

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of)
Chapters 4901:1-9, 4901:1-10, 4901:1-21,) Case No. 06-653-EL-ORD
4901:1-22, 4901:1-24, and 4901:1-15 of the)
Ohio Administrative Code.)

**COMMENTS
BY
THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

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**COMMENTS
BY THE
OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

I. INTRODUCTION

A. Preliminaries

The Ohio Consumer and Environmental Advocates¹ (Collectively “OCEA”) jointly submit these comments regarding rules proposed in an Entry dated July 23, 2008 (Environment Ohio, Sierra Club Ohio Chapter, and Greater Ohio are only signing on to the comments related to energy efficiency, environmental disclosure, and net metering.) OCEA requests that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) adopt the revisions to the proposed rules as set forth by OCEA. Utilities exist to serve the public and the public interest. In return for that service, they are entitled to reasonable compensation. In order to assure that a proper balance is maintained -- the public as the provider of compensation to the utilities and the Commission as the entity that determines the amount that is appropriate for customers to

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, Northwest Ohio Aggregation Coalition, Edgemont Neighborhood Coalition of Dayton, Ohio Farmers Union, Sierra Club Ohio Chapter, Greater Ohio, United Clevelanders Against Poverty; and Environment Ohio.

pay are entitled to full and complete data. Utilities have the burden of proving that their requests are justified and this requires sufficient information to justify its claims. These rules are instrumental in setting forth the minimal requirements to satisfy these objectives. As the Commission deliberates on these rules, OCEA members urge the Commission to keep in the forefront the public interest and the utilities' duty to serve that interest in a just and reasonable manner. In its simplest form, the message is: remember the public interest.

This pleading also addresses the three questions posed by the Commission in its Entry.² OCEA requests that the Commission consider the responses provided to the questions in the PUCO's deliberations on the proposed rules, including the proposed changes to the rules that we have included to implement our responses to the Commission's questions.

Finally, OCEA's comments and proposed rule changes incorporate a couple universal editorial changes. All of OCEA's comments and proposed rule changes incorporate the Staff's proposed change from "EDU" to "electric utility" that was made to most of the proposed rules -- but not all. OCEA asserts that this change should be made throughout all of the Chapters, but chose not to address each instance in order to highlight OCEA's substantive changes. In addition, OCEA proposes that contributions in aid of construction, "CIAC", should be spelled out throughout the document or included in the definition sections where used.

² Entry at 3-4, ¶(7) (July 2, 2008).

B. The Commission's Questions

- 1. Although staff has proposed to eliminate the requirement in Rule 4901:1-10-11, O.A.C., to report Momentary Average Interruption Frequency Index (MAIFI), should the service reliability indices and minimum performance standards set forth in Rule 4901:1-10-10(B)(1), O.A.C., include MAIFI and power quality indices as minimum standards?**

OCEA recommends that the Commission retain its reporting on MAIFI in Ohio Adm. Code 4901:1-10-10. OCEA has already proposed a draft rule that combines Rules 10 and 11. OCEA has provided comments regarding the continued inclusion of MAIFI with its comments on system reliability in Ohio Adm. Code 4901:1-10-10. The PUCO Staff stated in its Report in the AEP reliability case:

Momentary interruptions are becoming a nuisance to customers because devices such as computers, digital clocks, and electric motors with variable speed drives so sensitive to voltages fluctuations that, when a momentary interruption occurs, these products generally shutdown and need to be reset or restarted.³

As noted by the PUCO Staff, the measurement and reporting of momentary interruptions is perhaps more important than ever for two reasons: because it serves as indicator of the status of an electric utility's vegetation management program; and, the need for power quality in order to attract high tech businesses and provide adequate service to small customers is of critical importance. OCEA has also provided a proposed definition for MAIFI within Ohio Adm. Code 4901:1-10-01.

³ *Staff Concerns and Recommendations About Columbus Southern Power Company And Ohio Power Company's Provision of Electric Service*, May 1, 2003.at 3 The report was filed in *In re the Commission's Consideration of a Settlement Agreement between the Staff of the Public Utilities Commission and Columbus Southern Power Company and Ohio Power Company*, Case No. 03-2570-EL-UNC, Motion for Acceptance of the Stipulation (December 31, 2003) ("AEP Reliability Case").

2. **If minimum performance standards for MAIFI and power quality indices are established, should the minimum standards reflect the momentary interruptions experienced by all customers, what would be the expected cost of implementing these minimum standards, and who should bear the cost of implementation?**

Momentary Average Interruption Frequency Index (“MAIFI”) measurements should reflect the electric utility’s level of service provided to all of its customers. Because a measurement for MAIFI currently exists in Ohio Adm. Code 4901:1-10-11(C)(5)(d), which deals with circuit reliability, there should be little to no cost for an electric utility to implement a standard for MAIFI. Moreover, should advanced metering systems be implemented, other costs associated with compliance reporting can be automated so long as an open architecture system is teamed with the hardware.

3. **To the extent staff discovers other redundancies or inconsistencies among the chapters of the Administrative Code currently under review in this proceeding or in Case No. 08-723-AU-ORD, is there any reason not to adopt staff’s proposal of consolidating rules regarding residential and non-residential disconnection, reconnection, establishment of service, and bill payment into one chapter?**

OCEA supports the PUCO Staff’s efforts to consolidate all residential and nonresidential disconnection, reconnection, establishment of service, and bill payment rules as currently proposed in a separate rulemaking proceeding.⁴ Existing chapters of the Ohio Adm. Code, governing minimum standards for gas, electric, water and telephone service, include industry-specific disconnection, reconnection, establishment of service and bill payment. The industry-specific standards have caused confusion in the

⁴ *In the Matter of the Commission’s Review of Chapters 4901:1-7 and 4901:1-18 and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code (“Case No. 08-723”).*

past and were difficult to harmonize with the residential credit and disconnection rules in Ohio Adm. Code 4901:1-17 and Ohio Adm. Code 4901:1-18. While the rulemaking in Case No. 08-723 referenced above has not consolidated the residential and nonresidential provisions of the rules, OCEA supports the incorporation of the nonresidential provisions with the residential provisions within the same chapters of the Ohio Adm. Code.

II. ~~ELECTRIC COMPANIES-UTILITIES~~⁵ – CHAPTER 4901:1-9

4901:1-9-07 Rules, Regulations, and Practices for the Construction of Electric Line Extensions

A. Introduction

The definition section should be revised to benefit more fully from the information provided as part of the Line Extension Cases, PUCO Case Nos. 01-2708-EL-COI, et al., and especially from the concerns and determination by the Commission in its Opinion and Order dated November 7, 2002 (“Line Extension Order”). In particular regarding the definitions under consideration, the Line Extension Order addressed the “Proper costs of line extensions”⁶ that reflect the outcome of an extensive record regarding the manner in which six electric utilities dealt with line extensions. The Commission determined that stipulations in those cases did not adequately handle the definition of which costs should be defined as line extension costs.

The Line Extension Order stated that line extension costs do not include costs “to maintain, protect, or upgrade its distribution system” and do not include “system improvements (required for the general distribution system that serves multiple

⁵ The term “electric utilities” rather than “electric companies” is used throughout the proposed rules.

⁶ Line Extension Order at 37-38.

customers), which are driven by the customer’s load addition.”⁷ The definition for “line extension” and “premium service” should be revised, as follows, to reflect the insights gained by the Commission in the Line Extension Cases.

B. Comments and Proposed Changes

PROPOSED RULE CHANGE:

(A) Definitions

As used in this rule:

- (4) “Line extension” means the provision of INCREMENTAL facilities BY THE UTILITY (including, but not limited to, poles, fixtures, wires, and appurtenances) necessary for delivering electrical energy from the point of origin to the customer’s meter. SUCH FACILITIES DO NOT INCLUDE FACILITIES NORMALLY PROVIDED BY THE UTILITY IN CONNECTION WITH MAINTENANCE, PROTECTION, OR UPGRADE OF ITS DISTRIBUTION SYSTEMS AND DO NOT INCLUDE SYSTEM IMPROVEMENTS SUCH AS UTILITY SELECTED OVERSIZING OF FACILITIES AND IMPROVEMENTS REQUIRED FOR THE GENERAL DISTRIBUTION SYSTEM THAT SERVES MULTIPLE CUSTOMERS.

- (7) “Premium service” IS THE PROVISION OF LINE EXTENSION FACILITIES THAT ARE NOT NORMALLY PROVIDED BY THE UTILITY AND includes, but is not limited to, customer-requested oversizing of facilities, underground construction, and three-phase residential service.

The section regarding “applicability” appears to be based upon a misreading of S.B. 221. A new provision was added immediately following what is now section R.C. 4928.02(N). While R.C. 4928.02(N) addresses Ohio’s “effectiveness in the global economy,” the new provision that follows thereafter regarding “carrying out this policy”

⁷ Id. at 38.

refers to the totality of Ohio's policy as stated in R.C. 4928.02. Section (B) should be revised to reflect that focus.

PROPOSED RULE CHANGE:

(B) Applicability

This rule is applicable to all electric utilities to facilitate the state's effectiveness in the global economy and ensure the availability of reasonably priced electric service POLICIES AS SET OUT IN SECTION 4928.02, REVISED CODE by requiring all of the state's electric utilities to apply the same policies and charges on a nondiscriminatory and comparable basis in fulfilling theIR obligationS to construct line extensions when necessary to provide adequate distribution service to all customers, both residential and nonresidential.

Section (C) appears to imply that line extension tariff proposals may be submitted on a stand alone basis. Distribution tariffs may be altered in the context of a distribution rate case governed by R.C. Chapter 4909 and the Commission's rate case filing requirements that require a comprehensive evaluation of the utility's distribution functions. Alternatively, in the wake of S.B. 221 provisions, distribution proposals may be submitted as part of an ESP. In particular, newly enacted R.C. 4928.143(B)(2)(h) provides that an ESP may contain "[p]rovisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking" That provision does not simply permit single issue ratemaking, it permits single issue ratemaking upon the approval of the Commission in the context of an ESP application, and no similar exception to the rate-setting provisions of R.C. Chapter 4909 exists for MROs.

An ESP application is made to satisfy the requirement in R.C. 4928.141(A):

[A]n electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis . . . , a standard service offer of all competitive retail electric service necessary to maintain essential electric service to consumers, including a *firm supply of electric generation service*. *To that end, the electric distribution utility shall apply to the public utilities commission to establish the standard service offer in accordance with . . . 4928.143 [ESP] of the Revised Code. . . .*⁸

Thus, an ESP includes the provision of generation service to satisfy the requirements for the mandatory standard service offer. Single issue ratemaking does not take place outside the context of an ESP application. Section (C) of the rules should reflect the above-mentioned permissible routes for the adjustment of line extension tariffs.

PROPOSED RULE CHANGE:

(C) Tariff requirements

- (3) Upon the filing of an ~~application~~ PROPOSAL to establish or modify line extension tariffs AS PART OF A DISTRIBUTION RATE CASE OR ELECTRIC SECURITY PLAN CASE, the commission ~~may~~ SHALL fix a time and place for hearing ~~if the application appears to be unjust and unreasonable. The burden of proof to show that the proposals in the application are just and reasonable shall be upon the electric utility~~ AS REQUIRED FOR SUCH CASES.

Section (E) regarding line extension charges should reflect the same changes that were discussed earlier in connection with the definition of “line extension.” Costs should not include upgrades and system improvements, as further discussed in the Line Extension Order.

⁸ Emphasis added.

In addition, OCEA proposes to reduce the subsidy to new line extensions allowed to be included in distribution rate proceedings as defined in each of the following sections. Whereas in the past new line extensions would increase utility revenues and help control the costs of electric service to all customers, the new reality is that new customers may potentially push electric utilities toward construction of new expensive generating capacity if straight fixed variable rate designs are adopted.

PROPOSED RULE CHANGE:

(E) Line extension charges

(1) For line extensions to residential single family homes, both individual homes and homes in a development, the following shall apply:

(a) ~~The electric utility shall be responsible for all costs excluding the incremental costs of premium services up to THE FIRST THREE five thousand dollars of all costs incurred to provide service, excluding the incremental costs of premium services. THE ELECTRIC UTILITY SHALL BE RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH THE MAINTENANCE, PROTECTION, AND UPGRADE OF ITS DISTRIBUTION SYSTEMS AND WITH THE COST OF SYSTEM IMPROVEMENTS SUCH AS UTILITY SELECTED OVERSIZING OF FACILITIES AND IMPROVEMENTS REQUIRED FOR THE GENERAL DISTRIBUTION SYSTEM THAT SERVES MULTIPLE CUSTOMERS.~~

* * *

(c) The customer shall make arrangements with the electric utility for the payment of the costs that exceed ~~five~~ THREE thousand dollars. The electric utility shall afford the customer the option of paying those costs, plus interest, on a pro-rated monthly basis for up to fifty months.

(2) For line extensions to residential, non-master-metered, multifamily installations (two or more units) the following shall apply:

(a) The electric utility shall be responsible for all costs, ~~excluding~~ THE FIRST FIFTEEN HUNDRED DOLLARS PER UNIT, excluding the incremental costs of premium services, ~~up to twenty-five hundred dollars per unit.~~ THE ELECTRIC UTILITY SHALL BE RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH THE MAINTENANCE, PROTECTION, AND UPGRADE OF ITS DISTRIBUTION SYSTEMS AND WITH THE COST OF SYSTEM IMPROVEMENTS SUCH AS UTILITY SELECTED OVERSIZING OF FACILITIES AND IMPROVEMENTS REQUIRED FOR THE GENERAL DISTRIBUTION SYSTEM THAT SERVES MULTIPLE CUSTOMERS.

* * *

(c) The customer shall make arrangements with the electric utility for the payment of the costs that exceed ~~twenty-five~~ FIFTEEN hundred dollars. The electric utility shall afford the customer the option of paying those costs, plus interest, on a pro-rated monthly basis for up to fifty months.

(3) For line extensions to nonresidential customers the following shall apply:

(a) The electric utility shall be responsible for all costs, excluding the incremental costs of premium services. THE ELECTRIC UTILITY SHALL BE RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH THE MAINTENANCE, PROTECTION, AND UPGRADE OF ITS DISTRIBUTION SYSTEMS AND WITH THE COST OF SYSTEM IMPROVEMENTS SUCH AS UTILITY SELECTED OVERSIZING OF FACILITIES AND IMPROVEMENTS REQUIRED FOR THE GENERAL DISTRIBUTION SYSTEM THAT SERVES MULTIPLE CUSTOMERS.

(F) Electric utility cost recovery for line extensions.

- (1) The payment for premium service and for the cost of residential construction in excess of the limits of ~~five~~ THREE thousand dollars for single-family residences and ~~twenty-five~~ FIFTEEN hundred dollars per unit for multi-family residences shall be considered as a ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION and shall be grossed-up by the effect of applicable taxes. The total ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION payment (including the tax gross-up) shall be accounted for according to applicable accounting standards.

Section (G) addresses refunds under circumstances where other customers make use of facilities that were paid, in part, by a residential customer who previously requested a line extension. Unfortunately, the rule is only permissive (i.e. “may,” not “shall”) which does not require the refund or provide any explanation regarding how the issue of a refund will be resolved. Without a Commission determination (i.e. “shall”), the utility is left in a self-regulatory situation and the utility’s resolution of a refund issue would have to be addressed by means of a complaint proceeding brought by an individual residential customer. This is inadequate and impractical; the Commission should require refunds under the conditions specified in the proposed rules.

PROPOSED RULE CHANGE:

- (G) Future residential customers
 - (1) Any residential customer who paid to the electric utility a ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION other than for premium services, ~~may~~ SHALL be entitled to a refund of a portion of the ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION paid in accordance with the following:
 - (a) If any new residential customer, within fifty months of the completion of a line extension project for which a party has paid to the electric utility a ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION,

utilizes all or part of the facilities for which the ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION has been paid, the party who paid the contribution in aid of construction ~~may~~ SHALL be entitled to a refund which represents a pro rata portion of the original ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION calculated to equitably share the ~~CIAC contribution in aid of construction~~ responsibility for those facilities used in service by both the new and original residential customer.

- (b) If any new additional residential customer, within fifty months of the completion of the line extension project for which a party has paid to the electric utility a ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION, utilizes all or part of the facilities for which a ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION has been paid, the party who paid the ~~CIAC~~ CONTRIBUTION IN AID OF CONSTRUCTION ~~may~~ SHALL also be entitled to a refund.

APPENDIX

REGULATIONS TO GOVERN THE PRESERVATION OF RECORDS

The following revisions should be made to the “Schedule of Records and Periods of Retention” so that the Corporate Separation Chapter is consistent with this Rule: Also, insurance policies that are claims-based should be kept for the life of the corporation.

PROPOSED RULE CHANGE:

CORPORATE AND GENERAL

- (C)(1) Minute books of stockholders’, directors’, and directors’ committee meeting. 50 years or THREE YEARS AFTER termination of the corporation’s existence, whichever occurs ~~first~~. LAST

INSURANCE

(A)(1) Records of insurance policies in force, showing coverage, premiums paid and expiration dates.

~~Destroy at option after expiration of such policies.~~ **THREE YEARS AFTER LIFE OF CORPORATION**

During the recent Climate Strategy development by the City of Cincinnati, Duke Energy Ohio was unable to provide historical consumption for gas or electricity for the City of Cincinnati or any of the customer class subdivisions for 1996, which would have allowed a ten year aggregate growth rate to be identified.

PROPOSED RULE CHANGE:

REVENUE ACCOUNTING AND COLLECTING

(M) RECORDS OF AGGREGATE ANNUAL SALES DATA TO ALL CUSTOMERS, INCLUDING COMPONENT SALES TO THE CUSTOMER CLASSES, RESIDENTIAL, COMMERCIAL, INDUSTRIAL, GOVERNMENT AND TRANSPORTATION ALONG WITH FUEL USE DATA FOR THE UTILITY, FOR EACH MUNICIPAL JURISDICTION, EACH COUNTY AND ANY OTHER LARGE JURISDICTIONS OR SUBDIVISIONS THE UTILITY DEEMS APPROPRIATE. 20 years

(N) UTILITIES TO RETAIN RECORDS OF AGGREGATE DISTRIBUTED GENERATION BY TYPE. 20 years

III. ELECTRIC SERVICE AND SAFETY STANDARDS –CHAPTER 4901:1-10

A. Introduction

The Public Utilities Commission of Ohio (“PUCO” or “Commission”), by Entry dated April 4, 2007, originally initiated this review of its Electric Service and Safety Standards (“ESSS”) and sought comment on the proposed revisions by the PUCO Staff (“Staff”) to the ESSS that were attached to the Entry. In an Entry dated April 23, 2007, the Commission granted a joint motion by parties, including OCC, to hold a technical conference regarding the proposed ESSS, and extending the comment deadlines. The Commission established June 8, 2007 as the new date for filing initial comments, with reply comments to be filed by July 24, 2007. The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of residential utility consumers,⁹ joined with other members of the Consumer Groups in submitting initial and Reply Comments on the Staff Proposal.¹⁰ The Commission, by Entry dated July 23, 2008, initiated a second round of comments and reply comments on the PUCO Staff’s proposed revisions to the ESSS. The OCEA submit initial comments for the second round of rulemaking in this proceeding.

On July 6, 1999, the Governor of Ohio signed Amended Substitute Senate Bill No. 3 (“S.B. 3”). That legislation required Ohio’s electric industry to change from a monopoly environment to a competitive electric environment for generation services. The Commission is required, pursuant to R.C. 4928.11, to establish minimum service quality,

⁹ OCC has legislative authority to represent the residential utility consumers of Ohio pursuant to Chapter 4911 of the Ohio Revised Code.

¹⁰ The Consumer Groups consisted of the Appalachian People’s Action Coalition, Empowerment Center of Greater Cleveland, and Communities United for Action, Edgemont Neighborhood Coalition, Community Action Partnership, Consumers for Fair Utility Rates and OCC.

safety, and reliability rules for noncompetitive retail electric services. The rules which implemented the legislation first became effective during 2001.

Amended Substitute Senate Bill No. 221 (“S.B. 221”) amended certain provisions of Amended Substitute Senate Bill No. 3 (“S.B. 3”) including revisions to Section 4905.31 of the Revised Code and Chapter 4928 of the Revised Code. The revisions cited above require additional modifications to many rules under review in the above-captioned proceeding. In order to facilitate the review of the proposed rules, the OCEA, for procedural purposes, accepted the Staff’s changes as the working rule and redlined the proposed rule.

B. Overview

The electric utility’s core and most essential function is to provide reliable service at reasonable and non-discriminatory cost to its customers. Reliable service has implications not only for the statutory obligation to provide reasonable or adequate service, but also for modern economic performance. Such performance also impacts Ohio’s ability to provide jobs and economic growth for its citizens. As a result of the importance of the electric utility’s obligation, the Commission plays an important role in ensuring that electric service is reliable. The Commission’s rules can help assure the public that the electric reliability standards are being followed and that appropriate and transparent reporting of compliance is implemented. The OCEA’s comments on the proposed revisions to the ESSS reflect the importance of the electric utility’s obligation to ensure a reasonable level of service reliability, and the Commission’s duty to establish a clear and transparent methodology to measure and ensure utility performance according

to their obligations. Consumers pay for and are entitled to reliable, safe, and efficient service.¹¹ The Commission is responsible for ensuring that such service is delivered.

The Commission, in order to ensure electric utility reliability, must clearly identify the data that should be collected, measured, and reported to the PUCO. Furthermore, the rules should identify the performance standards, or set forth the method by which performance standard will be established, that will be used to measure an electric utility's reliability performance. Finally, the rules should reflect an open and transparent decision-making process to establish performance requirements and standards, as well as the submission of annual reports and analysis of reliability data and programs. The existing rules pertaining to the reliability of the distribution system do not constitute standards. At best, they are benchmarks that have been negotiated in private with the Commission Staff. The OCEA propose that the Commission adopt actual reliability standards developed with public input. Electric utility failure to meet these standards should have real and public consequences. The Staff's proposed rules have added transparency to the development of the electric utilities performance standards, yet more needs to be done, particularly in the enforcement provisions of the rules, to instill confidence in the efficacy of the ESSS.

The OCEA's comments reflect the need for revision of the proposed rules to achieve these objectives. The OCEA have rewritten Ohio Adm. Code 4901:1-10-10 and Ohio Adm. Code 4901:1-10-11 to clarify its proposed modifications to the rules. Ohio Adm. Code 1-10-26 has also been rewritten. In addition, the OCEA have rewritten proposed rule, Ohio Adm. Code 4901:1-10-30. The new rule proposes consequences for

¹¹ R. C. 4928.02.

an electric utility's failure to following the provisions of Ohio Adm. Code 4901:1-10-10, which OCEA has combined by with Ohio Adm. Code 4901:1-10-11, as well as Ohio Adm. Code 4901:1-10-26.

C. Comments by Major Theme

1. The Rules Should Exhibit Transparency.

A common thread that runs throughout the existing rules is the lack of transparency in compliance efforts, enforcement, and the development of performance “targets.” More public dissemination of information regarding the performance of the electric utilities is, however, warranted. These amended rules, proposed by the PUCO Staff, have taken steps to open up the process by developing “standards” in lieu of the targets that are utilized today – and by developing such standards in a Commission proceeding. Standards are a dramatic improvement over targets in one very important aspect – targets are aspirational while standards must be adhered to.

The enforcement or compliance efforts that the PUCO Staff is undertaking regarding the performance of the electric utilities should be publicly available as well. OCC previously requested that Staff-issued notices of probable noncompliance be docketed in support of greater transparency regarding the Commission's public role.¹² OCC's request was denied, but the Commission further stated that “histories of violations and/or *settled disputes*” would be available upon request.¹³ The PUCO noted that it

¹² *In the Matter of the Commission's Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code*, Case no. 99-1611-EL-ORD, Finding and Order (April 6, 2000) at 36.

¹³ *Id.* (emphasis added).

“would maintain its records as it sees fit” to comply with the Ohio Revised Code.¹⁴ The after-the-fact availability of public records does not properly serve the public interest.

Neither the Commission nor the public benefit from the lack of insight and perspective when the information that drives an enforcement process is closed to everyone but the Commission Staff. A closed process that results in the filing of a stipulation between the Staff and the utility simultaneous with the opening of a case does little to inspire public confidence in the reliability of the electric distribution system. Whether it’s the tree-trimming practices of the electric utility or the frequency of momentary outages – the public is unable to evaluate the electric service they pay for. The PUCO Staff has made great strides in these proposed rules to increase the transparency of its process in setting electric utility performance standards. The newly developed public process for providing input into the development of the electric utilities’ performance standards in Ohio Adm. Code 4901:1-10-10 should increase the public’s faith in the electric distribution system. Currently, the Commission is involved in the setting of targets only to the extent there is a disagreement between SMED and the electric utility. If and when a hearing is scheduled, the OCEA, or any party in interest, traditionally was at a disadvantage in helping to solve the problem. Of course, no such hearing has ever been requested by SMED or by an electric utility because the targets have always been acceptable to the PUCO Staff and the electric utility.

There is more that needs to be done, however, to make the public aware of the actual performance of the electric utility in addition to its *proposed* performance.

¹⁴ Id.

Maintaining transparency throughout the implementation, reporting, and enforcement process is critical.

An example of the lack of transparency that exists in the current rules is the manner in which electric utilities are instructed to provide updated annual reports information to the director of the Service Monitoring and Enforcement Division (“SMED”) and not to other parties. For example, pursuant to Ohio Adm. Code 4901:1-10-09(C)(1), electric utilities are required to report to the director of SMED if the minimum customer service levels are missed for any two months in a twelve-month period. Only SMED would have the information about the service even though residential customers could be greatly impacted by any degradation in service.

The reliability performance of the electric utilities should be shared with the public that pays for electric service. For example, in late 2003, the public first became aware of Staff’s concerns about the performance of Columbus Southern Power Company and Ohio Power Company (collectively “AEP”).¹⁵ During the course of the investigation that led to the stipulation in the case, Staff discovered that AEP’s reliability had declined significantly.¹⁶ Consumers would only have isolated data points from their experiences

¹⁵ *In re Settlement Agreement Between the Staff and AEP*, Case No. 03-2570-EL-UNC, Stipulation and Settlement Agreement (January 31, 2003). (“AEP reliability case”).

¹⁶ The May, 2003 Staff Investigative Report found that AEP violated numerous Electric Service and Safety Standard (“ESSS”) rules. The Staff Investigative Report documented numerous ESSS rules violations by AEP, including but not limited to the following: (a) ESSS rule 27(E)(2)(c), which requires the electric companies to submit to the Commission for acceptance, modifications to their maintenance plan, which includes tree trimming; (b) ESSS rule 27, which requires the electric companies to have an effective preventative tree-trimming program; (c) ESSS rule 27(E)(1), which requires the electric companies to have programs for inspection, maintenance, repair and replacement of distribution circuits and equipment, which includes right-of-way vegetation control (ESSS rule 27(E)(1)(f)); (d) ESSS rule 27(E)(1)(a), which requires the electric companies to follow their guidelines for prioritizing circuits for pole inspection and treatment; (e) ESSS rule 27(E)(1)(d), which requires electric utilities to annually inspect and maintain all distribution line reclosers; (f) ESSS rule 3(B), which requires electric companies to maintain records for three years to demonstrate compliance with ESSS rule 11(C)(4); (g) ESSS rule 27(F), which requires electric companies to maintain records to demonstrate compliance with its distribution facilities inspection programs required by ESSS rule 27(D)(1). Staff Investigative Report at 8-30.

with outages, but not collective data to demonstrate any continuous patterns of underperformance. In the AEP reliability case, the Company's poor performance was longstanding and known to the PUCO and its Staff, long before the public was made aware of the issues. Public input into the benchmarks that were agreed to by the Company and the Staff would have greatly enhanced the process and likely would have provided more concrete benefits to consumers.

In the recent FirstEnergy rate case, it came to light that several of its operating companies had repeatedly failed to meet performance standards which were earlier agreed to be FirstEnergy's operating companies and the PUCO Staff.¹⁷ CEI, for instance, had failed to meet its Customer Average Interruption Duration Index ("CAIDI") targets for 8 years -- since the ESSS were originally implemented in 1999-2000. OE also failed to meet its Service Average Interruption Frequency Index ("SAIFI") indices. These failures were and are all the more remarkable because the FirstEnergy Companies and the PUCO Staff are both permitted to have a review conducted by the Commission if an action plan for improvement cannot be agreed upon.

UMS Group, Inc. ("UMS") was hired to conduct a "focused assessment" of CEI's reliability as a result of the electric utility's repeated its failure to meet its SAIFI and Customer Average Interruption Duration Index CAIDI outage-based reliability targets.¹⁸ UMS' recommendations did not go far enough to ensure remedial and sustained reliability actions by CEI. Nor were any parties besides the PUCO Staff and CEI aware of the UMS Report and its findings prior to the discovery phase of the rate case. Again,

¹⁷ *In re the Application of FirstEnergy for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals*, Case No. 07-551-EL-AIR et al., ("FirstEnergy Rate Case"). Staff Ex. 1 at 76 (CEI Staff Report).

¹⁸ FirstEnergy Rate Case, Staff Ex. 2 at 76 (CEI Staff Report).

there was no transparency in any phase of the process, whether it related to the development of the targets or enforcement measures for not achieving the targets.

2. Major Events

The electric utilities should be required to formally request that outage data during major event be excluded for reporting purposes. The electric utilities should be required to prove that outages have occurred as a result of a major event. However, today a major even is measured solely by the duration of an outage and number of customers affected by the outage. In other words, if *many* customers experience a *lengthy* outage it may qualify as a major event regardless of the weather or other conditions at the time. In order to analyze and set measurable goals for service reliability performance, outage data is partitioned into normal and abnormal periods so that only normal event periods are used for calculating service reliability indices. The term “major event” is used to identify an abnormal event, for which this outage data is to be excluded when calculating service reliability indices.

Table 1¹⁹ and Table 2²⁰ highlight the impact that major storms have on the overall reliability assessment of a distribution system.²¹ The tables not only reflect the disproportionate impact that “major events” have on AEP’s distribution reliability, but reflect the need for performance standards in lieu of targets,

For example, in the recent AEP self-complaint case in Table 1, reliability performance, prior to 2006, had declined in several important respects starting around

¹⁹ Attachment 1.

²⁰ Attachment 2.

²¹ These tables are excerpted from the pre-filed supplemental testimony of Peter J. Lanzalotta filed on April 10, 2007, in *In the Matter of the Self Complaint of Columbus Southern Power Company and Ohio Power Company Concerning the Implementation of Programs to Enhance Their Currently Reasonable Level of Distribution Service Reliability*, Case No. 06-222-EL-SLF. (“PJL testimony”).

2001 (higher index values mean lower electric service reliability). As can also be seen from Table 1 in 2006, the Company's electric service reliability performance *with major storms excluded*, improved considerably compared to the four previous years.

The real value to having outage data provided without weather exclusions is the ability to see the actual reliability customers are experiencing. Table 1 does not accurately reflect the electric service reliability being experienced by AEP Ohio's customers, since it excludes all electric service outages that occur during major storms. Because storm activity is typically not constant from one year to the next, removing storm impacts from reliability data de-emphasizes the more variable reliability effects of storms. However, the exclusion of weather data does not reflect the quality of the electric service customers are actually experiencing. The practice of excluding major event data can actually encourage maintenance and operating practices that ignore the reliability impacts suffered during storms. Table 2 reflects the same reliability indices as in Table 1, only these indices include electric service interruptions experienced by customers during major storms.

As shown in the last three lines of Table 2, the outage frequency increased dramatically for the average AEP customer from 2002 to 2006 compared with the same period 1998 to 2001. There is a large percentage increase in the number of interruptions experienced and their duration during 2002-2006 when storm related outages are included in the reliability indices.

Reliability data will be skewed when an electric utility excludes more outage data from its reliability calculations than is appropriate. The performance data will be skewed because the number of customers interrupted and/or the customer minutes of the

interruption are excluded from the calculations of the performance metrics, thus resulting in lower (better) scores. The removal of storm-related customer outages from reliability indices can obscure changes in the distribution system's ability to provide reliable service during bad weather. If storm-related customer outages carry lesser weight in evaluating distribution system reliability performance than outages that are not storm-related, then electric utilities will have less incentive to design and/or maintain their distribution systems so as to maintain or to increase their ability to withstand storm-related events.

The inappropriate exclusion of outage data can be minimized if the Commission requires the electric utilities to formally notify the Commission when it has experienced what it believes to be a major event so that the specific outage data associated with the event would be excluded for calculating reliability performance. After providing the Commission Staff with the report, the utility would be able to exclude the related outage data from its reliability calculations only upon approval of the Commission. The following outage data should be provided in support of the request:

- The starting and ending times of the outage;
- The main operating area(s) affected by the major event, including the causes and number of customers affected;
- The neighboring operating area(s) affected, including the causes and number of customers affected;
- The date and time of the first information of a service interruption; and
- The actual time that service was restored to the last affected customer.

3. Vegetation Management Rules

The existing provisions of Ohio Adm. Code 4901:1-10-27(E) requires electric utilities to have programs for right of way vegetation control. However, the rule lacks specific requirements for the vegetation management program. Customers routinely inquire about the standards that electric utilities use for tree-trimming and about responsibilities for removing debris. As reported by PUCO Staff,²² tree-caused outages had the second greatest impact on the distribution system yet there are no specific vegetation management rules in Staff's proposal. Vegetation management programs are also directly related as a cause of momentary service interruptions, which last five minutes or less. These interruptions can cause loss of data in computers and can result in the need to reset many types of modern appliances and electronics. Commission Staff mentions this in the 2003 Staff Report²³ and explains how circuit breakers and reclosers on overhead distribution circuits are designed to operate, i.e., open, when a fault is detected, and then to close after a few seconds, to see if the fault has cleared. If the fault is gone, the breaker or recloser stays closed, and customers downstream from that device have experienced a momentary outage. If the fault is still there, the device opens again and typically locks out in the open position until the circuit can be checked for faults.²⁴ Falling tree branches and tree limbs swaying in the breeze can cause faults that disappear after a second or two. When a customer or a distribution circuit experiences high

²² *In the Matter of the Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio and Columbus Southern Power Company and Ohio Power Company*, Case No. 03-2570-EL-UNC and *In the Matter of the Self-Complaint of Columbus Southern Power Company and Ohio Power Company Concerning the Implementation of Programs to Enhance Their Currently Reasonable Level of Distribution Service Reliability*, Case No. 06-222-EL-SLF, Commission Ordered Investigative Report (April 17, 2006) at 14.

²³ 2003 Staff Report in the AEP Reliability Case.

²⁴ Some circuit breakers or reclosers may be set to operate several times in this fashion before locking out.

numbers of momentary outages, trees are one of the most likely causes. Of course, since the Company does not report numbers of momentary interruptions, a customer would most likely have to complain before the Company or the Commission became aware of the problem.

The use of “performance-based” direction of at least some vegetation management activities is on the increase among electric utilities. It may take the form of something as simple as annual listings of a utility’s worst performing distribution circuits, with these circuits targeted for remedial action including tree trimming. However, many utilities still have a trimming cycle that is employed on a system-wide basis, or other application of vegetation management techniques, every so many years. There is some variability in the lengths of these cycles. In the FirstEnergy rate case, testimony in the evidentiary hearing by both FirstEnergy and PUCO Staff witnesses indicated that the Company’s four-year cycle-based vegetation management program, in fact, was not a four year cycle at all. The four-year tree-trimming cycle actually did not mean that the vegetation on a given circuit would be trimmed every four years.²⁵ The fact that FirstEnergy failed to follow its vegetation management plan, which had been submitted to the Staff, was deemed not to be a violation of any commission rule according to both the company and the PUCO Staff. The plans, standing alone, are not enough. The Commission should require that vegetation management plans, or any action plan filed with the Commission or submitted to Staff, be followed and that consequences should attach for failure to follow the plans including forfeitures and other sanctions.

²⁵ FirstEnergy rate case. Tr. Vol. VIII at 104 (February 22, 2008) (Lettrich).

The use of a vegetation management policy that rations tree trimming and other vegetation management activities only to those distribution circuits that exhibit especially poor electric service reliability due to tree-related faults probably comes at a cost to overall system reliability. Minimizing tree trimming in this way leaves vegetation in close proximity to circuits, which also tends to increase the tree-related problems that occur during storms. For example, AEP's recent reliability index performance during storms certainly suggests that increased storm response and service restoration capabilities may be needed as part of its performance-based program of vegetation management.

Recent AEP policies to withhold tree-trimming from distribution circuits until they show negative reliability impacts due to tree contact can be expected to increase storm-related customer outages due to lack of tree-trimming, as the effects of wind and ice are increase due to infrequent tree-trimming. The OCEA offer the following amendment to Rule 4901:1-10-28 to ensure that the electric utilities develop vegetation management guidelines and file them with the Commission:

D. Proposed Comments and Changes

4901:1-10-01 Definitions.

The "critical customer" definition does not include any response required by the electric utility to prioritize the restoration of service for such customers. Customers that are designated "critical" are in desperate need for electricity and the electric utilities should have additional responsibilities for alerting family members or others about planned outages and to prioritize restoration during unplanned sustained outages.

PROPOSED RULE CHANGE:

- (F) “Critical customer” means any customer or consumer on a medical or life-support system who has provided appropriate documentation to the ELECTRIC UTILITY that NECESSITATES PRIOR NOTICE FOR PLANNED OUTAGES AND PRIORITY RESTORATION DURING SUSTAINED OUTAGES. ~~an interruption of service would be immediately life threatening.~~

Staff proposed several new definitions including adding a definition for major events, sustained outages, competitive retail electric service providers, mercantile commercial customers, postmarks, and utility distribution call center. In addition, the Staff clarified several of the existing definitions to include defining acronyms, specific offices within the commission, and other minor editorial changes. While many of the changes result in overall improvement in the rules, the OCEA proposes changes to the definition for a major event.

Having a definition for major events in the rules is important and should lead to more consistent reporting by electric utilities and the collection of better more comparable reliability performance data. Outages have a significant effect on consumers and the electric utilities should do everything possible to reduce the occurrence of outages and to reduce the amount of time that consumers are without service when they do occur. Currently, the electric utilities use a variety of different definitions for major events that involve the duration of the outage, number of customers affected, and if additional resources are required to restore service. A definition for major events that is overly inclusive of outage minutes can result in a perception of reliability performance issues where there may not be problems. Alternatively, a definition that is overly exclusive of outage minutes can result in the potential masking of reliability problems that should receive more attention. The definition proposed by Staff is overly

complicated and requires a statistician to determine when outages should be categorized as major events. Furthermore, the Staff has not provided any information that would allow a meaningful understanding about the impact of these proposed definitions on prior historical reliability data. There is no support provided for the specific standard deviation calculations that are proposed.

Other approaches for defining major events is to base the designation on the amount of the service territory that is without service, number of affected, and/or the duration of the outage. New York and Pennsylvania use similar definitions for major events where 10% of the service territory is without service for predetermined amounts of time.

The definition of “major event” recommended by the OCEA, or some variation of it, is employed by many utilities and/or imposed by a number of state public utilities commissions.²⁶ The OCEA are unaware of any state that employs the “2.5 beta methodology.” The OCEA’s recommended definition fulfills all of the criteria outlined in IEEE Std. 1366 in determining a proper definition for major event:

- Definition must be understandable and easy to apply.
- Definition must be specific and calculated using the same process for all utilities.
- Must be fair to all utilities regardless of size, geography, or design.
- Entities that adopt the methodology will calculate indices on a normalized basis for trending and reporting. They will

²⁶ New York and Pennsylvania Commission use the “10%” standard recommended by the OCEA. Annex A, pages 23-25 of IEEE Std 1366-2003 contains a study performed in 1999 by the Edison Electric Institute that contains responses from 45 electric utilities. More than one-third of the respondents utilized a variation of the definition of “major event” recommended by the OCEA.

further classify the major event days separately and report on those days through a separate process.²⁷

The OCEA's definition of "major event" is understandable to all stakeholders, including consumers. The IEEE definition is overly complicated and difficult to understand. The definition, in fact, is not easy to apply for non-engineers. Second, the OCEA's definition of "major event" is specific and can be calculated by each utility using the same process. Third, the definition recommended by the OCEA is fair to all electric utilities regardless of geography, size, or design. Fourth, the nature of the definition of "major event" recommended by the OCEA does not require normalization because the electric utilities in Ohio are each relatively large in size, nor do they differ significantly in current levels of reliability.²⁸ Finally, there is no information available to the public or reflected in the record of this proceeding that would allow for a consideration of the actual implications of the Staff's proposed definition on each electric utility's recent reliability performance. In other words, there is no rationale or analysis that has accompanied this proposal from the Staff, and given that it would be "unique" in terms of what other states have adopted in this regard, the adoption of this overly complicated and unproven approach would not be appropriate.

The OCEA acknowledged that adoption of a new definition of "major event" will necessitate the revision of certain reliability indices. However, adoption of these new indices should be determined in a public proceeding that results in a Commission order or other means of assuring public access to the resulting standards for each electric utility.

²⁷ IEEE Std. 1366, Annex B, at 26.

²⁸ FE Comment at 2.

Again, the end result of the development of indices based on any new criteria should be reliability *standards* rather than targets.

The OCEA propose that a definition for major event be adopted like Pennsylvania's where the distinction is based on the severity of the outage across the service territory. The OCEA propose a definition for major event as follows:

PROPOSED RULE CHANGE:

- (Q) "Major event" MEANS encompasses any calendar day when an electric utility's system average interruption duration index (SAIDI) exceeds the major event day threshold using the methodology outlined in section 4.5 of standard 1366-2003 adopted by the institute of electric and electronics engineers (IEEE) in "IEEE Guide for Electric Power Distribution Reliability Indices." The threshold will be calculated by determining the SAIDI associated with adding 2.5 standard deviations to the average of the natural logarithms of the electric utility's daily SAIDI performance during the most recent five-year period. The computation for a major event requires the exclusion of transmission outages. For purposes of this definition, the SAIDI shall be determined in accordance with paragraph (C)(3)(e)(ii) of rule 4901:1-10-11 of the Administrative Code.

AN INTERRUPTION OF ELECTRIC SERVICE RESULTING FROM CONDITIONS BEYOND THE CONTROL OF THE ELECTRIC UTILITY WHICH AFFECTS AT LEAST 10% OF THE CUSTOMERS IN THE ELECTRIC UTILITY SERVICE TERRITORY DURING THE COURSE OF THE EVENT FOR A SUSTAINED DURATION OF 5 MINUTES OR LONGER. THE EVENT BEGINS WHEN NOTIFICATION OF THE FIRST INTERRUPTION IS RECEIVED AND ENDS WHEN SERVICE TO ALL CUSTOMERS AFFECTED BY THE EVENT IS RESTORED. THE NATURE AND SEVERITY OF THE WEATHER OR OTHER EVENT THAT GIVES RISE TO THE LENGTHY OUTAGE SHALL BE REPORTED TO THE COMMISSION STAFF ON A MONTHLY BASIS.

Subsection (P) introduces a definition for, “Governmental aggregation program.” This term is also defined under Ohio Adm. Code 4901:1-21-01(T) and OCEA proposed the same change to that definition. The term is defined as an aggregation program established through R.C. 4928.20 with a fixed term of between one year and three years. This definition artificially limits the opportunities presented by governmental aggregation in contravention of R.C. 4928.20(K), which requires the commission to “encourage and promote large-scale governmental aggregation in this state.”

A governmental aggregation has the potential to serve as more than simply a bidding process. San Francisco has been developing a governmental aggregation to purchase solar and other renewable energy resources. Stimulating the investment necessary to develop the resources requires a longer time horizon and a three-year limit forecloses the opportunity for longer-term investments that can provide price stability for customers and/or provide opportunities for environmental compliance within an airshed by offsetting emissions. Additionally, if a municipality wanted to offer a program for the balance of a year and to start a new contract at the beginning of the following year, or some similar reason that would require a program for less than one year, this definition would artificially and arbitrarily foreclose that possibility.

PROPOSED RULE CHANGE:

- (P) “Governmental aggregation program” means the aggregation program established by the governmental aggregator with a fixed aggregation term, ~~which shall be a period of not less than one year and no more than three years~~ AS DESCRIBED IN THE OPT-OUT DISCLOSURE NOTIFICATION REQUIRED IN 4901:1-21-17

The proposed rules do not include a definition for momentary outages and these are a type of outage that needs to be defined to ensure consistency in the electric utility reporting processes. The proposed rules do include a definition for sustained outages as being interruptions of service to a customer for a duration of more than five minutes. The OCEA commends Staff for proposing a definition for sustained outages and recommends that a definition be adapted for momentary outages. Each of the electric utilities has their own definition for both sustained and momentary outages and the definitions need to be standardized for the rules to be effective.

Lack of a standard definition for momentary outages may result in different interpretations by the electric utilities for the types of outage data that should be reported and reflected in the reliability indices. Reporting of momentary outages provides an important benchmark for the type and quality of service that customers are receiving. The OCEA proposes later in these comments that standards for reporting momentary outages be adopted in this case. An abundance of momentary outages may be indicative of other more systemic problems that could lead to increased sustained outages. For example, lack of proper vegetation management may manifest itself initially in momentary outages. Over time, lack of vegetation management may result in more serious reliability problems and increased sustained outages. The Institute for Electrical and Electronic Engineers (IEEE) has adopted a definition for momentary outages being interruptions of service to customers for a duration of less than five minutes.

PROPOSED RULE CHANGE:

“MOMENTARY OUTAGE” MEANS AN INTERRUPTION IN ELECTRIC SERVICE WITH A DURATION UNDER FIVE (5) MINUTES.

The current rules do not provide a definition for performance standards. One of the key recommendations that the OCEA have made within this proceeding is the establishment of clear and unambiguous performance standards similar to the definition for performance standards implemented in Pennsylvania. A target does not mandate a level of compliance which is necessary to meet the constructs of adequate service. Thus, a standard rather than a target is appropriate.

PROPOSED RULE CHANGE:

“PERFORMANCE “STANDARD MEANS A NUMERICAL VALUE THAT ESTABLISHES A MINIMUM LEVEL OF ELECTRIC UTILITY RELIABILITY ALLOWED BY THE COMMISSION. THE PERFORMANCE STANDARD IS A CRITERION TIED TO THE PERFORMANCE BENCHMARK THAT APPLIES TO RELIABILITY PERFORMANCE FOR THE ELECTRIC UTILITY’S ENTIRE SERVICE TERRITORY. THE COMMISSION WILL, FROM TIME TO TIME, ESTABLISH NEW PERFORMANCE STANDARDS FOR EACH RELIABILITY INDEX FOR EACH ELECTRIC UTILITY.

The rules, as proposed, provide no definition for residential service. Not having a definition for residential customers in the rules could lead residential customers being served as commercial customers under the standard terms and conditions in an electric utility tariff. This is problematic for at least three reasons. First, the rates for commercial customers can be more than the rates residential customers pay based on the standard residential tariff. For example, the monthly customer charge for commercial service is more than the monthly customer charge for residential service. The inclusion of demand charges and other related fees can similarly result in commercial service being more expensive than residential service. Second, there are a number of consumer protections in the rules related to credit standards, payment plans, disconnection avoidance and

notices that apply to residential customers that do not apply to commercial customers. These consumer protections are important and should be applied uniformly to all residential customers in the state. Lastly, the determination for the class of service that a customer is receiving should not be based on an arbitrary definition in an electric utility tariff. The rules should specify the definition for the type of service being provided by electric utilities. The OCEA proposes the following definition for residential service:

PROPOSED RULE CHANGE:

“RESIDENTIAL ELECTRIC SERVICE” MEANS SERVICE THAT IS BEING PROVIDED TO ANY LOCATION WHERE THE ELECTRICITY IS BEING USED PRIMARILY FOR DOMESTIC PURPOSES.

The definition of “sustained outage” should be modified to include a provision that “partial power” outages of greater than five minutes also be categorized as “sustained outages.” While partial power conditions may permit certain home appliances to operate, it is unlikely that all of the major home appliances would be able to operate correctly and according to the service requirements within the tariff.

PROPOSED RULE CHANGE:

- (Y) “Sustained outage” means the interruption of service to a customer for more than five minutes. **SUSTAINED OUTAGES ALSO INCLUDE “PARTIAL POWER” OUTAGES OF GREATER THAN FIVE MINUTES.**

4901:1-10-03 Records.

- (A) Retention of records

The proposed record retention rule, which requires the electric utilities to maintain records for “the total number of years over which such activities are required to occur” is a major improvement over the existing rule. Combined with the portion of the rule which

requires retention of records sufficient to demonstrate compliance, the new rules close a significant gap in the electric utilities' current records retention policies. Any recordkeeping rule must necessarily require that records be kept to reflect performance for the duration of the program or activities undertaken. Recordkeeping practices sufficient to reflect compliance with the ESSS has been a problem for certain electric utilities in the past. The new language proposed by the PUCO should help to rectify the problem.

- (3) If compliance with any rule in this chapter is determined on the basis of activities (such as inspection, testing, or maintenance) occurring over a period of two years or more, then the three-year record retention requirement shall be increased by the total number of years over which such activities are required to occur and shall apply to the compilation of records comprised of the activities required during the stated period.

The PUCO Staff's modifications to the rule which require the utility to provided monitoring of customer service representatives, without the knowledge of the representatives, is crucial in ensuring that electric utility customers are provided with the necessary information for establishing and maintaining service. Without the monitoring of the company's interactions with its customers, there is no viable method for the Commission and the PUCO Staff to determine compliance with the Commission's consumer protection rules.

- (B) Access to records

* * *

- (3) Access includes the ability of staff to adequately monitor the electric utility call center interactions with Ohio customers either at a location in Ohio or in a manner agreed to by the staff. Electric utilities shall provide access to

monitor customer calls without the customer service representative's knowledge of the monitoring.

4901:1-10-05 Metering.

Paragraph F requires electric utilities to pay or credit customers with any adjustment that is necessary because the customer overpaid their bill. Over payments can occur for a number of reasons including faulty meters, misread meters, or following periods of inaccurate estimated meter reads. The electric utilities have the discretion to determine if the customer will be provided an immediate refund of the over-payment or if the refund is credited to the customer's account. The customer should have the option to decide if they want the refund to be mailed to them in a check or if the refund is to be credited to their current account. The rule has been modified as follows to support this change.

PROPOSED RULE CHANGE:

- (F) Metering accuracy shall be the responsibility of the electric utility.
 - (5) If the accuracy of the meter is found to be outside the tolerances specified in this rule, the electric utility
 - (b) Shall recalibrate the meter or provide a properly functioning meter that complies with the ANSI C12.1 standards without charge to the customer
 - (c) Shall, within thirty days, pay or credit, AT THE CUSTOMER'S OPTION, any overpayment to the customer, in accordance with one of the following billing adjustments:

Paragraph I requires that an actual meter read be performed if the meter was not read in the proceeding 60 days from when customers either request to initiate service or to terminate service. If the meter has been read in the proceeding thirty-three to fifty nine days before the customer request to have service initiated or terminated, the customer is

to be informed about the right to an actual meter read. If the meter was read in the proceeding thirty two days before the customer requests to initiate or terminate service, the electric utility is afforded a right to estimate the consumption. While this rule limits any potential error because the meter was not read for up to sixty days of usage, this error can still be significant.

The current rules are convoluted and unnecessarily complex. Customers should have the right to have an actual meter read anytime that the meter was not read within the proceeding seven days. This limits the potential error to no more than seven days of consumption while eliminating the need for multiple redundant trips to the premise to read the meter over a short period of time. Paragraph I also imposes a duty on the electric utilities to perform an actual meter read on an annual basis and to make reasonable attempts to obtain actual meter reads each billing period. This language is vague and “reasonable attempts” can be interpreted many different ways. The Commission should require actual meter read each billing cycle. In the alternative, if the electric utility is unable to obtain an actual read because of access issues, the customer should have the option to call-in the meter read.

PROPOSED RULE CHANGE:

- (I) Each electric utility shall comply with the following requirements regarding meter reading:
 - (1) The electric utility shall obtain actual readings of all its in-service customer meters at least once each calendar year. Every billing period, the electric utility shall make reasonable attempts to obtain accurate, actual readings of the energy and demand, if applicable, delivered for the billing period, except where the customer and the electric utility have agreed to other arrangements. **IF AN ACTUAL MONTHLY METER READ IS NOT POSSIBLE**

BECAUSE OF ACCESS ISSUES, THE CUSTOMER SHALL BE PROVIDED ALTERNATIVE WAYS TO PROVIDE THE METER READ TO THE ELECTRIC UTILITY. Meter readings taken by electronic means shall be considered actual readings.

* * *

- (3) An actual meter reading is required at the initiation and/or the termination of service, if the meter has not been read within the ~~sixty~~ SEVEN days immediately preceding initiation and/or termination of service and access to the meter is provided.
- ~~(4) If the meter has most recently been read within the thirty-three to fifty-nine days immediately preceding the initiation and/or termination of service, the electric utility shall inform the customer, when the customer contacts the electric utility, of the option to have an actual meter read at no charge to the customer.~~

The current rules do not address situations where meter reads are provided by customers through automated options that may be available by the electric utility. Customers should have some method of confirmation that the order was processed correctly by the electric utility. In addition, there are circumstances where final meter reads are necessary and neither the electric utility nor customer has access to the meter such as instances where a landlord maintains access to the meters. A new rule is necessary that requires the electric utility to notify the landlord and tenant about the access requirements.

PROPOSED RULE CHANGE:

- (J) WHEN A METER READ IS PROVIDED BY THE CUSTOMER THROUGH AN AUTOMATED INTERACTIVE SYSTEM, THE ELECTRIC UTILITY SHALL PROVIDE A CONFIRMATION OF THE METER READ TO THE CUSTOMER IN A WRITTEN LETTER BY THE FOLLOWING BUSINESS DAY.

- (K) WHEN THERE IS A LANDLORD/TENANT RELATIONSHIP AND NEITHER THE ELECTRIC UTILITY NOR THE CUSTOMER HAS ACCESS TO THE METER, THE UTILITY SHALL RENDER NOTICE BY MAIL TO BOTH THE LANDLORD, WHEN THE ADDRESS IS AVAILABLE, AND THE TENANT THAT ACCESS TO PERFORM AN ACTUAL METER READ IS NECESSARY.

4901:1-10-07 Outage Reports.

- (A) As used in this rule, “outage” means an interruption of service to:
- (1) ~~Two~~ ONE thousand ~~five hundred~~ or more customers in an area for a projected period of four hours or more
 - (2) One hundred or more customers in an area for a projected period of twenty-four hours or more.
 - (3) A facility of any telephone company, electric light company, natural gas company, water-works company, or a sewage disposal system company, as defined in section 4905.03 of the Revised Code and including a company that is operated not-for-profit, or owned or operated by a municipal corporation, when an interruption to that facility for a projected period of four hours or more, affects or will affect public safety.
 - (4) Any police department, fire department, hospital, or countywide 9-1-1 system, for a projected period of four hours or more.

As used in Paragraph A, “area” means the electric utility’s certified territory within a county or all adjoining municipalities and townships in an electric utility’s certified territory.

Paragraph A, above, requires an electric utility to immediately report outages to the commission outage coordinator for a number of reasons including an outage that involves more than 2,500 customers for a projected duration of four hours or more than 100 customers if the duration of the outage is expected to occur for more than twenty-four hours. There are many instances where a major circuit may fail and there are not

2,500 customers on the circuit. Designating an outage as affecting more than 1,000 customers for an expected duration of more than four hours addresses this concern. In addition, in Paragraph B, below, an electric utility should report outages of such magnitude to the OCC. OCC requires this information to respond to individual residential consumer inquiries.

PROPOSED RULE CHANGE:

- (B) Each electric utility shall immediately report each outage to the commission's outage coordinator AND OCC. Each electric utility shall report to the commission's outage coordinator AND OCC by voice mail message or e-mail or, during normal business hours, by faxing the outage report on a model form approved by the commission's outage coordinator.

4901:1-10-08 Emergency Plan; Annual Emergency Contact Report and Annual Review of Emergency Plan; Critical Customers; Emergency Exercise; and Coordination.

The rules require an electric utility to maintain emergency plans and to make the emergency plan available to the commission outage coordinator for review. The emergency plan should be available for review by the OCC as well as the commission outage coordinator. This helps address concerns with the lack of transparency in the planning process for emergencies.

PROPOSED RULE CHANGE:

- (A) Each electric utility shall maintain an emergency plan(s) in accordance with this rule. Each electric utility shall make its emergency plan and amendments available for review by the commission's outage coordinator AND OCC. In the emergency plan made available to the commission's outage coordinator AND OCC, the electric utility may delete the following confidential information:

Paragraph G requires an electric utility to submit reports to the commission outage coordinator with contact information and results from implementation of the

emergency plan within the past year. OCC should be provided copies of such reports along with the commission outage coordinator. A new sub-paragraph 4 should be added to address this requirement.

PROPOSED RULE CHANGE:

(G) At the direction of the commission's outage coordinator, electric utility shall submit:

(4) A copy of all reports shall be provided to OCC.

An electric utility is required in paragraph I to annually verify and update its list of critical customers. Annual updates could result in considerable error within the data and the listing should be updated quarterly. In addition, the rules do not require the electric utility's to provide notice to persons that may provide care to critical customers about scheduled outages or to provide a priority response to restore outages for critical customers. Each electric utility should have this responsibility. Rule I should be amended as follows to support this requirement.

PROPOSED RULE CHANGE:

(I) Each electric utility shall:

(1) Maintain and ~~QUARTERLY annually~~ verify and update its list of critical customers.

* * *

(4) MAINTAIN CONTACT INFORMATION FOR PERSONS THAT PROVIDE CARE FOR CRITICAL CUSTOMERS AND INFORM THE CONTACTS DURING SUSTAINED OUTAGES.

(5) PROVIDE A PRIORITY RESPONSE ON A REASONABLE ATTEMPT BASIS TO RESTORE

SERVICE FOR CRITICAL CUSTOMERS FOLLOWING
SUSTAINED OUTAGES.

Paragraph J requires an electric utility to conduct a comprehensive emergency exercise every three years to test and evaluate the effectiveness of the emergency plan. In addition, an electric utility is required to provide reports to the commission outage coordinator when implementation of the emergency plan has occurred and a waiver is being requested to the three-year requirement. OCC proposes that any reports that are developed by an electric utility that assesses its emergency plan effectiveness be made available to its office. In addition, any waiver request of the three-year test of the emergency plan should be filed with the commission.

PROPOSED RULE CHANGE:

- (J) Every three years, each electric utility shall conduct a comprehensive emergency exercise to test and evaluate major components of its emergency plan and shall invite a cross-section of the following, or their representatives, to the exercise:
 - (1) Mayors and other elected;
 - (2) County/regional emergency management directors;
 - (3) Fire and police departments;
 - (4) Community organizations such as the American Red Cross;
 - (5) The commission's outage coordinator; and
 - (6) OCC.

4901:1-10-09 Minimum Customer Service Levels.

Paragraph A requires the electric utilities to complete ninety-nine percent of the new service installations on a calendar month basis within three business days after an electric utility is notified that the service location is ready for service and all necessary

tariff and regulatory requirements have been met. Three business days is an excessive amount of time for the vast majority of customers to have to wait to initiate service. Electric utilities should be able to complete the majority of these installations within a much shorter period of time when requested by the customer. Since facility modifications are unnecessary, the electric utilities should be responsible for completing the majority of installations on the next business day upon request by the customer. For customers that don't request next day installation of service, ninety-nine percent of the installations should be completed by the requested installation date when the service location is ready for service. Paragraph A should be amended as reflected above.

PROPOSED RULE CHANGE:

- (A) On a calendar monthly basis, each electric utility shall complete the installation of new service or upgrade of service as follows:
 - (1) Ninety-nine per cent of new service installations requiring no construction of electric facilities shall:
 - (a) UPON REQUEST BY THE CUSTOMER, Be completed ~~within three business days~~ THE NEXT BUSINESS DAY after the electric utility has been notified that the service location is ready for service and all necessary tariff and regulatory requirements have been met
 - (b) Be completed by the requested installation date, when an applicant requests an installation date more than ~~three~~ TWO business days after the service location is ready for service and all necessary tariff requirements have been met.

In Paragraph B, Staff proposed changing the average answer time requirements for incoming calls to the electric utility call centers from sixty seconds to ninety seconds. There was no rationale within the rules supporting this change and there is no indication

that the change is necessary or desired. Customers contact electric utilities routinely for a host of reasons including initiating and changing services, health and safety issues, reporting outages or other service issues, checking account balances, and requesting payment information. An average answer time of ninety seconds results in excessive time for customers to have to wait to have the phone answered when there is the possibility that there are serious health and safety matters that could be involved. Not only is an average ninety seconds answer time inconvenient for consumers, this is an excessive amount of time for customers to have to wait to report outages and other potential emergencies. In addition, the sixty second answer time should be to reach a representative of the electric utility and not just to reach an automated answering system. This is especially true for calls that don't involve routine matters such as reporting outages to an automated attendant during major outages. The proposed increase in average answer time appears to be an arbitrary change that results in degraded customer service. Residential customers lead busy lives and should not have to spend time waiting on the telephone to contact an electric utility.

The Commission should disregard Staff's proposal to change the average call answer time from sixty seconds to ninety seconds. In addition, the Commission should adopt the OCEA's recommendation for clarifying that the average 60 seconds answer time should be to reach a representative of the electric utility and not just an answering system. There is no public benefit to changing a standard that provides customers with less instead of better service.

If the electric utility is unable to answer non-outage reporting types of calls within the average sixty seconds answer time, the customer should be provided the option to

leave contact information that can be used by the electric utility to call the customer back within one business day.

Based on the most recent U.S. Census Bureau data²⁹, the Hispanic/Latino population in Ohio has increased by 23% since 2000, while the Ohio population at large has grown by only 1% during this same time period. Electric utilities should be required to have bilingual representatives available to assist these customers, as well as the specific language requirements of other representative non-English speaking populations within the service territory served by the electric utility.

PROPOSED RULE CHANGE:

- (B) On a calendar monthly basis, each electric utility's average (arithmetic mean) answer time for telephonic customer service calls shall not exceed ~~ninety~~ SIXTY seconds. An electric utility shall set its queue to minimize the number of disconnected calls and busy signals.
 - (1) As used in this paragraph, "answer" means the service representative ~~or automated system~~ is ready to render assistance and/or to accept the information necessary to process the call.

* * *

- (5) IF A LIVE ATTENDANT IS NOT AVAILABLE TO TAKE THE CALL WITHIN THE AVERAGE SIXTY-SECOND ANSWER TIME, THE CUSTOMER SHALL BE PROVIDED THE OPTION TO LEAVE CALL BACK INFORMATION AND INSTRUCTIONS THAT WILL ENABLE THE ELECTRIC UTILITY TO CONTACT THE CUSTOMER WITHIN ONE BUSINESS DAY.

**ELECTRIC UTILITIES SHALL PROVIDE BILINGUAL
CALL CENTER ASSISTANCE TO CUSTOMERS
BASED ON THE PRIMARY NON-ENGLISH**

²⁹ Table 3: Annual Estimates of the Population by Sex, Race, and Hispanic or Latino Origin for Ohio: April 1, 2000 to July 1, 2006 (SC-EST2006-03-39) Source: Population Division, U.S. Census Bureau. Release Date: May 17, 2007-06-05.

LANGUAGES USED WITHIN ITS SERVICE
TERRITORY AND TO MEET OTHER SPECIAL
NEEDS.

There are several issues associated with the reporting of customer service levels that require attention by the Commission. Staff proposed changes in the rules that limit requirements on electric utilities to only report when customer service levels are not met for any two months within any twelve-month period. In addition, the rules require electric utilities to notify the director of the service monitoring and enforcement department in writing within thirty days of such failure. In other words, customers have to suffer with poor customer service levels for a period of up to ninety days before the Commission Staff would even be made aware of the issue. Electric Utilities should be required to report any month when customer service levels are not in compliance with Commission standards within 7 days of the end of the calendar month. Requiring electric utilities to notify the director of the service monitoring and enforcement department is not an effective way to obtain public disclosure about the issues or to seek public input for the solutions. The public should be kept informed about electric utility performance issues and given the option to participate in such cases as required to bring about timely changes. As a final matter, electric utilities are required to provide an annual report to the director service monitoring and enforcement department that provides a comparison of the actual customer service performance with the minimum customer service standards. Performance degradation occurring as a result of major events is excluded from the annual performance report. By excluding performance that occurred during major events, the Commission and other interested stakeholders do not have an accurate view of the level of service that customers are actually achieving. In addition, a major event in

one area of the state should not automatically trigger an assumption that the electric utility can not meet its requirements to serve other customers in its service territory. As a minimum, the Commission should have the electric utilities report customer service levels both including and excluding major events. Such reports should be filed with the Commission and subject to public review and input. This rule should be modified as reflected above.

The current rules do not include requirements for periodic customer satisfaction surveys by the electric utilities. Customer satisfaction surveys can provide important insight to the Commission and other stakeholders about the perceptions customers have about their electric service. Surveys can also provide valuable input for establishing a level of understanding the public has about their bills and other service preferences. The OCEA suspect that many of the electric utilities currently perform customer satisfaction surveys on a periodic basis, but the results aren't necessarily shared with the Commission and others. In addition, since there is no consistency in the survey methodologies employed by the electric utilities, there is no readily available way to compile the results into a single comparative report. Other states including PA and OK require electric utilities to conduct and report the results of customer satisfaction surveys using state-established standards.³⁰ The OCEA suggest that the Commission adopt a requirement for standard customer satisfaction surveys as a requirement in the ESSS rules. Implementation of this requirement could be accomplished by adopting paragraph (D) provision in Minimum Customer Service Levels. As noted by OCEA below, however,

³⁰ A copy of the Pennsylvania 2005 Customer Service Performance Report is available through the Pennsylvania Public Utility Commission Bureau of Consumer Services.

the customer satisfaction or customer perception surveys should not be utilized to develop outage-relates, technical standards.

PROPOSED RULE CHANGE:

- (C) Electric utilities shall comply with the following reporting requirements
 - (1) When an electric utility fails to meet any minimum service level, as set forth in paragraph (A) or (B) of this rule, for any ~~two~~ months within any twelve-month period, the electric utility shall FILE A LETTER WITH THE COMMISSION ~~notify the director of the service monitoring and enforcement department in writing~~ within ~~thirty~~ SEVEN days after such failure. The ~~notification~~ LETTER shall identify any factors that contributed to such failure, as well as any remedial action taken or planned to be taken or rationale for not taking any remedial action. Any failure to report the lack of compliance with the minimum service levels set forth in paragraphs (A) and (B) of this rule constitutes a violation of this rule.
 - (2) By March thirty-first of each year, each electric utility shall FILE ~~submit an annual report to the director of the service monitoring and enforcement department~~ WITH THE COMMISSION, setting forth its actual monthly customer service performance data during the previous calendar year as compared with each of the minimum monthly customer service performance levels set forth in paragraphs (A) and (B) of this rule

* * *

- (D) EACH ELECTRIC UTILITY SHALL ANNUALLY CONDUCT A CUSTOMER SATISFACTION SURVEY TO MEASURE CUSTOMER PERCEPTIONS ABOUT THE SERVICES PROVIDED BY THE ELECTRIC UTILITY. THE SURVEY WILL BE FUNDED BY THE ELECTRIC UTILITY AND WILL MEASURE PERCEPTIONS ABOUT SERVICES, UNDERSTANDABILITY OF THE BILL AND OTHER SERVICE OPTIONS, ABILITY TO CONTACT THE COMPANY, AND RESPONSIVENESS IN ADDRESSING ISSUES AND QUESTIONS. THE SURVEY METHODOLOGY AND QUESTIONS WILL BE DEVELOPED IN CONJUNCTION WITH THE COMMISSION STAFF AND OFFICE OF THE OHIO CONSUMERS' COUNSEL. THE SURVEY RESULTS

SHALL BE USED AS AN INPUT FOR INFORMING AND
EDUCATING CUSTOMERS ABOUT THE ELECTRIC
UTILITY'S RELIABILITY.

4901:1-10-10 Distribution System Reliability.

The OCEA is proposing a redraft of the current and proposed reliability of service rules in Ohio Adm. Code 4901:1-10-10, 4901:1-10-11, and 4901:1-10-26. The OCEA's approach reflects a significant change in the criteria for establishing performance standards, the method for establishing utility-specific performance standards, the need for more specificity with respect to "worst" circuit improvements, the need to combine and coordinate the various annual reporting requirements, and the need for additional standards for vegetation management. Rule 10, as amended by the OCEA, is specific to distribution system performance including circuit performance. The OCEA's proposed Rule 26 is a recommendation for a single annual report that combines in one source the reports that were previously spread in multiple reports. However, specific vegetation management standards are a key proposed component of Rule 27. Rule 30 is an enforcement approach that should result in the timely and effective resolution of compliance matters when applied in conjunction with Ohio Adm. Code 4901:1-23.

This proposal reflects in large part recent reliability of service regulations adopted in Pennsylvania and Michigan. Our comments reflect our key changes and recommendations organized by our proposed new section titles and content. Furthermore, our comments reflect the proposed changes highlighted in our introductory comments for this rulemaking proceeding concerning the need for enforceable standards that are established by means of a transparent and public process, as well as our proposed revised definition of "major event."

This rule should reflect our previously stated policy for open and transparent decision making with respect to assuring adequate reliability of service. The Commission should set standards for the electric utilities rather than negotiating performance “targets.” It is crucial that the PUCO should establish a baseline of performance for each electric utility and that such baseline be made clear to the utility and available to the public. The Commission should also impose financial consequences if a utility’s performance falls below such baseline so that customers do not bear the risk of noncompliance with reasonable performance standards.

- (A) General. This rule prescribes the measurement of each electric utility’s service reliability, the development of minimum performance standards for such reliability, and the reporting of performance against such standards

Paragraph (B)(1) of this rule sets forth the definitions of CAIDI and SAIFI, and propose to eliminate SAIDI and ASAI. Any reliability regulation must identify the proper reliability indices to implement a comprehensive reliability regulation. It is through these measurements that utilities report and customers can evaluate performance based on both the frequency of interruptions (SAIFI) and length of interruptions (CAIDI). These reliability indices are commonly used by all the States to evaluate utility reliability performance.

The OCEA support the continued use of CAIDI and SAIFI, but suggests more detailed additions to the current definitions. The definitions of CAIDI and SAIFI should be amended to reflect a more accurate description of the interruptions that are captured in these indices, particularly to ensure that the indices capture “sustained interruptions.” These details are important to ensure that all the electric utilities are defining and capturing comparable data.

The OCEA strongly disagrees with the elimination of SAIDI. SAIDI is calculated to determine the average duration of interruptions experienced throughout the system. As stated in IEEE Std. 1366, “To adequately measure performance, both duration and frequency of customer interruptions must be examined at various system levels.”³¹ SAIDI is a preferred method to measure the total costs of an outage, including utility repair costs and customer losses because it measures the duration of an outage.³² Without SAIDI there is no comprehensive measure for how well the overall distribution system is performing.

Finally, the OCEA recommends the inclusion of a new definition of Momentary Outages or Momentary Average Interruption Frequency Index (“MAIFI”). The reporting requirement for this standard was eliminated by Staff in its proposed rules. Customers and businesses require ever-greater levels of reliability of service and the capture of momentary interruptions (those less than five minutes) will allow the Commission to continue to develop programs and policies that reflect this important indicator of reliability of service. Momentary outages are often more than an inconvenience and can have dramatic effects on various customers, including those on life support. Vegetation management is usually a significant factor as a cause of momentary service interruptions, which last five minutes or less. These interruptions can cause loss of computer data and can result in the need to reset many types of modern appliances and electronics. For those electric utilities that do not have outage management systems (“OMS”) available to record momentary outages, the Commission should require that the electric utility file a plan within 30 days of the Order in this case to assure future reporting compliance.

³¹ IEEE Std. 1366 at 17.

³² IEEE Std. 1366, Annex B, at 28.

The OCEA's changes to the reliability sections of the proposed rules contain our recommended definitions of CAIDI, SAIDI, SAIFI, and MAIFI.

PROPOSED RULE CHANGE:

- (B) Service reliability indices and minimum performance standards.

(1)C. MAIFI—MOMENTARY AVERAGE INTERRUPTION FREQUENCY INDEX—THE AVERAGE FREQUENCY OF MOMENTARY INTERRUPTIONS PER CUSTOMER OCCURRING DURING THE ANALYSIS PERIOD. IT IS CALCULATED BY DIVIDING THE TOTAL NUMBER OF MOMENTARY CUSTOMER INTERRUPTIONS BY THE TOTAL NUMBER OF CUSTOMERS SERVED.

(1)D. SAIDI—SYSTEM AVERAGE INTERRUPTION DURATION INDEX—THE AVERAGE DURATION OF SUSTAINED CUSTOMER INTERRUPTIONS PER CUSTOMER OCCURRING DURING THE ANALYSIS PERIOD. IT IS THE AVERAGE TIME CUSTOMERS WERE WITHOUT POWER. IT IS DETERMINED BY DIVIDING THE SUM OF ALL SUSTAINED CUSTOMER INTERRUPTION DURATIONS, IN MINUTES, BY THE TOTAL NUMBER OF CUSTOMERS SERVED. THIS DETERMINATION IS MADE BY USING THE FOLLOWING EQUATION:

The establishment of performance standards that are enforceable and enforced is the most important aspect of this rulemaking proceeding. Recent history in Ohio has clearly demonstrated the need for clearly defined and enforceable reliability performance requirements. One of these, as addressed in existing ESSS Rule 10, is to compare the electric utility's system reliability indices for a period of time, typically one year, against performance targets. Rule 10 specifies that these performance targets should reflect historical performance, along with other factors. The OCEA commend the PUCO Staff for replacing performance "targets" with "standards" and setting forth an application

process with public input on the company-specific standards. The modification of the existing rule creates a level of transparency lacking in the existing ESSS.

The OCEA recommends that the Commission establish performance standards, as also recommended by PUCO Staff, based on the individual utility historical performance history, for several reasons. First, the establishment of a single or uniform reliability performance level will necessarily result in a standard that some utilities already meet or exceed and would allow a significant deterioration in current performance prior to any enforcement action under the rule. Other utilities with historical performance levels which are “worse” than the uniform standard would naturally urge the PUCO to adopt a performance standard that would allow them to operate without violating the rule or undertaking significant investment or management changes to meet the standard.

Therefore, any attempt to derive a single or uniform performance level is most likely to result in a standard that reflects the lowest common denominator, a result that does not benefit the customers of any utility. Second, utility service territories and the historical design of utility distribution networks do differ and a single standard would fail to reflect these real and sometimes significant differences. Finally, it is not possible to ensure compliance with the statutory obligation to assure a reasonable level of reliability of service for all utility customers without taking into account the historical performance of each utility and establishing the regulatory mechanisms to make sure that service reliability does not deteriorate and in fact improves based on the experiences of the customers of each utility.

PROPOSED RULE CHANGE:

- (B)(4) Supporting justification for the proposed methodology and each resulting performance standard.
- (A) Performance standards should reflect historical system performance, system design, technological advancements, service area geography, customer perception survey results as defined in paragraph (B)(4)(b) of this rule, and other relevant factors.

Customer perception surveys should not be utilized in the development of reliability standards such as those contained in this Staff-proposed rule. Customers are paying for quality reliable service and they expect the electric utilities to do everything possible to meet that objective. Asking customers if they have a preference for SAIDI or SAIFI is meaningless. Customers have expectations for few outages and to have service restored promptly when there is an outage. Using survey data to reach obvious conclusions is unnecessary and not in the public interest. Therefore, the Commission should reject the use of customer perception surveys in establishing reliability standards.

PROPOSED RULE CHANGE:

- (B)(4)(b) Each electric utility shall periodically (no less than every three years) conduct a customer perception survey. ~~The survey results shall also be used as an input to the methodology for calculating new standards.~~ The survey shall be paid for by the electric utility and shall be conducted under staff oversight. The objective of the survey is to measure customer perceptions and expectations of electric service reliability. **THE RESULTS OF THE SURVEY SHOULD BE ANNUALLY FILED WITH THE COMMISSION AS PART OF THE ELECTRIC UTILITY'S RULE 26 REPORT. in terms of the service reliability indices defined in paragraph (B)(1) of this rule.**

* * *

Again, the OCEA commend the PUCO Staff for requiring the electric utilities to fully support their proposed performance standards. The proposed technical conference and comment period is a welcome addition to the current process which limits participation to the Staff and the electric utility. The filing of the workpapers with the Commission is an important step in enabling public participation in the standard-setting process.

- (5) A complete set of work papers must be filed with the application. Work papers must include, but are not limited to, any and all documents prepared by the electric utility for the application, a list of assumptions used in establishing its proposed methodology, and a narrative or other justification for its proposed methodology and each resulting performance standard.

Discovery should be explicitly provided for in the procedural schedule outlined below. Parties to the comment process will be unable to provide meaningful input without ample discovery rights.

PROPOSED RULE CHANGE:

- (6) Unless ordered otherwise by the commission, legal director, deputy legal director, or attorney examiner, the following procedural schedule shall apply:
 - (a) Upon filing of an application, the commission, legal director, deputy legal director, or an attorney examiner will schedule a technical conference. The purpose of the technical conference is to allow interested persons an opportunity to better understand the electric utility's application. The electric utility will have the necessary personnel in attendance at this conference so as to explain, among other things, the filing, the work papers and the manner in which methodologies and resulting performance standards were devised. The conference will be held at the commission offices.
DISCOVERY SHALL BE AVAILABLE TO ALL

PARTIES IMMEDIATELY FOLLOWING THE
TECHNICAL CONFERENCE AND PRIOR TO
THE FILING DEADLINE FOR INITIAL
COMMENTS.

Discovery should be permitted upon filing of an application by an electric utility. Without discovery, the parties may not have adequate support for their recommendations or comments.

PROPOSED RULE CHANGE:

- (b) Within twenty days after the technical conference, any person may file comments.
- (c) Within thirty days after the technical conference, the commission's staff SHALL ~~may~~ file comments.
- (d) Within fifty days after the technical conference, any person may file a response to the comments.

The promise of a hearing when there appears to be disagreement on the development of a utility's performance standards is a welcome and necessary ingredient to achieving success in the comment process proposed above. The PUCO Staff, however, must be required to file comments on the proposed standards so that the parties know what is being recommended to the Commission. Only after consideration of all the parties' comments, including PUCO Staff's, should the Commission determine if a hearing is necessary. The threshold that the Commission has for setting the matter for hearing, however, is too high. The burden should remain on the Applicant to file a just and reasonable application. If that burden is not met the Commission should order a hearing.

PROPOSED RULE CHANGE:

- (e) ~~If it appears to~~ UNLESS the commission DETERMINES that the proposals in the application ~~may be~~ ARE unjust and unreasonable, the commission shall set the matter for hearing and shall publish notice of the hearing in accordance with section 4909.10 of the Revised Code. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the electric utility.

The Commission Staff's provision of ample discovery, prior to the scheduling of a hearing is a welcome addition to the standard-setting process. Outside parties will bring unique perspectives to such a hearing, while safeguarding the interests of the electric utilities' customers.

- (f) Interested persons wishing to participate in the hearing shall file a motion to intervene no later than thirty days after the issuance of the entry scheduling 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 procedural requirements necessary for approval by the Commission of the proposed performance standards is an enormous improvement over the closed process now employed to develop performance "targets." With minor adjustments to the process, adequate public review and input can be achieved. The requirement that the Commission itself must approve performance standards will dramatically reassure the public regarding the reliability of their electric service.

- (7) No performance standard shall be effective until approved by the commission. Notwithstanding the foregoing, the existing performance standards and/or targets previously reviewed and accepted by staff shall continue in effect for

the purpose of the electric utility's compliance with this rule until performance standards are authorized and become effective pursuant to this rule.

Again, the Commission Staff has improved the system reliability rules by requiring that proposals to modify the performance standards be filed with the Commission rather than submitted to the PUCO Staff. The public interest is best served if the all interested parties are involved, not only with the development of the standards, but also with the modification of, or noncompliance with, the standards.

- (8) An electric utility may request to revise its authorized performance standards (starting with the next succeeding calendar year) by filing such revisions and supporting justification for such revisions with the commission for approval pursuant to paragraph (B)(6) of this rule, unless otherwise ordered by the commission, legal director, deputy legal director, or attorney examiner.
- (C) Annual report. Each-electric utility shall file with the commission an annual report by March thirty-first of each year. That annual report shall include the following information regarding the previous calendar year:
 - (1) Annual performance and supporting data for each service reliability index set forth in paragraph (B) of this rule both with and without exclusions for major events and transmission outages.
 - (2) Performance on the same indices during major events and transmission outages, reported in separate categories with their respective supporting data.
 - (3) Data for the total number of service interruptions, customers interrupted, and customer minutes interrupted for each outage cause code, all of which shall be reported in the following versions:
 - (a) Data excluding major events and transmission outages.
 - (b) Data for major events only.

- (c) Data for transmission outages only.
- (4) Each electric utility shall file the annual report required by paragraph (C) of this rule in an electronic form prescribed by the commission or its staff.

The PUCO Staff has vastly improved the transparency and efficacy of its distribution system reliability rules. The rules are insufficiently transparent, however, if electric utilities that fail to meet standards need only to file an “action plan” if the performance standards are not achieved. It is critical that actual compliance with the standards, which are to be adopted subject to a transparent and open process, be demanded by the Commission. Parties to the comment process, which is proposed for the development of the standards, are entitled to be informed of the actual performance of the electric utilities and should receive the annual reports. Without the compliance information, the public process used to develop the standards is meaningless.

PROPOSED RULE CHANGE:

4901:1-10-10

- (D) Except as otherwise provided in paragraph (E) of this rule, if the annual performance of an electric utility does not meet the electric utility’s performance standard for any index, the electric utility file ~~shall submit~~ FILE an action plan to the director of the service ~~monitoring and enforcement department~~, WITH THE COMMISSION by March thirty-first of the same year.
 - (1) The action plan shall include the following:
 - (a) Factors which contributed to the actual performance level for that index.
 - (b) Proposal for improving performance to a level that meets or exceeds the performance standards authorized for each missed reliability index, including each action taken or planned to be taken, and the anticipated completion date.

- (2) The action plan shall be submitted in an electronic form prescribed by the commission or its staff.
- (3) A status report on each action included in the action plan shall be ~~submitted to~~ FILED WITH the ~~director of the service monitoring and enforcement department upon request of the staff.~~ COMMISSION.

With respect to the customer-oriented performance standards, in Paragraph E the OCEA propose that the utility be required to provide credits to affected customers when the performance standard is not met so that customers who experience outages that are not restored within a reasonable time or who suffer repetitive interruptions on the same circuit can obtain a compensation for the poor performance of the utility. In both cases, enforcement tools and objectives should be designed to shift the risk of non-performance and poor performance from the customer to the utility. Our recommended approach is similar to the customer credit program that has been approved by the Commission to assure reasonable customer service performance by electric and gas utilities. The utilities obtain revenues and rates that are designed to assure compliance with reasonable and adequate service. When service is not provided at levels required by the ESSS, customers should be credited a portion of their monthly charges.

PROPOSED RULE CHANGE:

- (E) ~~Failure to meet a performance standard for two consecutive years shall constitute a violation of this rule.~~ IN ADDITION TO THE PERFORMANCE STANDARDS THAT REFLECT THE INDICES SET FORTH IN THIS RULE, IT IS AN UNACCEPTABLE LEVEL OF PERFORMANCE FOR AN ELECTRIC UTILITY TO FAIL TO MEET ANY OF THE FOLLOWING SERVICE INTERRUPTION STANDARDS:
 - 1. CONSIDERING DATA DERIVED THROUGH THE AMALGAMATION OF DATA FROM ALL CONDITIONS, INCLUDING MAJOR EVENTS, AN

ELECTRIC UTILITY SHALL RESTORE SERVICE WITHIN 36 HOURS TO NOT LESS THAN 90% OF ITS CUSTOMERS EXPERIENCING SERVICE INTERRUPTIONS.

2. CONSIDERING DATA INCLUDING ONLY MAJOR EVENTS, AN ELECTRIC UTILITY SHALL RESTORE SERVICE WITHIN 60 HOURS TO NOT LESS THAN 90% OF ITS CUSTOMERS EXPERIENCING SERVICE INTERRUPTIONS.
3. CONSIDERING DATA INCLUDING ONLY CONDITIONS THAT EXCLUDE MAJOR EVENTS, AN ELECTRIC UTILITY SHALL RESTORE SERVICE WITHIN 8 HOURS TO NOT LESS THAN 90% OF ITS CUSTOMERS EXPERIENCING SERVICE INTERRUPTIONS.
4. CONSIDERING DATA DERIVED THROUGH THE AMALGAMATION OF DATA FROM ALL CONDITIONS, INCLUDING MAJOR EVENTS, AN ELECTRIC UTILITY SHALL NOT EXPERIENCE 5 OR MORE SAME CIRCUIT REPETITIVE INTERRUPTIONS IN A 12-MONTH PERIOD ON MORE THAN 5% OF ITS CIRCUITS.
5. IT IS AN UNACCEPTABLE LEVEL OF PERFORMANCE FOR AN ELECTRIC UTILITY TO FAIL TO RESPOND TO A REQUEST FOR RELIEF OF A NON-UTILITY EMPLOYEE GUARDED DOWNED WIRE AT A LOCATION IN A METROPOLITAN STATISTICAL AREA WITHIN 240 MINUTES AFTER NOTIFICATION AT LEAST 90% OF THE TIME UNDER ALL CONDITIONS.
6. IT IS AN UNACCEPTABLE LEVEL OF PERFORMANCE FOR AN ELECTRIC UTILITY TO FAIL TO RESPOND TO A REQUEST FOR RELIEF OF A NON-UTILITY EMPLOYEE GUARDED DOWNED WIRE AT A LOCATION IN A NON-METROPOLITAN STATISTICAL AREA WITHIN 360 MINUTES AFTER NOTIFICATION AT LEAST 90% OF THE TIME UNDER ALL CONDITIONS.

(F) FAILURE TO MEET A PERFORMANCE STANDARD FOR TWO CONSECUTIVE YEARS SHALL CONSTITUTE A

VIOLATION OF THIS RULE. IN ADDITION TO FILING THE REMEDIAL ACTION PLAN AS REQUIRED IN (D)(3) ABOVE, THE PUCO STAFF SHALL ISSUE ITS FINDINGS AND PROPOSED ENFORCEMENT MEASURES WITHIN 60 DAYS OF ELECTRIC UTILITY'S ANNUAL RULE 26 FILING.

Rule 11 has been eliminated by OCEA and provisions of the rule are combined with Rule 10 so that system and circuit reliability are considered within the same rule. Circuit performance and overall system reliability are inextricably linked and should be consolidated for compliance and enforcement purposes.

PROPOSED RULE CHANGE:

- (G) DISTRIBUTION CIRCUIT PERFORMANCE. WITH RESPECT TO ANY CIRCUITS THAT ARE IDENTIFIED IN THE ELECTRIC UTILITY'S ANNUAL REPORT THAT MEET THE INDIVIDUAL CIRCUIT IDENTIFICATION CRITERIA (SO-CALLED "WORST" CIRCUITS), THE ELECTRIC UTILITY SHALL DESCRIBE THE STEPS TAKEN OR PLANNED TO BE TAKEN TO RESPOND TO THE CIRCUIT IDENTIFICATION AND PROPOSE, WHERE REQUIRED DUE TO COMPLIANCE ACTIVITIES THAT WILL OCCUR OVER THE FOLLOWING CALENDAR YEAR, AN ENFORCEABLE COMPLIANCE PLAN WITH SPECIFIC MILESTONES AND TIME TABLE TO CORRECT ANY DEFICIENCIES IN THE DESIGN OR MAINTENANCE OF THE CIRCUIT SO AS TO ASSURE MORE RELIABLE SERVICE FOR THE CUSTOMER SERVED BY THE CIRCUIT.
 - A. THE COMPLIANCE PLAN THAT ADDRESSES THE INDIVIDUAL CIRCUITS IDENTIFIED IN THE ELECTRIC UTILITY'S ANNUAL REPORT SHALL BE REVIEWED BY THE STAFF AND OTHER INTERESTED PARTIES AND ANY DISPUTES SHALL BE SUBMITTED TO THE COMMISSION FOR RESOLUTION AFTER NOTICE AND OPPORTUNITY FOR COMMENT.
 - B. IT SHALL BE A VIOLATION OF THIS RULE FOR THE ELECTRIC UTILITY TO FAIL TO MEET THE MILESTONES, TIMETABLE, AND PERFORMANCE

OBJECTIVES SET FORTH IN THE COMPLIANCE PLAN FOR THE INDIVIDUAL CIRCUIT.

- C. IT SHALL BE A VIOLATION OF THIS RULE FOR A CIRCUIT TO APPEAR ON THE ELECTRIC UTILITY'S LIST OF IDENTIFIED INDIVIDUAL CIRCUITS (SO-CALLED "WORST CIRCUITS") FOR A SECOND CONSECUTIVE YEAR, UNLESS THE COMPLIANCE PLAN OTHERWISE APPLICABLE TO THE CIRCUIT REQUIRES A MULTI-YEAR IMPROVEMENT PLAN.

~~4901:1-10-11~~**Distribution Circuit Performance.**

- ~~(A) General. This rule sets forth a method for determining the performance of each electric utility's distribution circuits.~~
- ~~(B) Circuit performance methodology. The following provisions apply to the determination of the appropriate method for calculating circuit performance.~~
- ~~(1) Circuit performance data during major storm events and transmission outages shall be excluded from the calculation of circuit performance~~
- ~~(2) Each electric utility shall submit, for review and acceptance by the director of the service monitoring and enforcement department, a method to calculate circuit performance, based on the service reliability indices defined in paragraph (B)(1) of rule 4901:1-10-10 of the Administrative Code and other factors proposed by the electric utility, and supporting justification for that method. An electric utility may revise the method it uses for calculating circuit performance (starting with the next succeeding calendar year) by submitting such revisions and supporting justification for such revisions to the director of the service monitoring and enforcement department for review and acceptance.~~
- ~~(3) If the electric utility and the director of the service monitoring and enforcement department cannot agree on the method to calculate circuit performance, then the director of the service monitoring and enforcement department shall issue a letter rejecting the proposal within forty five days of its submittal. The electric utility or the director may request a hearing to establish the appropriate calculation methodology. At such hearing, the burden of~~

~~proof to show that the calculation methodology is just and reasonable shall be upon the electric utility.~~

~~No proposal shall be effective until it is either accepted by the director or, in the event of a hearing, approved by the commission.~~

~~(C) — Worst performing circuits. The following provisions apply to the reporting of each electric utility's eight per cent worst performing circuits:~~

~~(1) — Each electric utility shall submit, no later than ninety days after the end of its reporting period, a report to the director of the service monitoring and enforcement department that identifies the worst performing eight per cent of the electric utility's distribution circuits during the previous twelve-month reporting period.~~

~~(2) — Unless otherwise approved by the commission, each electric utility's reporting period for purposes of paragraph (C) of this rule shall begin on September first of each year and shall end on August thirty first of the subsequent year.~~

~~(3) — The report prescribed by paragraph (C) of this rule shall provide the following information for each reported distribution circuit:~~

~~(a) — The circuit identification number.~~

~~(b) — The location of the primary area served by the circuit.~~

~~(c) — The approximate number of customers on the circuit.~~

~~(d) — The circuit ranking value.~~

~~(e) — The values and supporting data for each circuit's service reliability indices for the reporting period:~~

~~(i) — System average interruption frequency index (SAIFI) determined according to paragraph (B)(1) of rule 4901:1-10-10 of the Administrative Code.~~

- (ii) ~~Customer average interruption duration index (CAIDI) determined according to paragraph (B)(1) of rule 4901:1-10-10 of the Administrative Code.~~
- (iii) ~~System average interruption duration index calculated by multiplying the SAIFI times the CAIDI.~~
- (f) ~~The number of safety and reliability complaints, based on the definition of complaint pursuant to paragraph (A) of rule 4901:1-10-21 of the Administrative Code.~~
- (g) ~~An identification of each circuit lockout that occurred during the reporting period, together with an explanation of the cause and duration of each such circuit lockout.~~
- (h) ~~The total number of outages experienced during the reporting period, together with an explanation of the cause of each such outage.~~
- (i) ~~The total number of outages experienced during the reporting period, together with an explanation of the cause of each such outage.~~
- (j) ~~An identification of any major factors or events that specifically caused the circuit to be reported among the worst performing circuits and, if applicable, the analysis performed to determine those major factors.~~
- (k) ~~An action plan, including the start and completion dates of all remedial action taken or planned, to improve circuit performance to a level that removes the circuit from the report submitted pursuant to paragraph (C) of this rule within the next two reporting periods. If the electric utility does not believe remedial action is necessary, then the electric utility must state the rationale for not taking any remedial action~~
- (D) ~~If the director of the service monitoring and enforcement department believes that an action plan submitted pursuant to paragraph (C)(3)(k) of this rule is insufficient or unreasonable, the~~

~~director shall provide written notice to the electric utility within forty five days of the submittal, otherwise the report is deemed approved. Should no agreement be reached between the electric utility and the director of the service monitoring and enforcement department on a modified action plan, within thirty days following the rejection of the action plan, the electric utility shall apply to the commission for a hearing. At such hearing, the burden of proof to show that the modified action plan is just and reasonable shall be upon the electric utility.~~

~~(E) Each electric utility shall submit the reports required by this rule, on electronic media, in a format prescribed by the commission or its staff.~~

~~(F) The inclusion of a given circuit in the report under paragraph (C) of this rule for three consecutive reporting periods shall constitute a violation of this rule.~~

4901:1-10-12 Provision of Customer Rights and Obligations.

The current customer rights and obligations provides important consumer protections to help customers better understand their rights as Ohio residential utility consumers. However, a number of improvements are needed to provide better information in educating consumers. For example, the electric utilities are only required to provide customers with this information when they initially apply for service and thereafter, upon request. Existing customers may not be aware that they have to make subsequent requests to obtain this information. For this reason, the OCEA recommend that the customer rights and obligations be provided in written form to all customers when they initially apply for service and annually thereafter. The information could be provided in conjunction with bills to help reduce postage expense.

The existing customer rights document does not include a reference to the formal complaint process at the PUCO. Customers are informed that they have an obligation to contact the electric utility initially to attempt to resolve the issue and to call the PUCO call center if the issue is not resolved after calling the electric utility. There is no

reference to customers having a right to file formal complaints at the PUCO. While the formal complaint process may be discussed with customers when they contact the PUCO call center, they should not be required to call the PUCO call center to learn about the formal complaint process.

The current rules require the electric utilities to inform customers with a description of deferred payment plans, low-income assistance plans, and information about those plans. There is, however, other important information that customers should have concerning customer rights to information to help avoid disconnection. This information includes primarily access to financial assistance, medical certifications and other information that may be helpful.

The rules require customers to be informed of their right to return to the electric utility standard offer service without the costs associated with the switch for situations involving default, abandonment, or certification rescission by a CRES provider. Customers can be charged switching costs for returning to the standard offer service at the end of a contract term with a CRES provider. Customers should have a right to return to the standard offer service without fee at the end of the contract term.

The rules require electric utilities to have a statement in the customer rights and obligations that customers can contact the electric utility to obtain additional information about alternative rates. While this rule is appropriate, it is limited to the extent that customers have to inquire about the alternative rates. In addition, the electric utilities may be developing other programs to assist consumers in finding ways to reduce energy costs. Customer rights should be expanded to include placing a duty on the electric utilities to inform customers about alternative rates, plans, and programs.

The current rules require the electric utility to perform an actual meter read before customers initiate or terminate service if the meter has not been read within the previous 60 days. Initiating or terminating service without an actual read should be discouraged since actual usage will not be known when service is initiated or for the final bill. Customers should have the right to be billed accurately for their own usage and not the usage of others. However, if the meter was actually read within the previous 7 days from the date when the customer requests that service be terminated or initiated, the electric utility can estimate usage for the initial or final bill.

PROPOSED RULE CHANGE:

Each electric utility shall provide to new customers, upon application for service, and existing customers upon request, **OR IN AN ANNUAL BILL INSERT** a written summary of their rights and obligations under this chapter. This written summary shall also be prominently posted on the electric utility's website. The summary shall be in clear and understandable language. Each electric utility shall submit the summary or amendments thereto to the chief of the reliability and service analysis division for review at least sixty days prior to mailing the summary to its customers. **COPIES OF THE RIGHTS AND OBLIGATIONS SUMMARY SHALL BE MADE AVAILABLE TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL.** For purposes of this rule "new customer" means a customer who opens a new account and has not received such a customer rights summary within the preceding year. The summary shall include, but not be limited to, the following:

- (A) The electric utility and commission procedures for complaints, which shall include:

* * *

- (2) A statement that:

"If your complaint is not resolved after you have called (your electric utility), or for general utility information, residential and business customers may contact the Public Utilities Commission of Ohio for assistance at 1-800-686-7826 (toll free) or for TTY at

1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.PUCO.ohio.gov.”

“Residential customers may also contact the Ohio Consumers’ Counsel for assistance with complaints and utility issues at 1-877-742-5622 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.pickocc.org.”

(3) CUSTOMERS CAN ALSO FILE FORMAL COMPLAINTS AT THE PUCO PURSUANT TO OHIO REVISED CODE 4905.26.

(B) Customer rights and responsibilities, which shall include:

* * *

(3) A description of the following customer rights:

- (a) The circumstances under which the electric utility may demand and/or hold security deposits.
- (b) The circumstances under which customers may obtain deferred payment plans and low-income assistance plans; FINANCIAL ASSISTANCE REFERRALS, MEDICAL CERTIFICATIONS,, and information concerning those plans.

(F) Information on privacy rights, which shall include:

* * *

(3) A statement that customers have the right to request up to twenty-four months of usage history, meter data, and payment history from the electric utility without charge.

THE USAGE DATA SHALL INCLUDE THE AGGREGATE AMOUNT OF ELECTRICITY OR NATURAL GAS SUPPLIED FOR EACH OF THE TWENTY-FOUR MONTHS, THAT PERMITS PROSPECTIVE TENANTS AND OWNERS TO ASSESS THE POTENTIAL ENERGY COSTS OF A GIVEN BUILDING. THE USAGE INFORMATION SHALL BE PROVIDED AND MAINTAINED WITHOUT REFERENCE TO ANY PERSONAL INFORMATION REGARDING THE PREVIOUS TENANTS AND WITHOUT REFERENCE TO SPECIFIC EQUIPMENT MAINTAINED ON SITE.

- (H) A statement that customers returning to the electric utility's standard offer service due to default, abandonment, slamming, ~~or~~ THE END OF THE CONTRACT TERM, or certification rescission of a CRES provider will not be liable for any costs associated with the switch.

* * *

- (K) Information concerning actual meter readings.

- (1) A statement that the electric utility is required to obtain an actual meter reading when the customer initiates or terminates electric service with the electric utility, if the meter has not been read within the preceding ~~sixty~~ SEVEN days.
- (2) A statement that, if the meter has not been read within the preceding SEVEN ~~thirty three to fifty nine~~ days, the electric utility is required to inform the customer, when the customer contacts the electric utility to initiate or terminate service, of the option to have an actual meter read, at no charge.
- (3) A statement that the customer may request two actual meter reads per calendar year, at no charge, if the customer's usage has been estimated for more than two of the consecutively preceding billing cycles if the customer is switching to a competitive provider, or if the customer has reasonable grounds to believe that the meter is malfunctioning.

The current rules do not include any provisions for credits to customers if an electric utility fails to initiate service on time or has for reasons other than scheduled maintenance caused the customer to have a sustained outage. Lack of electricity causes a major hardship on customers and electric utilities need to take all reasonable efforts to avoid customers being without service. While some sustained outages are unavoidable, proper inspection, maintenance and repair of distribution facilities can assist in avoiding service interruptions. Service interruptions that are momentary can also be minimized by

proper management of vegetation in right-of ways. Credits for customers should be included within the rules by adopting the following paragraph:

- (L) AN ELECTRIC UTILITY SHALL CREDIT CUSTOMERS AN AMOUNT NOT LESS THAN \$25 PER DAY FOR EACH DAY THE CUSTOMER IS WITHOUT SERVICE AS A RESULT OF THE ELECTRIC UTILITY NOT TIMELY INITIATING SERVICE OR FOR SUSTAINED OUTAGES CAUSED BY LACK OF MAINTENANCE BY THE ELECTRIC UTILITY. CUSTOMERS SHALL BE CREDITED AN AMOUNT NOT LESS THAN MONTHLY CUSTOMER CHARGE FOR ANY MONTH IN WHICH MORE THAN THREE (3) MOMENTARY OUTAGES OCCUR AS A RESULT OF INADEQUATE VEGETATION MANAGEMENT BY THE ELECTRIC UTILITY.

4901:1-10-13 Employee Identification.

The current rules require electric utility employees that are seeking access to a customers premise to upon request from a customer, identify themselves by providing a photo identification and stating the reason for the visit. Customers should not have to request that electric utility employees identify themselves as the employee should be wearing a badge and garments that display their relationship with the electric utility.

PROPOSED RULE CHANGE:

Any electric utility employee or agent seeking access to the customer's or landlord's premises shall identify himself/herself by displaying company photo identification, and, ~~upon request,~~ state the reason for the visit.

4901:1-10-20 Fraudulent Act, Tampering, and Theft of Service.

Paragraph A requires electric utilities to establish and maintain an anti-theft and anti-tampering plan and to submit the plan to the director of the service monitoring and enforcement division. Tampering presents potentially serious safety issues and the electric utilities need to quickly identify and rectify such matters. However, the electric utilities should not leave the perception that they are both judge and jury when allegations

are made about tampering. One way to help avoid this perception is to have the anti-theft and anti-tampering plan reviewed by Ohio State Legal Services Association and OCC. Such review helps develop more transparency in the process and to ensure that due-process is afforded while the matter is being addressed. This paragraph should be amended as follows:

PROPOSED RULE CHANGE:

- (A) Each electric utility shall establish and maintain an anti-theft and anti-tampering plan and shall submit its plan and subsequent amendments FOR COMMENT to the director of the service monitoring and enforcement department, OCC AND THE OHIO STATE LEGAL SERVICES ASSOCIATION.

Paragraph C includes the notice requirements before an electric utility can disconnect service for fraudulent practices. The notices do not include reference to OCC or the Ohio State Legal Services Association as resources that may be available to assist the consumer. This rule should be amended as follows:

PROPOSED RULE CHANGE:

- (C) Disconnection of service for fraudulent act.

An electric utility may disconnect service, after following the steps set forth in this paragraph, when a customer uses any fraudulent act, as defined by paragraph (O) of rule 4901:1-10-01 of the Administrative Code, to obtain or maintain service.

* * *

- (2) The notice shall clearly display each of the following items:

* * *

- (G) A STATEMENT AND TOLL-FREE NUMBER FOR ASSISTANCE THAT MAY BE AVAILABLE AT OFFICE OF THE OHIO

CONSUMERS' COUNSEL AND THE OHIO
LEGAL SERVICES ASSOCIATION

4901:1-10-22 Electric Utility Customer Billing and Payments.

Staff proposed changes in paragraph B that result in improvements in consumer protections because bills will have to be rendered on a monthly basis rather than as previously required “at regular intervals”. Bills that are rendered for longer periods of time can be difficult for customers to pay; whereas, monthly bills can be planned better within the family budget. However, the language can be even further improved by clarifying that monthly is referring to a billing month for the usage that occurred 28-32 days before the bill is rendered. Proposed language is provided as follows:

Customer bills issued by or for the electric utility shall be accurate and rendered at monthly intervals FOR SERVICE DURING THE PROCEEDING 28-32 DAYS, and shall contain clear and understandable form and language.

4901:1-10-22 (C)

Paragraph B requires that bills be rendered in clear and understandable form and language. However, the proposed rules do not currently have provisions related to electric utility's providing alternative bill formats. Many customers are unable to understand their bill because of language barriers and/ or vision problems. Alternative bill formats include, but are not limited to, large print, Braille, and print in languages other than English. Providing bills in alternative format helps customers better understand the nature and costs of the services being provided by electric utilities. In addition, requiring alternative bill formats demonstrates Ohio's commitment towards helping those with special needs and promoting cultural diversity. The language in the proposed rules should be modified as follows:

PROPOSED RULE CHANGE:

- (B) Any new bill format proposed by an electric utility shall be filed with the commission for approval. An electric utility shall offer alternative bill formats upon request by customers including large print, Braille, and alternative languages that represent the demography of its service territory. If an application for sample bill approval is not acted upon within forty-five days, said sample shall be deemed approved.

4901:1-10-22 (E)

Paragraph E, if adopted as proposed by Staff, would result in customers being charged more than twice what they are currently charged for making payments at authorized agents. Customers are currently assessed a fee that cannot exceed two times the cost of a first-class stamp to make payments at authorized agents. The proposed rules increase the charge to an amount that cannot exceed \$2.00. There was no rationale provided with the draft rules explaining this change. In addition, there is no reason why electric customers should be burdened with paying a fee to authorized agents that is over twice the amount the same customer pays authorized agents for payment of natural gas or telephone bills. While a \$2.00 additional charge may not seem like much money to some, this additional fee could mean the difference for a low-income customer in being unable to pay their bill.

An estimated 1,392,000 people in Ohio were poor in 2005 according to the 2006 Current Population Survey (“CPS”) or approximately 12.3% of the population.³³ Nearly 1.1 million households in Ohio have reported incomes that are below 175% of the Federal Poverty Level. Many of these customers do not have checking accounts and rely on cash transactions through authorized agents to make utility payments. In the past, the

³³ The Ohio Poverty Report, April 2007. Ohio Department of Development, Office of Strategic Research.

electric companies had payment centers throughout their service territories and customers could use these centers to pay their bills without any additional fee. While the payment centers were closed as cost savings measure for the utilities, the cost for making cash payments at authorized agents was shift directly to a group that can least afford the additional expense.

The OCEA suggest that this is a time for decreasing the cost of payments made at authorized agents rather than a time for increasing fees. The energy burden for low-income customers is already significantly greater than the burden on median and higher income consumers. Low-income assistance and payment plans help bridge this gap to a certain extent, but additional fee's for making utility bill payments at authorized agents can be self-defeating. As a regulatory body, we should be encouraging customers to make payments and eliminating the obstacles and barriers that prevent this from happening. Additional fees for making payment at authorized agents may be one of those obstacles. Additional fees for making payments through credit card and/ or electronic checking may be yet another obstacle.

There are two other authorized agent issues that the OCEA recommend be addressed in paragraph D. First, the rules do not require the electric utilities to have authorized agents available in close proximity, or within reasonable access to the neighborhoods where customers tend to pay via authorized agents. Second, the rules do not require electric utility's to have standard signage available at their authorized agents to specifically designate these locations as being different from other non-authorized bill payment centers. There are a number of different businesses that accept electric bill payments from customers that are not authorized agents of the Company. This can

include banks, convenient stores, check cashing establishments and other institutions that accept bill payments as a convenience for their customers. Requirements for timely payment posting with the utility do not apply to these payments. While there may not be practical ways to prohibit these businesses from accepting electric bill payments, the Commission can require that authorized agents be so designated. Signage that states the business is an authorized agent of the electric utility would be appropriate. Paragraph D should be modified as follows:

Each electric utility shall, upon request, provide customers with an updated list of the name and street address/location of the nearest payment center and/or local authorized agent, and alternative methods available for payment of customer bills. EACH ELECTRIC UTILITY SHALL ENSURE THAT BILL PAYMENT LOCATIONS ARE IN CLOSE PROXIMITY TO AREAS WHERE CUSTOMERS TEND TO PAY IN PERSON. IN ADDITION, IF THE ELECTRIC UTILITY'S ARE ACCEPTING PAYMENTS FROM CUSTOMERS VIA AUTHORIZED AGENTS, THE ELECTRIC UTILITY SHALL PROVIDE SIGNAGE WITH COMPANY LOG'S OR OTHER APPROPRIATE INDICATORS THAT AFFIRM THE PAYMENT LOCATION AS AN AUTHORIZED AGENT OF THE COMPANY. Customers shall NOT be charged a fee for MAKING PAYMENTS by cash, check, CREDIT CARD, or money ORDER AT BUSINESSES THAT ARE authorized TO ACCEPT PAYMENTS FOR THE ELECTRIC UTILITY.

4901:1-10-22 (I)

The proposed rules do not require electric utilities to offer customers the option to have their billing due date adjusted to meet their needs. Many customers on fixed monthly incomes receive checks on a specific date each month. Having the due date for the electric bill coincide with when funds are available is of great benefit to consumers. Adjusted due dates help customers better plan and manage monthly finances and facilitate timely payments to utilities. The rules should be amended to include the following requirement.

ELECTRIC UTILITIES SHALL OFFER CUSTOMERS WHEN THEY INITIALLY APPLY FOR SERVICE AND UPON REQUEST THEREAFTER, THE OPTION TO HAVE THE DUE DATE ON THE BILL ADJUSTED BY UP TO 21 DAYS WITHOUT RESULTING IN LATE PAYMENT FEES OR PENALTIES.

4901:1-10-24 Customer Safeguards and Information.

The Staff's proposed rules make some minor editorial changes in the provision for electric utilities to notify customers about its summary of customer rights and responsibilities. This includes important provisions related to procedures for making complaints, customer rights and responsibilities, identification during premise visits, alternative rate information, privacy rights, changes in supplier information, and meter reading.

The OCEA consider consumer rights and protections to be extremely important and the type of information that customers should receive on a routine basis. Providing a bill insert or other notice about how to obtain a copy of the summary is not an effective way to keep customers informed. The majority of the information that is required by Ohio Adm. Code 4901:1-10-08 can be provided as part of an annual bill insert or other notice. Customers will then be able to obtain this important information on an annual basis without having to call the electric utility to request that a copy be sent. Furthermore, this should help provide some cost savings to the electric utilities by eliminating the need for answering calls from customers requesting copies of the customer rights summary. Paragraph A should be modified as follows:

PROPOSED RULE CHANGE:

- (A) Each electric utility shall PROVIDE ~~notify~~ customers annually, by bill insert or other notice, ~~about its summary~~ A COPY THE of

customer rights and responsibilities, as prescribed by rule 4901:1-10-8 of the Administrative Code, and how to request a copy from the electric utility

The current rules require electric utilities to provide informational, promotional, and educational materials that explain services, rates, and options to customers. However, there is not a requirement for electric utilities to provide informational and educational materials to customer in non-English form. Considering the large number of Hispanic and other nationalities that now make up the demographic composition of the state, electric utilities should be required to provide informational and educational materials in non-English form. Wisconsin has made substantial improvements in the information available in non-English format.³⁴ This will result in customers that do not read English being more capable in understanding the terms, conditions, and pricing of their service. In addition, the Commission Staff can review and request modifications to these materials. The OCEA request that copies of informational and educational materials that involve residential customers be made available to OCC as well. Having the electric utility's informational materials available at OCC is of tremendous benefit in helping explain electric utility's programs, services, rates, and options to customers. OCC routinely is contacted by electric utility's residential customers inquiring about the nature of service, different alternatives that may be available, and the impact on bills. Having the same information that is being used by the electric utilities is helpful to OCC in addressing customer specific issues. Furthermore, electric utilities benefit in having these materials available at OCC since it may result in fewer contacts with the electric

³⁴ Wisconsin Electric Service Rules, PSC Chapter 113.

utility and for shorter periods of time. The OCEA recommend that paragraph C be modified as follows:

PROPOSED RULE CHANGE:

(C) Customer education and marketing practices.

Each electric utility shall provide informational, promotional, and educational materials that are non-customer specific and explain services, rates, and options to customers. **SUCH MATERIALS SHALL BE PROVIDED ENGLISH AND SHALL BE TRANSLATED IN OTHER LANGUAGES THAT REPRESENT OTHER NATIONALITIES REPRESENTED IN THE ELECTRIC UTILITY SERVICE TERRITORY.** The staff may review and/or request modification of informational, promotional, and educational materials. **COPIES OF INFORMATIONAL AND EDUCATIONAL MATERIALS SHALL BE PROVIDED TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL.** Such materials, shall include the following information:

The current rules provide examples of unfair or deceptive acts or practices that electric utilities are prohibited from engaging in with respect to the promotion or provision of services. These prohibitions include electric utilities claiming that service can be disconnected for non-payment of nonregulated service and electric utilities charging customers for service that was not ordered. An additional unfair or deceptive practice should be defined as the routine requesting of social security numbers. Identity theft is a major national issue and far more effort is needed to protect the integrity of customers' social security number. One way that the Commission can help support this objective is to prohibit electric utilities from routinely requesting a customer social security number unless the electric utility has a bona-fide need for having the social security number. Paragraph D would be modified to read as follows:

PROPOSED RULE CHANGE:

- (D) Unfair and deceptive acts or practices. No electric utility shall commit an unfair or deceptive act or practice in connection with the promotion or provision of service, including an omission of material information. An unfair or deceptive act/practice includes, but is not limited to, the following:

* * *

- (3) AN ELECTRIC UTILITY DOES NOT DISCLOSE TO A CUSTOMER ALL OF THE OPTIONS THAT ARE AVAILABLE TO DEMONSTRATE FINANCIAL RESPONSIBILITY WHERE THE SOCIAL SECURITY NUMBER IS NOT REQUIRED.

The Staff's proposed rule results in a degradation in consumer protections because the customer account number can be disclosed without written consent. There should be very few instances where an electric utility needs to disclose the customers account number to a third party. An electric utility can disclose the account number without consent for several purposes including credit evaluation, credit/ collections reporting, participation in PIPP, and government aggregation.

In general, the OCEA are opposed to electric utilities releasing customer account numbers to third parties without consent. The utility account number is a unique identifier of the relationship between the customer and the company. Improper use of the account number could lead to unauthorized changes in electric supplier and potentially even worse problems for the consumer. In addition, it is unclear why an account number is released without consent for credit evaluation purposes. The account number should not be required information to enable a credit evaluation. The proposed rules include no support for the new language which supports electronic authorization for the customer consent. Without further information to support why electronic authorization should be

permitted in the Ohio rules, the OCEA suggest that the consent be kept in written form.

Paragraph E should be modified as follows:

PROPOSED RULE CHANGE:

- (E) Customer specific information.
 - (1) An electric utility shall ~~only~~ not disclose a customer's account number without the customer's written consent, ~~or electronic authorization,~~ or a court or commission directive ordering disclosure, except for the following purposes:
 - (a) An electric utility's collections and/or credit reporting activities **WHEN THE SOCIAL SECURITY NUMBER IS NECESSARY AND AFFIRMED BY THE CUSTOMER AS BEING THE DESIRED METHOD TO DEMONSTRATE FINANCIAL RESPONSIBILITY PURSUANT TO 4901:1-17 OF THE OHIO ADMINISTRATIVE CODE.;**
 - ~~(b) Participation in programs funded by the universal service fund, pursuant to section 4928.54 of the Revised Code, such as the percentage of income payment plan programs.~~
 - ~~(c) Cooperation with governmental aggregation programs, pursuant to section 4928.20 of the Revised Code.~~

4901:1-10-26 Annual System Improvement Plan Report.

The rule should revise the requirements associated with the annual reliability report, combine the distribution reliability report with transmission reliability, and assure that the utility reports are available to the public. The OCEA's proposed regulation establishes the minimum contents of the annual reliability report and reflects the type of information that is required by other commissions including the Pennsylvania Commission. Specifically, our proposal distinguishes between the distribution and transmission systems, requires the reliability performance data that reflects the rule's substantive standards, and requires the utility to submit information on budgets and actual

expenditures on ongoing reliability improvement programs. Staff's proposed Rule 27 was specific to distribution circuit performance. As seen above, the OCEA have recommended the consolidation of circuit performance within the section 26 so that all performance requirements are defined within one section of the rules. Likewise, the reporting of reliability data occurs through a hodgepodge of methods in each of the Rules 26, 27, 28, and 29 depending on if the report involves system performance, problems, or investment plans. The OCEA recommend that the reporting be consolidated into a single Annual Report.

The electric utility's annual reports should be publicly available and the rule should require the Commission to issue an annual report that summarizes and identifies trends and other enforcement or improvement actions undertaken by the Commission. For example, the Pennsylvania PUC publishes an annual report, Electric Service Reliability in Pennsylvania. The report³⁵ contains a description of the reliability performance of each utility and provides a historical presentation of each utility's reliability performance and compares that performance to the applicable performance standards. Thus, the public and other interested stakeholders can visually compare utility performance and follow the Commission's oversight of the utility performance and compliance plans.

The OCEA agree with the proposal that the regulation make reference to reliability standards and requirements that have been adopted by the Electric Reliability Organization ("ERO") and approved by FERC within the annual report. However, it

³⁵ The Pennsylvania PUC reliability report for 2005 is available at http://www.puc.state.pa.us/general/publications_reports/pdf/Electric_Service_Reliability2005.pdf In addition, the Illinois Commerce Commission publishes annual reliability reports for its electric utilities. See, <http://www.icc.illinois.gov/industry/publicutility/energy/electricity/electricreliability.aspx>.

proposes to limit the “plan for future investment” to two years instead of the current three years prior to the filing of the report. This change should not be adopted because it would not capture longer term investment plans.

The rule should expand the requirements associated with the annual reliability report, combine or coordinate the distribution reliability report with transmission reliability, and assure that the utility reports are available to the public. The OCEA’s proposed regulation establishes the minimum contents of the annual reliability report and reflects the type of information that is required by the Pennsylvania Commission. Specifically, our proposal distinguishes between the distribution and transmission systems, requires the reliability performance data that reflects the rule’s substantive standards, and requires the utility to submit information on budgets and actual expenditures on ongoing reliability improvement programs. The OCEA’s proposed language for the annual reports is as follows:

PROPOSED RULE CHANGE:

- (A) AN ELECTRIC UTILITY SHALL SUBMIT AN ANNUAL RELIABILITY REPORT TO THE COMMISSION, ON OR BEFORE MARCH 30 OF EACH YEAR.
 - 1. AN ORIGINAL AND SIX COPIES OF THE REPORT SHALL BE FILED WITH THE COMMISSION’S SECRETARY AND ONE COPY SHALL ALSO BE SUBMITTED TO THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL.
 - 2. THE NAME, TITLE, TELEPHONE NUMBER AND E-MAIL ADDRESS OF THE PERSONS WHO HAVE KNOWLEDGE OF THE MATTERS AND CAN RESPOND TO INQUIRIES, SHALL BE INCLUDED.
- (B) THE ANNUAL RELIABILITY REPORT FOR SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING ELEMENTS:

1. AN OVERALL CURRENT ASSESSMENT OF THE STATE OF THE SYSTEM RELIABILITY IN THE ELECTRIC UTILITY'S SERVICE TERRITORY INCLUDING A DISCUSSION OF THE ELECTRIC UTILITY'S CURRENT PROGRAMS AND PROCEDURES FOR PROVIDING RELIABLE ELECTRIC SERVICE.
2. A DESCRIPTION OF EACH MAJOR EVENT THAT OCCURRED DURING THE YEAR BEING REPORTED ON, INCLUDING THE TIME AND DURATION OF THE EVENT, THE NUMBER OF CUSTOMERS AFFECTED, THE CAUSE OF THE EVENT AND ANY MODIFIED PROCEDURES ADOPTED TO AVOID OR MINIMIZE THE IMPACT OF SIMILAR EVENTS IN THE FUTURE.
3. A TABLE SHOWING THE ACTUAL VALUES OF EACH OF THE RELIABILITY INDICES (SAIFI, CAIDI, SAIDI, AND IF AVAILABLE, MAIFI) FOR THE ELECTRIC UTILITY'S SERVICE TERRITORY FOR EACH OF THE PRECEDING 5 CALENDAR YEARS. THE REPORT SHALL INCLUDE THE DATA USED IN CALCULATING THE INDICES, NAMELY THE AVERAGE NUMBER OF CUSTOMERS SERVED, THE NUMBER OF SUSTAINED CUSTOMER MINUTES INTERRUPTIONS, THE NUMBER OF CUSTOMERS AFFECTED AND THE MINUTES OF INTERRUPTION. IF MAIFI VALUES ARE PROVIDED, THE NUMBER OF CUSTOMER MOMENTARY INTERRUPTIONS SHALL ALSO BE REPORTED.
4. PERFORMANCE DATA SHOWING THE ELECTRIC UTILITY'S COMPLIANCE WITH THE PERFORMANCE STANDARDS SET FORTH IN SECTION 4901:1-10-26 AND APPLICABLE COMMISSION ORDER.
5. A BREAKDOWN AND ANALYSIS OF OUTAGE CAUSES DURING THE YEAR BEING REPORTED ON, INCLUDING THE NUMBER AND PERCENTAGE OF SERVICE OUTAGES, THE NUMBER OF CUSTOMERS INTERRUPTED, AND CUSTOMER INTERRUPTION MINUTES CATEGORIZED BY OUTAGE CAUSE SUCH AS EQUIPMENT FAILURE, ANIMAL CONTACT, TREE RELATED, AND OTHER OUTAGE CATEGORIES APPROVED BY THE STAFF.

PROPOSED SOLUTIONS TO IDENTIFIED SERVICE PROBLEMS SHALL BE REPORTED.

6. A LIST OF THE MAJOR REMEDIAL EFFORTS TAKEN TO DATE AND PLANNED FOR CIRCUITS THAT HAVE BEEN ON THE WORST PERFORMING 8% OF CIRCUITS LIST FOR A YEAR OR MORE. CIRCUIT PERFORMANCE SHALL BE EVALUATED BASED ON MINUTES OF INTERRUPTION PER CUSTOMER SERVED BY THE CIRCUIT.
7. A COMPARISON OF ESTABLISHED TRANSMISSION AND DISTRIBUTION INSPECTION AND MAINTENANCE GOALS/OBJECTIVES VERSUS ACTUAL RESULTS ACHIEVED DURING THE YEAR BEING REPORTED ON. EXPLANATIONS OF ANY VARIANCES SHALL BE INCLUDED.
8. A COMPARISON OF BUDGETED VERSUS ACTUAL TRANSMISSION AND DISTRIBUTION OPERATION AND MAINTENANCE EXPENSES FOR THE YEAR BEING REPORTED ON IN TOTAL AND DETAILED BY THE ELECTRIC UTILITY'S OWN FUNCTIONAL ACCOUNT CODE OR FERC ACCOUNT CODE AS AVAILABLE. EXPLANATIONS OF ANY VARIANCES 10% OR GREATER SHALL BE INCLUDED.
9. A COMPARISON OF BUDGETED VERSUS ACTUAL TRANSMISSION AND DISTRIBUTION CAPITAL EXPENDITURES FOR THE YEAR BEING REPORTED ON IN TOTAL AND DETAILED BY THE ELECTRIC UTILITY'S OWN FUNCTIONAL ACCOUNT CODE OR FERC ACCOUNT CODE AS AVAILABLE. EXPLANATIONS OF ANY VARIANCES 10% OR GREATER SHALL BE INCLUDED.
10. QUANTIFIED TRANSMISSION AND DISTRIBUTION INSPECTION AND MAINTENANCE GOALS/OBJECTIVES FOR THE CURRENT CALENDAR YEAR DETAILED BY SYSTEM AREA (THAT IS, TRANSMISSION, SUBSTATION AND DISTRIBUTION).
11. BUDGETED TRANSMISSION AND DISTRIBUTION OPERATION AND MAINTENANCE EXPENSES FOR THE CURRENT YEAR IN TOTAL AND DETAILED BY

THE ELECTRIC UTILITY'S OWN FUNCTIONAL ACCOUNT CODE OR FERC ACCOUNT CODE AS AVAILABLE.

12. BUDGETED TRANSMISSION AND DISTRIBUTION CAPITAL EXPENDITURES FOR THE CURRENT YEAR IN TOTAL AND DETAILED BY THE ELECTRIC UTILITY'S OWN FUNCTIONAL ACCOUNT CODE OR FERC ACCOUNT CODE AS AVAILABLE.
13. A DESCRIPTION OF THE ELECTRIC UTILITY'S COMPLIANCE WITH THE MINIMUM DISTRIBUTION AND TRANSMISSION INSPECTION AND MAINTENANCE PROGRAMS REQUIRED BY SECTION 10-30 OR OTHER APPLICABLE COMMISSION REQUIREMENTS APPLICABLE TO THE ELECTRIC UTILITY, AN IDENTIFICATION OF DEFECTS OR OTHER INDICATORS OF DETERIORATION OF PERFORMANCE OR FAILURE TO COMPLY WITH APPLICABLE MINIMUM REQUIREMENTS, AND A PROPOSED REMEDIAL PLAN TO OBTAIN COMPLIANCE WITHIN A REASONABLE TIME.
14. AN IDENTIFICATION OF ANY ELECTRIC RELIABILITY ORGANIZATION (ERO) STANDARDS VIOLATIONS, REGIONAL TRANSMISSION OPERATOR OR REGIONAL RELIABILITY ORGANIZATION STANDARDS VIOLATIONS, OR OTHER COMMUNICATIONS OR NOTIFICATIONS OF DEFECTS OR INDICATIONS OF RELIABILITY IMPROVEMENTS THAT WILL BE REQUIRED RECEIVED BY THE ELECTRIC UTILITY.
15. A LIST OF RELIABILITY, QUALITY OF SERVICE, AND SAFETY COMPLAINTS RECEIVED BY THE ELECTRIC UTILITY FROM ANY OTHER DISTRIBUTION UTILITY, RURAL ELECTRIC COOPERATIVE, MUNICIPAL UTILITY, COMPETITIVE ELECTRIC SUPPLIER, OR OTHER GOVERNMENTAL BODY REPRESENTING LOCAL, REGIONAL, OR STATE RESIDENTS, AS WELL AS THE ELECTRIC UTILITY'S RESPONSE AND STATUS OF THE COMPLAINT.

16. AN IDENTIFICATION OF THE IMPACTS WHICH THE ELECTRIC UTILITY'S ENERGY EFFICIENCY AND DISTRIBUTED GENERATION PLANS ARE EXPECTED TO HAVE ON SPECIFIC TRANSMISSION AND DISTRIBUTION CONGESTION OR OTHER ISSUES.
- (C) THE COMMISSION SHALL PUBLISH AN ANNUAL ELECTRIC SYSTEM RELIABILITY REPORT THAT CONTAINS THE PERFORMANCE STANDARDS AND RESULTS FOR EACH ELECTRIC UTILITY.
- ~~(A) Each electric utility and transmission owner shall report annually regarding its compliance with the minimum service quality, safety, and reliability requirements for noncompetitive retail electric services.~~
- ~~(B) Annual report. On or before March thirty first of each year, each electric utility and transmission owner shall file with the commission an annual report for the previous calendar year by the utility's chief executive officer or other senior officer responsible for the service quality, safety, and reliability of the electric utility's and transmission owner's transmission and/or distribution service. The annual report shall include:~~
- ~~(1) A plan for investment in and improvements to the electric utility's or transmission owner's transmission and distribution facilities/equipment that will ensure high quality, safe, and reliable delivery of energy to customers and will provide the delivery reliability needed for fair and open competition. Each plan shall also contain the estimated cost of implementation and any changes to the plan from the previous annual report. Each plan shall:~~
- ~~(a) Cover all of the electric utility's service territory, and shall describe the relevant characteristics of the service territory, including the following:~~
- ~~(i) The number of miles of overhead distribution lines.~~
- ~~(ii) The number of miles of underground distribution lines.~~
- ~~(iii) The number of miles of overhead transmission lines.~~

- ~~(iv) — The number of miles of underground transmission lines.~~
- ~~(v) — Any other notable characteristics.~~
- ~~(b) — Cover a period of no less than two years following the year in which the report was filed.~~
- ~~(c) — Provide a timetable for achievement of the plan's goals.~~
- ~~(d) — List any quality, safety, and reliability complaints the electric utility or transmission owner received during the reporting period from other electric utilities, rural electric cooperatives, municipal electric utilities, and competitive retail electric suppliers, and shall report the specific actions the electric utility took to address these complaints.~~
- ~~(e) — List any electric reliability organization standards violations, regional reliability organization standards violations, regional transmission operator operating violations, transmission load relief, the top ten congestion facilities by hours of congestion occurring on the electric utility's and/or transmission owner's facilities, and a description of the relationship between the annual system improvement plan and the regional transmission operator's transmission expansion plan.~~
- ~~(f) — Report all unresolved quality, safety, and reliability complaints and violations as described in section (B)(1)(d) and (B)(1)(e) of this rule that were carried over from the prior year, along with the reason the complaint or violation was not resolved.~~
- ~~(2) — A report of the electric utility's or transmission owner's implementation of the plan that it filed pursuant to paragraph (B)(1) of this rule for the previous annual reporting period, including an identification of significant deviations from the goals of the previous plan and the reasons for the deviations;.~~
- ~~(3) — A report by service territory of the age, current condition, reliability and performance of the electric utility's and/or~~

~~transmission owner's transmission and distribution facilities. (In analyzing and reporting the age of the electric utility's and/or transmission owner's facilities and equipment, the electric utility and/or transmission owner may utilize book depreciation. Statistical estimation and analysis may be used when actual ages and conditions of facilities are not readily available. The use of such techniques shall be disclosed in the report.) The report shall include:~~

- ~~(a) — A qualitative characterization of the condition of the electric utility's and/or transmission owner's system and an explanation of the criteria used in making the qualitative assessment.~~
- ~~(b) — An overview of the number and substance of customers' safety and reliability complaints for the annual reporting period in each service territory.~~
- ~~(c) — Each electric utility's or transmission owner's budgeted and actual reliability-specific capital and maintenance expenditures for the past and current fiscal year, by account and subaccount, reported separately for transmission construction and maintenance, the ratio of those expenditures to the electric utility's or transmission owner's total transmission investment, and an explanation for any variance between budgeted and actual expenditures that exceeds ten per cent.~~
- ~~(d) — Each electric utility's budgeted and actual reliability-specific capital and maintenance expenditures for the past and current fiscal year, by account and subaccount, reported separately for distribution construction and maintenance, and the ratio of those expenditures to the electric utility's total distribution investment, and an explanation for any variance between budgeted and actual expenditures that exceeds ten per cent.~~
- ~~(e) — The average remaining depreciation lives of the electric utility's and/or transmission owner's transmission and distribution facilities, expressed separately by facility type as a percentage of total depreciation lives.~~

- (f) — For each reporting period, provide a list and purpose of current inspection, maintenance, repair, and replacement programs required by paragraph (E) of rule 4901:1-10-27 of the Administrative Code that the electric utility and/or transmission owner's utilizes for quality, safe, and reliable service from its transmission, substation, and distribution facilities and/or equipment. This report shall include the following:
 - (i) — The goals of each program and whether the electric utility's and/or transmission owner's annual goals for each program were achieved. If the goals were achieved, describe how they were achieved and to what extent, including numerical values and percentages in the description. If the goals were not achieved, describe the problems that prevented the achievement and the level of completion of each program, including numerical values and percentages
 - (ii) — A summary of the electric utility's and/or transmission owner's annual findings as a result of performing each program
 - (iii) — A summary of the remedial activity that has been or will be performed as a result of the program findings, and the actual and estimated completion dates for such remedial activity
 - (iv) — The electric utility's and/or transmission owner's plans and programs to prevent overloading or excessive loading of its transmission and distribution facilities and equipment.
 - (v) — The electric utility's and/or transmission owner's actions to remedy overloading or excessive loading of its transmission and distribution facilities and equipment.
 - (vi) — An identification of the programs that have been added, deleted, and/or modified from the previous reporting period in accordance

with the requirements of paragraph (F) of rule 4901:1-10-27 of the Administrative Code.

- ~~(4) An identification of customer service interruptions that were due solely to the actions or in-actions of another electric utility, regional transmission entity, and/or a competitive retail electric supplier for the annual reporting period and the causes of these interruptions.~~

4901:1-10-27 Inspection, Maintenance, Repair, and Replacement of Transmission and Distribution Facilities (Circuits and Equipment).

Ohio Adm. Code 4901:1-10-27(B) states that the distribution system performance assessment will reflect compliance with this rule. Paragraph C then establishes the requirements for a Transmission System performance assessment. Again, however, the proposed rule allows each electric utility to adopt its own methodology to assess its transmission system and negotiate with the Staff on its acceptance. The OCEA object to any process by which an electric utility's transmission system reliability methodology is "approved" by the Staff in a non-public process. Rather, the electric utility should propose its methodology in the Annual Report required by Rule 4901:1-10-27. These proposals should be subject to public notice and comment prior to their approval. It is likely that any such methodology will reflect the FERC-approved reliability standards and reporting requirements established by the ERO.

Paragraph D of this section establishes minimum inspection cycles for transmission and distribution facilities. Again, this inspection cycle may be impacted by the ERO standards relating to the transmission system. With regard to the distribution system, the inspection cycles in the proposed rule appear reasonable and the clarifications proposed are appropriate. Again, however, the report required by this subsection should

be integrated into the annual report required by Rule 4901:1-10-27 and made available to the public.

Paragraph E addresses maintenance, repair, and replacement programs for both transmission and distribution facilities. Again, the obligations applicable to the transmission system may be impacted by the ERO standards adopted by FERC. With respect to the distribution system plans and compliance with the electric utility-specific plan, the OCEA believe that a complete delegation of this process of plan approval and monitoring for compliance to the Staff is inappropriate. The electric utility should be required to submit its proposed plan and program in the annual report required by Rule 4901:1-10-26 and Rule 4901:1-10-27, followed by public notice and opportunity for comment prior to approval by the Commission.

The OCEA recommends that this section should include minimum vegetation management standards, minimum standards for contractors, and the requirement that the electric utility conduct a reasonable public outreach and education program concerning its vegetation management practices. The OCEA urge the Commission to require a minimum four-year vegetation management cycle. Any cycle-based vegetation management plan, however, must contain explicit guidelines for the terms and conditions under which the electric utility can vary from its cycle-based vegetation management plan.

Paragraph F contains proposed new language that requires the electric utility to “record all deficiencies revealed by inspections or tests and all actions taken to correct those deficiencies.” In addition, the proposed rule would require the electric utility to fix dangerous conditions “promptly” and all remaining deficiencies within one year. The

intent of this provision is laudable in that the proposal seeks to require the electric utility to identify the defects revealed by its tests and inspections and establish a reasonable means of assuring repair and correction of these defects. The OCEA support this general approach, but suggest that the term “deficiency” is likely to give rise to dispute in the future and should be defined as follows:

PROPOSED RULE CHANGE:

“DEFICIENCY” MEANS A DEFECT IN THE EQUIPMENT, FAILURE TO CONFORM TO THE MINIMUM STANDARDS OF THIS RULE, OR THE DETECTION OF A CONDITION HAZARDOUS TO THE PUBLIC OR OTHER CONDITION THAT IS LIKELY TO THREATEN THE RELIABILITY OF THE DISTRIBUTION OR TRANSMISSION SYSTEM.

The regulation should then require the electric utility to identify “deficiencies” in its Annual Report and to state what action(s) were undertaken to correct any deficiencies. Any deficiencies identified, but not yet corrected prior to the submission of the Annual Report, should be specifically identified and accompanied by an enforceable compliance plan with specific milestones and timetables to enable the Commission to monitor for correction. Such an approach would allow the electric utility to propose a specific compliance plan that reflects the nature of the deficiency that has been identified. The OCEA propose the following changes to the Staff’s proposed rule:

PROPOSED RULE CHANGE:

- (A) This rule applies to the inspection, maintenance, repair, and replacement of utility transmission and distribution system facilities (circuits and equipment). The rebuttable presumption that an electric utility and/or transmission owner is providing adequate service pursuant to paragraph (F) of rule 4901:1-10-02 of the Administrative Code, does not apply to this rule.

- (B) AN ELECTRIC UTILITY SHALL INSTALL AND MAINTAIN ITS TRANSMISSION FACILITIES, AND ENSURE THAT ITS TRANSMISSION FACILITIES ARE OPERATED, IN CONFORMITY WITH THE APPLICABLE REQUIREMENTS OF THE NATIONAL ELECTRICAL SAFETY CODE. AN ELECTRIC UTILITY SHALL OPERATE ITS TRANSMISSION FACILITIES IN CONFORMITY WITH THE OPERATING POLICIES, CRITERIA, REQUIREMENTS AND STANDARDS OF NERC AND THE APPROPRIATE REGIONAL RELIABILITY COUNCIL, OR SUCCESSOR ORGANIZATIONS, AND OTHER APPLICABLE REQUIREMENTS.

- (C) THE RELIABILITY OF AN ELECTRIC UTILITY'S TRANSMISSION SERVICE PROVIDED TO WHOLESALE CUSTOMERS, SUCH AS ELECTRIC COOPERATIVE CORPORATIONS AND MUNICIPAL CORPORATIONS, SHALL BE COMPARABLE TO THE RELIABILITY WHICH THE TRANSMISSION SUPPLIER PROVIDES AT THE WHOLESALE LEVEL, TAKING INTO ACCOUNT THE NATURE OF EACH SERVICE AREA IN WHICH ELECTRICITY IS DELIVERED TO THE CUSTOMER, THE DELIVERY VOLTAGE AND THE CONFIGURATION AND LENGTH OF THE CIRCUIT FROM WHICH ELECTRICITY IS DELIVERED.

- (D) Distribution system performance assessment. For electric distribution circuits, the electric utility shall comply with rule 4901:1-10-10 of the Administrative Code.

- (E) Transmission system performance assessment. Each electric utility and transmission owner shall maintain, on file with the staff, a report setting forth its methodology used to assess the reliability of its transmission circuits. That methodology shall be subject to review and acceptance by the COMMISSION ~~director of the utilities department~~.

- (1) Each electric utility or transmission owner shall submit a method to assess circuit reliability based on the total number of sustained outages per circuit per calendar year and other factors proposed by the electric utility, or required by the electric reliability organization (ERO), the regional reliability organization (RRO), or the regional transmission operator, which affect circuit performance, together with supporting justification for that method.

- (b) Revisions to a previously accepted methodology for assessing the reliability of its transmission circuits, shall be submitted for review and acceptance along with supporting justification to the COMMISSION ~~director of the utilities department~~, no later than ninety days prior to the beginning of the next succeeding calendar year.

- (2) Each electric utility or transmission owner shall ~~submit~~ FILE WITH THE COMMISSION, AN ANNUAL report on electronic media in a format prescribed by the commission on or before March thirty-first of each year, that identifies the performance of each transmission circuit for the previous calendar year. Each annual report shall, at a minimum, provide the following information for each transmission circuit:

* * *

- (E) Transmission and distribution inspection, maintenance, repair, and replacement programs.
 - (1) Each electric utility and transmission owner shall establish, maintain, and comply with written programs, policies, procedures, and schedules for the inspection, maintenance, repair, and replacement of its transmission and distribution circuits and equipment. These programs shall establish preventative requirements for the electric utility to maintain safe and reliable service. Programs shall include, but are not limited to, the following facilities:
 - (a) Poles and towers.
 - (b) Circuit and line inspections.
 - (c) Primary enclosures (e.g., pad-mounted transformers and pad-mounted switch gear) and secondary enclosures (e.g., pedestals and handholes).
 - (d) Line reclosers.
 - (e) Line capacitors.
 - (f) Right-of-way vegetation control

(g) Substations.

- (2) Each electric utility and transmission owner shall file its inspection, maintenance, repair, and replacement programs, instituted pursuant to paragraph (E)(1) of this rule, with the commission, and simultaneously provide a copy of the filing to the director of the service monitoring and enforcement department. The electric utility's and transmission owner's filing shall include supporting justification and rationale based upon generally accepted industry practices and procedures or requirements set by ERO, RRO, or the transmission operator in the case of transmission.

* * *

- (5) ELECTRIC UTILITY AND TRANSMISSION OWNERS ARE ENCOURAGED TO TAKE A MORE PROACTIVE APPROACH WITH THE INSPECTION, REPAIR, AND REPLACEMENT PROGRAMS FOR THEIR TRANSMISSION AND DISTRIBUTION FACILITIES, INCLUDING THE USE OF TECHNICAL INNOVATIONS SUCH AS ELECTRONIC LINE INSPECTION EQUIPMENT.

- (F) Inspection, maintenance, repair, and replacement program revisions and amendments.

All revisions or amendments (including modification to a current program, addition of a new program, or elimination of an existing program) requested by an electric utility or transmission owner shall be filed with the commission as outlined in paragraph (E)(2) of this rule.

- (2) If a filing to revise or amend the electric utility's and transmission owner's inspection, maintenance, repair, and replacement programs is not acted upon by the commission within forty-five days after it is filed, the inspection, maintenance, repair, and replacement programs shall be deemed approved on the forty-sixth day after filing.

4901:1-10-27(G) Vegetation Management.

As noted in OCEA's comments above regarding vegetation management, the practices of at least two major electric utilities have been haphazard and poorly documented over the recent past. The Commission should adopt the rule below in order to ensure that the vegetation management practices of the electric utility follow electric industry and vegetation management "best practices."

PROPOSED RULE CHANGE:

1. GENERAL PROVISIONS

- (A) AN ELECTRIC PUBLIC UTILITY SHALL ENSURE THAT VEGETATION MANAGEMENT IS CONDUCTED IN ACCORDANCE WITH THIS SUBCHAPTER ON ANY ENERGIZED CONDUCTORS OF 600 VOLTS AND HIGHER, WHETHER FOR DISTRIBUTION OR TRANSMISSION, THAT THE ELECTRIC PUBLIC UTILITY OWNS, IN WHOLE OR IN PART.**
- (B) EACH ELECTRIC UTILITY SHALL ENSURE THAT ALL REQUIRED PERMITS AND LICENSES ARE OBTAINED.**
- (C) AN ELECTRIC UTILITY SHALL COMPLY WITH ANY LAWS OR REGULATIONS GOVERNING THE USE OF THOSE BIOLOGICAL AND CHEMICAL AGENTS IF USED.**
- (D) EACH ELECTRIC UTILITY SHALL EMPLOY A VEGETATION MANAGER (VM), WHO IS A CERTIFIED ARBORIST AND HAS THE AUTHORITY AND THE RESOURCES TO ADMINISTER ALL ASPECTS OF THE UTILITY'S VEGETATION MANAGEMENT PROGRAM.**
- (E) EACH ELECTRIC UTILITY SHALL ENSURE THAT ALL CONTRACTORS HIRED TO PERFORM VEGETATION MANAGEMENT INFORM THEIR WORKERS OF ALL APPLICABLE FEDERAL, STATE, COUNTY, AND MUNICIPAL LAWS, RULES OR**

REGULATIONS THAT APPLY TO THE WORK
PERFORMED UNDER THIS SUBCHAPTER.

- (F) UPON AN ELECTRIC UTILITY RECEIVING NOTICE OF, OR HAVING ACTUAL KNOWLEDGE OF, ANY DEAD, ROTTEN, OR DISEASED VEGETATION WHICH OVERHANGS, LEANS TOWARD, OR MAY FALL INTO AN ENERGIZED CONDUCTOR, THE ELECTRIC UTILITY SHALL PROMPTLY REMOVE OR REMEDY THE POTENTIAL SAFETY CONCERN AS PROMPTLY AS POSSIBLE. IF REMOVAL OF THE VEGETATION REQUIRES THE ELECTRIC UTILITY TO ACCESS OR CROSS PROPERTY FOR WHICH IT DOES NOT HOLD AN EASEMENT OR OTHER LEGAL AUTHORIZATION, THE ELECTRIC UTILITY SHALL TAKE ALL REASONABLE STEPS TO OBTAIN ANY NECESSARY PERMISSION FROM THE PROPERTY OWNER AND REMOVE OR REMEDY THE POTENTIAL SAFETY CONCERN AS PROMPTLY AS POSSIBLE.
- (G) MAINTENANCE INSPECTIONS
- A. AN ELECTRIC UTILITY SHALL PERFORM AN ANNUAL VISUAL INSPECTION OF ALL ENERGIZED CONDUCTORS, TO DETERMINE WHETHER VEGETATION MANAGEMENT IS NEEDED. THE ELECTRIC UTILITY SHALL TAKE INTO ACCOUNT THE HEIGHT OF THE VEGETATION AND THE DISTANCE OF THE VEGETATION FROM THE ENERGIZED CONDUCTOR, IN DETERMINING WHETHER VEGETATION MANAGEMENT IS NEEDED.
- B. AN ELECTRIC UTILITY SHALL PERFORM VEGETATION MANAGEMENT ON VEGETATION THAT IS CLOSE ENOUGH TO POSE A THREAT TO ITS ENERGIZED CONDUCTORS AT LEAST ONCE EVERY FOUR YEARS.
- C. IN ADDITION TO THE MAINTENANCE REQUIRED ABOVE, IF AN ELECTRIC UTILITY BECOMES AWARE EITHER THROUGH NOTIFICATION OR DURING THE INSPECTIONS OF ANY VEGETATION CLOSE

ENOUGH TO POSE A THREAT TO ITS ENERGIZED CONDUCTOR, WHICH IS LIKELY TO AFFECT RELIABILITY OR SAFETY PRIOR TO THE NEXT REQUIRED VEGETATION MANAGEMENT, THE ELECTRIC UTILITY SHALL ENSURE THAT NECESSARY VEGETATION MANAGEMENT IS PROMPTLY PERFORMED.

- D. EACH ELECTRIC UTILITY SHALL DEVELOP ITS OWN VEGETATION MANAGEMENT STANDARDS AND GUIDELINES BASED ON THEN CURRENT STANDARDS OUTLINED BY THE INTERNATIONAL SOCIETY OF ARBORICULTURE (ISA) AND THE AMERICAN NATIONAL STANDARDS FOR TREE CARE OPERATION (ANSI A300).
- E. AS PART OF ANY VEGETATION MANAGEMENT PLAN FILED WITH THE COMMISSION, AN ELECTRIC UTILITY SHALL INCLUDE A FOUR-YEAR CYCLE-BASED VEGETATION MANAGEMENT COMPONENT. THE ELECTRIC UTILITY SHALL COMPLETE TRIMMING OF EACH OF ITS CIRCUITS EVERY 48 MONTHS. A THOROUGH EXPLANATION AND RATIONALE SHALL BE PROVIDED FOR ANY VARIANCE FROM THE 48 MONTH CYCLE AND SUCH RATIONALE SHALL BE FILED WITH THE COMMISSION AS PART OF THE ELECTRIC UTILITY'S RULE REPORT.
- F. EACH ELECTRIC UTILITY SHALL PUBLICLY FILE A COPY OF THEIR VEGETATION MANAGEMENT STANDARDS AND GUIDELINES WITH THE COMMISSION WITHIN 60 DAYS OF THE ADOPTION OF THIS RULE. ANY CHANGES IN THE VEGETATION MANAGEMENT STANDARDS AND GUIDELINES MUST BE PUBLICLY FILED WITH THE COMMISSION NO LATER THAN 30 DAYS PRIOR TO IMPLEMENTING THE CHANGE.

G. THE ELECTRIC UTILITY SHALL REMOVE ALL TRIMMINGS AND CUT VEGETATION RESULTING FROM VEGETATION MANAGEMENT ACTIVITIES THAT ARE PART OF THE UTILITY'S REGULAR MAINTENANCE CYCLE, WITHIN FIVE BUSINESS DAYS AFTER THE VEGETATION WAS CUT, EXCEPT IF:

I. THE ELECTRIC UTILITY OBTAINS WRITTEN CONSENT TO LEAVE THE TRIMMINGS OR CUT VEGETATION, FROM THE OWNER OF THE PROPERTY; OR

II. THE VEGETATION MANAGEMENT ACTIVITIES ARE PERFORMED AS A DIRECT RESULT OF A MAJOR EVENT, IN WHICH CASE THE ELECTRIC UTILITY SHALL REMOVE THE TRIMMINGS AND CUT VEGETATION THAT WAS CUT OR TRIMMED AS PART OF ITS VEGETATION MANAGEMENT ACTIVITIES, AS SOON AS POSSIBLE AFTER THE CONCLUSION OF THE MAJOR EVENT.

(H) TRANSMISSION LINE VEGETATION MANAGEMENT

A. AN ELECTRIC PUBLIC UTILITY SHALL MEET THE REQUIREMENTS OF THE NATIONAL ELECTRIC SAFETY CODE (C-2 2002) FOR MINIMUM CLEARANCES BETWEEN ANY TRANSMISSION LINE AND THE CLOSEST VEGETATION BENEATH IT.

B. IF A TRANSMISSION LINE IS UPGRADED OR NEWLY CONSTRUCTED AFTER DECEMBER 18, 2006, THE WIDTH OF THE CLEARING UNDER THE TRANSMISSION LINE SHALL MEET THE MINIMUM REQUIREMENTS OF THE NATIONAL ELECTRICAL SAFETY CODE (C-2 2002).

C. AN ELECTRIC PUBLIC UTILITY MAY REQUEST AN EXEMPTION FROM (B) AND (C) ABOVE BASED UPON EXIGENT CIRCUMSTANCES.

- D. IN ADDITION TO MEETING THE OTHER REQUIREMENTS IN THIS SECTION, EACH ELECTRIC PUBLIC UTILITY SHALL ENSURE THAT THE FOLLOWING REQUIREMENTS FOR TRANSMISSION LINES ARE MET:
- I. CLEARING UNDER TRANSMISSION LINES SHALL BE WIDE ENOUGH SO THAT NO VEGETATION OR PARTS OF VEGETATION WILL GROW OR FALL INTO THE TRANSMISSION LINES;
 - II. AN ELECTRIC UTILITY SHALL NOT ALLOW ANY VEGETATION THAT GROWS TALLER THAN 15 FEET AT MATURITY TO GROW ANYWHERE WITHIN A TRANSMISSION LINE RIGHT OF WAY;
 - III. AN ELECTRIC PUBLIC UTILITY SHALL NOT ALLOW WOODY PLANTS THAT NATURALLY MATURE ABOVE THREE FEET TALL TO GROW IN THE WIRE ZONE WITHOUT PRIOR NOTICE AND INSPECTION BY THE ELECTRIC UTILITY'S VEGETATION MANAGER;
 - IV. THE ELECTRIC UTILITY SHALL NOT ALLOW ANY WOODY PLANT SPECIES THAT NATURALLY MATURES ABOVE 15 FEET TO GROW IN THE BORDER ZONE. MATURE HEIGHT MAY BE DETERMINED FROM A RELIABLE TEXT AUTHORITIES EITHER LISTED IN, OR EQUIVALENT TO THOSE LISTED IN SUBSECTION (D);
 - V. NON-WOODY AGRICULTURAL CROPS, NOT EXCEEDING 12 FEET IN HEIGHT AT MATURITY, MAY BE GROWN ANYWHERE IN THE RIGHT OF WAY;
 - VI. ONLY GRASS VEGETATION NOT EXCEEDING A HEIGHT OF 18 INCHES SHALL BE PERMITTED TO GROW WITHIN THREE FEET OF ANY STRUCTURE;

- VII. WHERE AN ELECTRIC PUBLIC UTILITY HAS CLEARED A RIGHT OF WAY OF VEGETATION AND BARE SOIL IS EXPOSED, THE UTILITY SHALL COMPLY WITH THE SOIL EROSION REQUIREMENTS OF THE APPLICABLE SOIL CONSERVATION DISTRICT IN ORDER TO PREVENT SOIL EROSION;

- E. EACH YEAR, BEFORE JUNE 1, THE ELECTRIC PUBLIC UTILITY SHALL DEVELOP A SCHEDULE FOR TRANSMISSION LINE VEGETATION MANAGEMENT, WHICH SHALL BE INCLUDED IN THE ELECTRIC UTILITY'S ANNUAL SYSTEM PERFORMANCE REPORT AS REQUIRED BY RULE 4901:1-10-27. THE SCHEDULE SHALL:
 - I. LIST THE TRANSMISSION LINES PLANNED FOR VEGETATION MANAGEMENT FOR THE NEXT FOUR YEARS IN ADVANCE (ONE OF THE FOUR-YEAR CYCLES REQUIRED BY THIS SECTION;

 - II. ENSURE THAT VEGETATION MANAGEMENT ON TRANSMISSION LINES IS PERFORMED PRIOR TO VEGETATION BECOMING A THREAT TO SAFETY OR SERVICE RELIABILITY; AND

 - III. BE DISTRIBUTED TO AFFECTED MUNICIPALITIES BY THE ELECTRIC UTILITY.

- (I) TRAINING, RECORDKEEPING AND REPORTING
 - A. EACH ELECTRIC UTILITY SHALL ENSURE THAT ALL PERSONS WHO PERFORM VEGETATION MANAGEMENT FOR THE UTILITY, WHETHER EMPLOYEES OR CONTRACTORS, ARE TRAINED IN THE PROPER CARE OF TREES AND OTHER WOODY PLANTS IN ORDER TO PROVIDE SAFE, RELIABLE ELECTRIC SERVICE, ARE KNOWLEDGEABLE REGARDING SAFETY PRACTICES AND LINE CLEARANCE TECHNIQUES, AND HAVE DEMONSTRATED THE ABILITY TO PERFORM THE WORK SAFELY.

- B. THE ELECTRIC PUBLIC UTILITY SHALL MONITOR AND DOCUMENT ALL VEGETATION MANAGEMENT AND RELATED ACTIVITIES. DOCUMENTATION SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO:
 - I. IDENTIFICATION OF THE CIRCUIT AND SUBSTATION WHERE VEGETATION MANAGEMENT ACTIVITIES WERE PERFORMED;
 - II. THE TYPE OF VEGETATION MANAGEMENT PERFORMED INCLUDING REMOVAL, TRIMMING AND SPRAYING AND METHODS USED;
 - III. THE DATE OF ACTIVITY;
 - IV. ANY SAFETY HAZARDS ENCOUNTERED;
 - V. ANY UNEXPECTED OCCURRENCE OR ACCIDENT RESULTING IN DEATH, LIFE-THREATENING OR SERIOUS INJURY TO A PERSON ASSIGNED TO PERFORM VEGETATION MANAGEMENT ACTIVITIES OR THE PUBLIC; AND
 - VI. VEGETATION MANAGEMENT ACTIVITIES PLANNED FOR THE FOLLOWING YEAR.
- C. EACH ELECTRIC UTILITY SHALL INCLUDE A SUMMARY OF THE INFORMATION REQUIRED IN © ABOVE ABOUT ITS VEGETATION MANAGEMENT WORK DURING THE PAST YEAR, AND PLANNED ACTIVITIES FOR THE FOLLOWING YEAR IN AN ANNUAL REPORT TO BE FILED WITH THE COMMISSION. THIS INFORMATION SHALL INCLUDE, AT A MINIMUM, THE NAME OF EACH MUNICIPALITY IN WHICH THE ELECTRIC PUBLIC UTILITY CONDUCTED VEGETATION MANAGEMENT DURING THE PRECEDING YEAR, AND ALL CIRCUITS AFFECTED.
- (J) PUBLIC NOTICE OF PLANNED VEGETATION MANAGEMENT

EACH ELECTRIC UTILITY SHALL MAKE A DILIGENT ATTEMPT TO NOTIFY ALL PROPERTY OWNERS THAT MAY BE AFFECTED BY PLANNED VEGETATION MANAGEMENT. THIS REQUIREMENT WILL BE SATISFIED IF THE ELECTRIC UTILITY PROVIDES WRITTEN NOTICE TO AFFECTED PROPERTY OWNERS AT LEAST THIRTY DAYS, BUT NOT MORE THAN 60 DAYS, PRIOR TO PERFORMING ANY VEGETATION MANAGEMENT ACTIVITY. SUCH NOTICE SHALL EXPLICITLY STATE THE VEGETATION MANAGEMENT ACTIVITY THAT IS PLANNED AND THE SCOPE OF THE ACTIVITIES AND STANDARDS THAT ARE BEING USED. IN ADDITION, CUSTOMERS SHALL BE GIVEN THE OPTIONS TO HAVE VEGETATION MANAGEMENT PERFORMED BY THEIR OWN AGENT AND AT THEIR OWN EXPENSE SHOULD THEY CHOOSE. NOTICE SHALL BE PROVIDED BY SEPARATE DIRECT MAILING OR ANY OTHER COMMISSION-APPROVED METHOD.

4901:1-10-28 Net Metering.

The following proposed revisions to the net-metering draft rules will help meet Amended S.B. 221's stated goals to "encourage implementation of distributed generation..."³⁶

The proposed modification below avoids utility discretion in filing appropriate net-metering tariffs.

PROPOSED RULE CHANGE:

- (A) Standard net metering.
 - (1) Each ~~EDU~~-electric utility shall ~~develop~~ FILE A TARIFF IN CONFORMANCE WITH THE PROVISIONS OF THIS RULE AND WITH NO BARRIERS NOT SPECIFIED IN THE RULE a tariff for net metering. Such tariff shall be made available to qualifying customer generators; upon request, ~~and on a first-come, first-served basis, whenever the total rated generating capacity used by~~

³⁶ Sec. 4928.02 (K)

~~customer generators is less than one per cent of the EDU's aggregate customer peak demand in the state.~~

- (a) A qualifying customer generator is one whose generating facilities are:
 - (i) Fueled by solar, wind, biomass, landfill gas, or hydropower, or USE A COGENERATION TECHNOLOGY ~~use a~~, microturbine, or a fuel cell.

This modification allows for a third party net-metering model to take hold in Ohio. This model accounts for two thirds of capacity being installed and utilities in various states have tried to require customer ownership to preclude the use of this model.

PROPOSED RULE CHANGE:

- (c) A QUALIFYING CUSTOMER GENERATOR IS NOT REQUIRED TO BE THE OWNER OR LESSEE OF THE GENERATING FACILITY ON THE CUSTOMER GENERATOR'S PREMISES. POWER PURCHASE AGREEMENTS WITH THIRD PARTY OWNERS OF A GENERATING FACILITY ARE ALLOWED.

This modification will help residential installations because homeowners cannot negotiate such an insurance addition.

PROPOSED RULE CHANGE:

- ~~(3)~~ (c) Purchase additional liability insurance OR REQUIRE THE NAMING OF THE ELECTRIC UTILITY AS AN ADDITIONAL INSURED ON ANY INSURANCE POLICY HELD BY THE CUSTOMER GENERATOR ~~beyond that required by paragraph (B)(1)(A)(3)(a) of this rule.~~

This proposed change requires the utility to inform the net-metering customer when their meter is not capable of measuring the flow of electricity in two directions. Without this modification, the customer generator may not know that they need a new meter and will not get credited for any excess generation.

PROPOSED RULE CHANGE:

- (A) Standard net metering.
 - (4) Net metering shall be accomplished using a single meter capable of registering the flow of electricity in each direction. A customer's existing single-register meter that is capable of registering the flow of electricity in both directions satisfies this requirement. If the customer's existing electrical meter is not capable of measuring the flow of electricity in two directions, the electric utility **SHALL INFORM THE CUSTOMER AND** upon written request from the customer, shall install at the customer's expense a meter that is capable of measuring electricity flow in two directions.

This revision adds symmetry by directly links what an electric utility receives as payment for generation services with what a net-metering customer receives for providing generation services to the utility. Currently, net-metering customers in Ohio are receiving below market or below utility regulated generation rate for their excess generation. The latter part helps recognize the additional benefits of distributed generation to the electric grid as most non-induction generators can push VARS into the grid which reduces line losses for the utility and PJM currently pays a premium for black start capability.

PROPOSED RULE CHANGE:

- (6) The measurement of net electricity supplied or generated shall be calculated in the following manner:

* * *

- (c) If the customer generator feeds more electricity back to the system than the electric utility supplies to the customer generator, only the excess generation component, WHETHER THAT BE THE ELECTRICITY SECURITY PLAN DETERMINED GENERATION RATE INCLUDING ALL GENERATION RIDERS AND SURCHARGES OR A GENERATION RATE INCLUDING ALL GENERATION RIDERS AND SURCHARGES DETERMINED AS PART OF A MARKET RATE OPTION AND APPROVED BY THE COMMISSION shall be allowed to accumulate as a credit-and shall be applied to the following month's bill. At the end of each calendar year, any accumulated credits from the previous twelve months shall be refunded to the customer. WHERE DEMONSTRATED, THE NET-METERING CUSTOMER CAN REQUEST AN ADDITIONAL CREDIT FOR IMPROVING DISTRIBUTION LINE LOSSES AND FOR THE ABILITY TO BLACK BUS START GENERATING CAPACITY.

* * *

This modification lends specificity to "the market value" and is consistent with the market price definitions being used in the new market based standby rates.

PROPOSED RULE CHANGE:

- (B) Hospital net metering.
 - (6) The hospital customer generator's net metering service shall be calculated as follows:
 - (b) All electricity generated by the hospital shall be credited at the market value as of the time the hospital generated the electricity. THE MARKET VALUE WILL BE THE LOCATIONAL MARGINAL PRICE DETERMINED IN PJM, MISO OR A COMBINATION OF BOTH DEPENDING ON THE SERVICE TERRITORY[IES] WHERE THE POWER IS

PLACED ON THE GRID. IF THE HOSPITAL'S GENERATION RESOURCE IS COMMITTED AS A CAPACITY RESOURCE IN AN RTO OPERATING A CAPACITY MARKET SUCH AS PJM, THEY WILL ALSO BE ENTITLED TO A CAPACITY PAYMENT.

This proposed addition clarifies that the hospital will get a market rate only from excess generation and insulates other customer classes from subsidizing the hospital rate class from the potential subsidy created by the different rates being charged for generation.

PROPOSED RULE CHANGE:

- (d) THE MARKET VALUE PAYMENT WILL BE FOR ELECTRICITY EXPORTED TO THE ELECTRIC GRID AND NOT FOR ELECTRICITY GENERATED FOR ONSITE USE. ANY SUBSIDY ACCRUING TO A HOSPITAL BY THIS TARIFF ARRANGEMENT SHALL BE RECOVERED BY THE CUSTOMERS IN THE SAME RATE CLASS.

This modification allows a utility to pass through any appropriate PJM or MISO charges for providing the market rate service.

PROPOSED RULE CHANGE:

- (8) In no event shall the electric utility impose on the hospital customer generator any charges ABOVE THOSE IMPOSED BY PJM OR MISO that relate to the electricity the customer generator feeds back to the system.

4901:1-10-29 Coordination With Competitive Retail Electric Service (CRES) Providers.

- (A) Each electric utility shall coordinate with CRES providers to promote nondiscriminatory access to electric services, to ensure timely enrollment with CRES providers to maintain a customer's electric service, and to timely and correctly switch the customer's electric service between CRES providers.

- (B) Each electric utility shall adopt a supplier tariff containing standardized requirements to the extent such standardization is feasible. At a minimum, such tariff shall include requirements for imbalances, load profiles, scheduling, billing (between the electric utility and CRES provider), customer billing (options, collection, and application of customer payments), metering, retail settlements, scheduling coordinators, losses, customer information (procedures for disclosing load profile, account information, and payment history), dispute resolution processes (between the electric utility and CRES provider), standard operating rules, performance incentives and standards, creditworthiness and default security, supplier agreement, electronic data interchange protocols, CRES provider enrollment with the electric utility, service termination and disconnection (of end-user customer), certified CRES provider lists, return to standard offer, customer enrollment and switching, supplier training, and supplier proof of certification.
- (C) An electric utility shall execute with each CRES provider a supplier agreement to operate under the terms of the supplier tariff. At minimum, the supplier agreement shall include representations and warranties, indemnification, limitations on liability, default (breach), remedies, force majeure, form/format of scheduling coordinators, commencement, and term.
- (D) The electric utility and CRES provider shall execute a standardized trading partner agreement, as required by the standard electronic transmission protocols.
- (E) Pre-enrollment. Electric utilities shall make eligible-customer lists available to certified CRES providers via electronic media. Such lists shall be updated quarterly. The eligible customer list shall, at a minimum, contain customer name, service and mailing address, rate schedule (class and sub-class), applicable riders, load profile reference category, meter type, interval meter data indicator, budget bill indicator, meter read date or schedule, and historical consumption data (actual energy usage plus any applicable demand) for each of the most recent twelve months.
- (F) Customer enrollment.
 - (1) Within two business days after confirming the validated electronic data file for a CRES provider's customer enrollment request, the electric utility shall mail the customer a competitively neutral confirmation notice stating:

- (a) That the electric utility has received a request to enroll the customer for competitive electric service with the named CRES provider.
 - (b) The date such service is expected to begin.
 - (c) That residential and small commercial customers have seven days from the postmark date on the notice to contact the electric utility to rescind the enrollment request or notify the electric utility that the change of service provider was not requested by the customer.
 - (d) The electric utility's toll-free telephone number.
- (2) Such notice shall not be used as an opportunity for the electric utility to convince customers to remain on or return to the electric utility's standard offer service.
 - (3) Each electric utility shall have a twenty-four hour per day capability for accepting CRES residential and small commercial customer enrollment rescission by telephone.
 - (4) When a residential or small commercial customer calls the electric utility to rescind enrollment with a CRES provider, the electric utility shall provide the customer a unique cancellation number.
 - (5) Within two business days after receiving a customer's request to rescind enrollment with a CRES provider, the electric utility shall initiate such rescission and mail the customer confirmation that such action has been taken.
- (G) Customer billing.
- (1) Electric utilities shall make consolidated billing available to CRES providers and shall not take any actions to inhibit or prohibit dual billing by CRES providers.
 - (2) Consolidated billing shall include budget billing as a customer-elected option.
- (H) Customers returning to standard offer.
- (1) Any customer returning to the standard offer due to a CRES provider's default, abandonment, slamming, certification rescission of a CRES provider, or the end of

their contract term with a CRES provider, will not be liable for any costs or penalties associated with the customer's return to the standard offer.

- (2) Within two business days after confirming the validated electronic data file for a CRES provider's customer-drop request, the electric utility shall mail the customer a notice stating:
 - (a) That the electric utility has received a request to drop the customer from competitive electric service with the named CRES provider.
 - (b) The deadline date for the electric utility to receive a CRES provider's request to enroll the customer.
 - (c) That the electric utility is available to address any questions the customer may have.
 - (d) The electric utility's toll-free telephone number.
- (I) Percentage of income payment plan (PIPP) customers will be coordinated exclusively by the Ohio department of development pursuant to section 4928.54 of the Revised Code.
 - (1) Electric utilities shall not switch PIPP and arrearage crediting program customers to CRES providers.
 - (2) Customers pending enrollment with a CRES provider who subsequently become approved for PIPP or the electric utility's arrearage crediting program shall not be switched to the CRES provider.
 - (3) Electric utility customers who have switched to a CRES provider and subsequently become approved for the electric utility's arrearage crediting program shall be transferred to the electric utility's standard offer service at the next regularly scheduled meter read date after the electric utility enrolls the customer in the program.
 - (4) Until the Ohio department of development has in place a mechanism for the administration and operation of the low-income customer assistance programs, customers who have switched to a CRES provider and subsequently become approved for PIPP shall be dropped by the electric utility to standard offer service at the next regularly scheduled meter read date after the electric utility receives notice of the

customer's participation in PIPP. The electric utility shall notify the affected CRES provider within ten business days of the customer's transfer to a new electric service provider to participate in PIPP. Any switching fees shall be added to the customer's arrearages, not current charges.

- (5) When the host electric utility is not purchasing the receivables of the affected CRES provider, the electric utility shall submit to Ohio department of development, on behalf of the affected CRES provider(s), the pre-PIPP arrearages of customers transferred to the PIPP program.
- (6) The host electric utility shall transfer the pre-PIPP arrearages received from the Ohio department of development, on behalf of the affected CRES provider, to the appropriate CRES provider within ten business days after receipt from the Ohio department of development.

4901:1-10-30 Failures to Comply With the Rules or Commission Orders.

The OCEA propose a new section to be added to the Commission's reliability rules. The purpose of this section is to reflect our recommended approach with respect to the adoption of enforceable performance standards, both those that are based on the traditional reliability indices and those that reflect the customer service performance standards. In general, the OCEA recommend that the rule make clear that the failure to meet an annual performance standard is a violation of the rule and that the resulting Commission action, whether undertaken informally or formally, should result in a compliance plan with enforceable milestones and objectives to assure compliance within a reasonable period of time. If service is inadequate or is of concern in a service territory, then the public is entitled to the information that explains why they are not getting the service they are paying for.

In addition, the OCEA's proposed Paragraph D reflects the approach adopted in the Michigan reliability rule which requires the utility to provide credits to affected customers who restoration of service is not completed in a timely manner.

If the annual report reflects a failure to meet one or more of the applicable reliability performance targets, the Electric Utility should also be required to submit a Compliance Plan that demonstrates prompt compliance with the performance standard. This Compliance Plan should propose enforceable milestones and objectives with a specific timeline for assuring compliance within a reasonable time. When such a Compliance Plan is proposed as part of an annual report, the rule should require that the Staff notify the Commission and state the Staff's opinion with regard to the reasonableness of the proposed Compliance Plan, with opportunity for public notice and comment. The proposed new rule reads as follows:

PROPOSED RULE CHANGE:

- ~~(A) — Any electric utility or CRES provider that fails to comply with the rules and standards in this chapter, or with any commission order, direction, or requirement promulgated thereunder, may be subject to any and all remedies available under the law, including but not limited to the following:~~
- ~~(1) — Forfeiture to the state of not more than ten thousand dollars for each such failure, with each day's continuance of the violation being a separate offense.~~
 - ~~(2) — Corrective action to effectuate compliance.~~
 - ~~(3) — Restitution or damages to the customer/consumer.~~

~~Enforcement of any rule in this chapter or commission order, direction, or requirement promulgated thereunder, will be conducted in accordance with Chapter 4901:1-23 of the Administrative Code.~~

- (A) THE PERFORMANCE STANDARDS ESTABLISHED BY THIS RULE AND COMMISSION ORDER SHALL BE THE MINIMUM LEVEL OF ELECTRIC UTILITY RELIABILITY PERFORMANCE ALLOWED BY THE COMMISSION FOR EACH MEASURE FOR ALL ELECTRIC UTILITIES. PERFORMANCE THAT DOES NOT MEET THE STANDARD FOR ANY RELIABILITY MEASURE SHALL BE THE

THRESHOLD FOR TRIGGERING ADDITIONAL COMPLIANCE ENFORCEMENT ACTIONS BY THE COMMISSION OR ITS STAFF AS SET FORTH IN OHIO ADM. CODE 4901:1-23.

- (B) IF AN ELECTRIC UTILITY FAILS TO MEET AN ANNUAL PERFORMANCE STANDARD AS SET FORTH IN SECTION 10-10 OR ANY OTHER RELIABILITY PERFORMANCE STANDARD ESTABLISHED BY THE COMMISSION, THE ELECTRIC UTILITY SHALL REPORT SUCH FAILURE IN THE NEXT ANNUAL RELIABILITY REPORT. AS PART OF THE ANNUAL REPORT, THE ELECTRIC UTILITY SHALL PROPOSE A COMPLIANCE PLAN WITH ENFORCEABLE MILESTONES AND OBJECTIVES TO OBTAIN COMPLIANCE WITHIN A REASONABLE PERIOD OF TIME.
- (C) IN RESPONSE TO DETERIORATION IN PERFORMANCE AND FAILURE TO MEET ONE OR MORE PERFORMANCE STANDARDS, THE COMMISSION (OR STAFF AS DELEGATED BY THE COMMISSION) SHALL REQUIRE THE ELECTRIC UTILITY TO CONDUCT ADDITIONAL MONITORING, INITIATE ADDITIONAL REMEDIAL REVIEW, AND REQUIRE ADDITIONAL ELECTRIC UTILITY REPORTING. IN ADDITION, THE COMMISSION SHALL REQUIRE A FORMAL IMPROVEMENT PLAN WITH ENFORCEABLE COMMITMENTS AND IMPLEMENTATION SCHEDULE, AND DIRECT THE PUCO STAFF AND TO PROPOSE PENALTIES OR FORFEITURES FOR THE ELECTRIC UTILITY'S FAILURE TO MEET ITS PERFORMANCE STANDARDS.
- (D) NOTWITHSTANDING ANY OTHER ENFORCEMENT ACTION, THE ELECTRIC UTILITY SHALL PROVIDE CREDITS TO CUSTOMERS AS FOLLOWS:
 - A. AN ELECTRIC UTILITY THAT FAILS TO RESTORE SERVICE TO A CUSTOMER WITHIN 120 HOURS AFTER AN INTERRUPTION THAT OCCURRED DURING THE COURSE OF ANY CONDITION, INCLUDING THOSE INVOLVING MAJOR EVENTS, SHALL PROVIDE TO ANY AFFECTED CUSTOMER THAT NOTIFIES THE UTILITY OF THE INTERRUPTION WITH A BILL CREDIT ON THE CUSTOMER'S NEXT BILL. THE AMOUNT OF THE CREDIT PROVIDED TO A RESIDENTIAL CUSTOMER SHALL BE THE GREATER OF \$25.00 OR THE

CUSTOMER'S MONTHLY CUSTOMER CHARGE. THE AMOUNT OF THE CREDIT PROVIDED TO ANY OTHER DISTRIBUTION CUSTOMER SHALL BE THE CUSTOMER'S MINIMUM BILL PRORATED ON A DAILY BASIS.

- B. AN ELECTRIC UTILITY THAT FAILS TO RESTORE SERVICE TO A CUSTOMER WITHIN 16 HOURS AFTER AN INTERRUPTION THAT OCCURRED DURING NORMAL CONDITIONS (THAT EXCLUDE MAJOR EVENTS) SHALL PROVIDE TO ANY AFFECTED CUSTOMER THAT NOTIFIES THE UTILITY OF THE INTERRUPTION A BILL CREDIT ON THE CUSTOMER'S NEXT BILL. THE AMOUNT OF THE CREDIT PROVIDED TO A RESIDENTIAL CUSTOMER SHALL BE THE GREATER OF \$25.00 OR THE CUSTOMER'S MONTHLY CUSTOMER CHARGE. THE AMOUNT OF THE CREDIT PROVIDED TO ANY OTHER DISTRIBUTION CUSTOMER SHALL BE THE CUSTOMER'S MINIMUM BILL PRORATED ON A DAILY BASIS.

4901:1-10-31 Environmental Disclosure.

OCEA recommends that the proposed environmental disclosure requirements of Ohio Adm. Code 4901:1-21-09 (below) should be replicated here (the section for CRES environmental disclosure).

Senate Bill 221 identifies at R.C. 4928.01.(A)(31)(a) the definition of a net metering system, using the Staff's proposed language. However, at R.C. 4928.01.(A)(34)(b) the definition of "advanced energy resource" includes "any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities;" The term "cogeneration" is more expansive than the term "microturbine", and inclusion in the rules defining net metering contracts better achieves the stated purpose of S.B. 221.

PROPOSED RULE CHANGE:

(C) Determination of environmental disclosure data.

(1) Contents of environmental disclosure data.

(a) Approximate generation resource mix.

Each electric utility shall specifically identify each of the following generation sources used in the generation of the power AND THE PERCENTAGE OF TOTAL LOAD AND QUANTITY OF MWHS FOR EACH SOURCE WHICH ~~that~~ is made available under its standard offer: biomass power, coal-fired power, hydro power, natural gas-fired power, COMBINED HEAT AND POWER, nuclear power, oil-fired power, other sources, solar power, unknown purchased resources, and wind power.

The electric utility shall exercise all reasonable efforts to identify the power source or resource used to generate the power in question. The electric utilities shall maintain documentation sufficient to demonstrate the steps taken to make such identification. NOTHING IN THIS SECTION SHALL BE USED TO LIMIT THE ELECTRIC UTILITY'S USE OF SUPPLEMENTARY INFORMATION TO PROVIDE ADDITIONAL INFORMATION WHICH IT FEELS IS PERTINENT TO PROVIDING UNDERSTANDING OF THE RESOURCE MIX, DEPENDENCE ON SPECIFIC RESOURCES AND POTENTIAL OPPORTUNITIES TO IMPROVE THE COST OR ENVIRONMENTAL IMPACT OF THE MIX OF RESOURCES USED.

* * *

(D) Environmental disclosure to customers.

* * *

(2) Format.

The environmental disclosure data shall be provided in a standardized format in order to facilitate comparisons by customers. This data shall be disclosed in not less than a ten-point font. The presentation of this data shall comply with each of the following requirements:

* * *

- (b) A table shall be provided which illustrates the typical environmental characteristics associated with the generation resource categories detailed in paragraph (C)(1)(a) of this rule.

The general categories and assumptions to be depicted in the table are as follows:

Biomass power – results in ~~air emissions and solid waste~~ MIXED OXIDES OF NITROGEN (NOX) AND FINE PARTICULATE (PM 2.5)EMISSIONS.

Coal-fired power – results in ~~air emissions and solid waste~~ MIXED OXIDES OF NITROGEN (NOX), SULPHUR DIOXIDE (SO₂), FINE PARTICULATE (PM 2.5 EMISSIONS, CARBON DIOXIDE EMISSIONS, AND SOLID TOXIC AND HAZARDOUS WASTE.

* * *

Natural gas-fired power – results in ~~air~~ MIXED OXIDES OF NITROGEN , FINE PARTICULATE (PM 2.5) AND CARBON DIOXIDE emissions, and solid TOXIC AND HAZARDOUS waste.

* * *

Oil-fired power – result in ~~air~~ MIXED OXIDES OF NITROGEN, SULPHUR DIOXIDE, FINE PARTICULATE (PM 2.5) EMISSIONS , CARBON DIOXIDE emissions, and solid TOXIC AND HAZARDOUS waste.

* * *

COGENERATION – RESULTS IN MIXED OXIDES OF NITROGEN (NOX), SULPHUR DIOXIDE (SO₂), FINE PARTICULATE (PM 2.5 EMISSIONS, CARBON DIOXIDE EMISSIONS, AND SOLID TOXIC AND HAZARDOUS WASTE.

4901:1-10-31 (D)(2)(f) and (i).

OCEA proposes the following two sections to be inserted into Section (D)(2). The first section below seems to fit between (e) and (g) while the second would make sense as the final section: (D)(2)(f) will provide an understanding of the benefits of efficiency and renewable provisions in S.B. 221. (D)(2)(i) ensures that customers and interested parties will be able to evaluate progress over time.

(D) Environmental disclosures to customers

(2) Format

(f): THE ELECTRIC UTILITY SHALL REPORT THE ANNUAL AND CUMULATIVE ENVIRONMENTAL BENEFITS AND PERCENTAGE OF LOAD REDUCTION FROM THE ENERGY EFFICIENCY KWH SAVINGS RESULTANT FROM PROGRAMS DEVELOPED UNDER THE REQUIREMENTS OF S.B. 221. THE ELECTRIC UTILITY SHALL ALSO REPORT SEPARATELY THE ANNUAL AND CUMULATIVE ENVIRONMENTAL BENEFITS AND PERCENTAGE OF LOAD GENERATED FROM THE RENEWABLES ENERGY PROVISIONS DEVELOPED UNDER THE REQUIREMENTS OF S.B. 221.

(fg) Each electric utility shall maintain records detailing the magnitude of each environmental characteristic associated with the power offered under the contract. Such details shall be provided to customers and commission staff upon request and may be included on an electric utility's website.

(gh) An electric utility may include other information that it feels is relevant to the required environmental disclosure data, provided this additional information is distinctly separated from the required information. Electric utility's shall maintain sufficient documentation to permit verification of the accuracy of any additional information that is disclosed.

- (i) THE ELECTRIC UTILITY SHALL INCLUDE ON THE CUSTOMER BILL INSERT OR ALTERNATIVE MAILING A WEB PAGE LINK WHICH CONTAINS ALL THE DATA REQUIRED FOR THE CURRENT ENVIRONMENTAL DISCLOSURE PLUS AN ARCHIVE OF PREVIOUS DISCLOSURE STATEMENTS. THE ELECTRIC UTILITY AT ITS DISCRETION MAY PROVIDE AN ALTERNATIVE FORMAT FOR ENVIRONMENTAL DISCLOSURE DATA SUCH AS A SPREADSHEET OR CHART WHICH PROVIDES THE SAME QUALITATIVE AND QUANTITATIVE DATA IN A MORE COMPACT

4901:1-10-32 Cooperation With Certified Governmental Aggregators.

- (A) Each electric utility shall cooperate with governmental aggregators to facilitate the proper formation and functioning of governmental aggregations. Upon the request of a certified governmental aggregator or certified electric services company under contract with the governmental aggregator, the electric utility shall provide for all customers residing within the governmental aggregator's boundaries, including those customers who have opted off the pre-enrollment list, the following information:
 - (1) An updated list of names, account numbers, service addresses, billing addresses, rate codes, percentage of income payment plan codes, load data, and other related customer information, consistent with the information that is provided to other electric services companies.
 - (2) An identification of customers who are currently in contract with an electric services company or in a special agreement with the electric utility.
 - (3) On a best efforts basis, an identification of mercantile customers.
- (B) Each electric utility shall provide such customer information list to the governmental aggregator, or the electric services company under contract with the governmental aggregator, at no charge.
- (C) Each electric utility shall publish charges and/or fees for services and information provided to governmental aggregators in an approved tariff filed with the commission.

- (D) Unless a customer notifies the electric utility of the customer's intent not to join a governmental aggregation by responding to the confirmation notice or providing some other notice as provided by the electric utility's tariffs, the electric utility shall switch customer accounts to or from a governmental aggregation under the same processes and time frames provided in published tariffs for switching other customer accounts. A switching fee shall not be assessed to customer accounts that switch to or from a governmental aggregation.
- (E) Pursuant to division (I) of section 4928.20 of the Revised Code, if the electric utility establishes a surcharge under section 4928.144 of the Revised Code, the electric utility shall charge customers that are part of a governmental aggregation only a portion of such surcharge that is proportionate to the benefits that the electric load centers within the jurisdiction of the governmental aggregation as a group receive as determined by the commission.
- (F) Each electric utility shall cooperate with governmental aggregators to determine the amount of any surcharge that will be assessed to customers that are part of a governmental aggregation pursuant to division (I) of section 4928.20 of the Revised Code.
- (G) If a governmental aggregator notifies the commission of its election to not receive standby service from the electric utility that is operating under an approved electric security plan during the governmental aggregation program, the electric utility shall not charge any customer that is part of that governmental aggregation for standby service. However, the electric utility shall charge any customer that returns to the electric utility for retail electric service during the governmental aggregation program the market price of power incurred by the electric utility to serve that customer plus any amount attributable to the electric utility's cost of compliance with the alternative energy resource provisions of section 4928.64 of the Revised Code to serve that customer, unless such customer becomes ineligible pursuant to paragraphs (E)(1)(a) or (E)(1)(g) of rule 4901:1-21-17 of the Administrative Code, or any customer who moves within the aggregation boundaries where the electric utility considers the customer that is moving to be a new customer.

4901:1-10-33 Consolidated Billing Requirements.

The consolidated billing requirements apply to bills that are rendered by an electric utility for both electric utility and CRES charges. In large part, the rules that

govern the terms and conditions of an electric utility bill and the informational content of an electric utility bill also apply to consolidated bills. Therefore, several of the specific comments that were made by the OCEA concerning electric utility billing requirements in section 4901:1-10-12 apply within this section also.

- (A) This rule applies to an electric utility that issues customers a consolidated electric bill that includes both electric utility and competitive retail electric service (CRES) provider charges for electric services. Nothing in this rule affects the obligations of the electric utility to provide disconnection notices.
- (B) A supplier agreement between an electric utility and a CRES provider must provide that if the electric utility collects customer payments on behalf of the CRES provider, the customer's liability to the CRES provider ceases to the extent of a payment made and applicable to the customer's CRES provider account.

Paragraph C as proposed by Staff results in a billing improvement because bills are required to be rendered on a monthly basis rather than as previously required "at regular intervals". However, the language can be even further improved by clarifying that a billing month is for the usage that occurred 28-32 days before the bill is rendered. Proposed language is provided as follows:

PROPOSED RULE CHANGE:

- (C) Consolidated bills shall be accurate, shall be rendered at monthly intervals, **FOR SERVICE DURING THE PROCEEDING 28-32 DAYS** and shall contain clear and understandable form and language. All consolidated customer bills issued by or on behalf of an electric utility and a CRES provider must include at least the following information:

Paragraph F has specific requirements related to approval of bill formats by the commission. This section should also address alternative bill formats based upon the discussion in the previous section. Many customers are unable to understand their bill

because of language barriers and/ or vision problems. Alternative bill formats include, but are not limited to, large print, Braille, and print in languages other than English. Providing bills in alternative format helps customers better understand the nature and costs of the services being provided by electric utilities. In addition, requiring alternative bill formats demonstrates Ohio's commitment towards helping those with special needs and promoting cultural diversity. The language in the proposed rules should be modified as follows:

PROPOSED RULE CHANGE:

- (F) Consolidated bill format. Any new consolidated bill format proposed by an electric utility shall be filed with the commission for approval. **AN ELECTRIC UTILITY SHALL OFFER ALTERNATIVE BILL FORMATS UPON REQUEST BY CUSTOMERS INCLUDING LARGE PRINT, BRAILLE, AND ALTERNATIVE LANGUAGES THAT REPRESENT THE DEMOGRAPHY OF ITS SERVICE TERRITORY.** If an application for a consolidated bill format is not acted upon by the commission within forty-five days after it is filed, the consolidated bill format shall be deemed approved on the forty-sixth day after filing.

Paragraph H results in the allocation of partial payments such that billed and past due CRES provider charges are paid before traditional regulated electric utility charges. This is a change from the allocation of partial payments as outlined in the non-consolidated electric utility billing requirements in 4901:1-10-12(G). In that set of rules, partial payments are allocated first to past due regulated charges, then past due current charges, and then past due non-regulated charges. While the OCEA are aware that there are several considerations, including purchase of receivables that can have an impact on partial payment allocations, the requirement should clearly state that partial payments be applied in a manner that is most advantageous in avoiding disconnection of service for

non-payment. Having partial payments being applied to CRES charges before being applied to electric utility charges would then only occur if the payment helped the customer avoid disconnection. Requirements for partial posting of payments for consolidated bills should be the same as non-consolidated bills and partial payments should be applied in a manner that most assists customers avoid termination of service. The rule should be amended as follows:

PROPOSED RULE CHANGE:

(H) Partial payment priority.

- (1) PARTIAL PAYMENT POSTING SHALL FOLLOW THE SAME PRIORITY AS ASSIGNED IN RULE 4910-10-12 (G) OF THE OHIO ADMINISTRATIVE CODE. HOWEVER, IF THE ELECTRIC UTILITY PURCHASES CRES SUPPLIER RECEIVABLES AND POSTING OF SUCH PARTIAL RECEIVABLES AND POSTING OF SUCH PARTIAL PAYMENTS CAN RESULT IN AVOIDANCE OF DISCONNECTION OF SERVICE, A customer's partial payment shall be credited in the MOST ADVANTAGEOUS MANNER THAT ASSISTS THE CUSTOMER IN AVOIDING DISCONNECTION OF SERVICE. following order:

- ~~(a) Billed and past due CRES provider charges, or, if applicable, CRES provider payment arrangement or past due CRES provider budget billing.~~
- ~~(b) Billed and past due electric utility distribution, standard offer generation, and transmission charges or, if applicable, electric utility payment arrangement or past due electric utility budget billing.~~
- ~~(c) Billed and due current electric utility distribution and transmission charges or current electric utility budget billing.~~
- ~~(d) Billed and due current CRES provider charges or current CRES provider budget billing~~

~~(e) — Other past due and current non-regulated charges, excluding CRES charges.~~

4901:1-10-33 (K).

The proposed rules do not require electric utilities that render consolidated bills to offer customers the option to have their billing due date adjusted to meet their needs. OCC has advanced in earlier comments that electric utilities should be required to offer adjusted due dates. Customers that receive consolidated bills from an electric utility should have the same option for an adjusted due date. Many customers on fixed monthly incomes receive checks on a specific date each month. Having the due date for the electric bill coincide with when funds are available is of great benefit to consumers. Adjusted due dates help customers better plan and manage monthly finances and facilitate timely payments to utilities. The rules should be amended to include the new paragraph K as follows:

PROPOSED RULE CHANGE:

- K. ELECTRIC UTILITIES THAT RENDER CONSOLIDATED BILLS THAT INCLUDE CRES CHARGES SHALL OFFER CUSTOMERS UPON REQUEST THE OPTION TO HAVE THE DUE DATE ON THE BILL ADJUSTED BY UP TO 21 DAYS WITHOUT RESULTING IN LATE PAYMENT FEES OR PENALTIES.

4901:1-10-33 (L).

There are no provisions related to the timeliness in which payments must post to accounts for consolidated bill customers that pay at the company business office or at an authorized agent of the company. Electric utility payments that do not include CRES charges must credit to the account immediately if the payment is made at a company business office or authorized agent. The requirements for timeliness of payment posting

should be the same. In addition, the charge for payments (if any) that are made at authorized agents should be the same as the charges for electric utility bills that do not include CRES charges. This rule should be amended as follows:

PROPOSED RULE CHANGE:

- L. EACH ELECTRIC UTILITY SHALL, UPON REQUEST, PROVIDE CUSTOMERS WITH AN UPDATED LIST OF THE NAME AND STREET ADDRESS/LOCATION OF THE NEAREST PAYMENT CENTER AND/OR LOCAL AUTHORIZED AGENT, AND ALTERNATIVE METHODS AVAILABLE FOR PAYMENT OF CUSTOMER BILLS. EACH ELECTRIC UTILITY SHALL ENSURE THAT BILL PAYMENT LOCATIONS ARE IN CLOSE PROXIMITY TO AREAS WHERE CUSTOMERS TEND TO PAY IN PERSON. IN ADDITION, IF THE ELECTRIC UTILITIES ARE ACCEPTING PAYMENTS FROM CUSTOMERS VIA AUTHORIZED AGENTS, THE ELECTRIC UTILITY SHALL PROVIDE SIGNAGE WITH COMPANY LOGO'S OR OTHER APPROPRIATE INDICATORS THAT AFFIRM THE PAYMENT LOCATION AS AN AUTHORIZED AGENT OF THE COMPANY. CUSTOMERS SHALL NOT BE CHARGED A FEE FOR MAKING PAYMENTS BY CASH, CHECK, CREDIT CARD, OR MONEY ORDER AT BUSINESSES THAT ARE AUTHORIZED TO ACCEPT PAYMENTS FOR THE ELECTRIC UTILITY.

IV. RULES FOR COMPETITIVE ELECTRIC SERVICE – CHAPTER 4901:1-21

The Staff proposes few changes to the Competitive Retail Electric Service (“CRES”) rules. While there has not been considerable switching to CRES providers in the recent past, there are some additional improvements needed. These upgrades are intended to address consumer protection issues or to facilitate the emergence of competitive providers.

4901:1-21-01 Definitions.

Subsection (T) introduces a new definition, “Governmental aggregation program”. The term is defined as an aggregation program established through R.C. 4928.20 with a fixed term of between one year and three years. This definition artificially limits the opportunities presented by governmental aggregation in contravention of R.C. 4928.20(K), which requires the Commission to “encourage and promote large-scale governmental aggregation in this state.”

A governmental aggregation has the potential to serve as more than simply a bidding process. San Francisco has been developing a governmental aggregation to purchase solar and other renewable energy resources. Stimulating the investment necessary to develop the resources requires a longer time horizon and a three-year limit forecloses the opportunity for longer-term investments that can provide price stability for customers and/or provide opportunities for environmental compliance within an airshed by offsetting emissions. Additionally, if a municipality wanted to offer a program for the balance of a year and to start a new contract at the beginning of the following year, or some similar reason that would require a program for less than one year, this definition would artificially and arbitrarily foreclose that possibility.

Governmental aggregations should be able to contract to provide a portion of the load to its customers, with the balance made up from SSO service in order to stimulate the use of local resources. Communities should further be permitted to make investment and program decisions through governmental aggregations of whatever length is necessary to satisfy the intent of R.C. 4928.20(K). Establishing a minimum term of one year and a maximum term of three years is unnecessary. Proposed Rule 4901:1-21-01(T) should be revised as follows:

PROPOSED RULE CHANGE:

- (T) “Governmental aggregation program” means the aggregation program established by the governmental aggregator with a fixed aggregation term, which shall be a period of not less than one year and no more than three years AS DESCRIBED IN THE OPT-OUT DISCLOSURE NOTIFICATION REQUIRED IN 4901:1-21-17

4901:1-21-03 General Provisions.

Paragraph D requires CRES providers to provide rates and other cost information to the director of the service quality and monitoring department. This information is used by the Commission for updating pricing comparison tools. OCC maintains price comparison information as well for residential customers in a *Comparing Your Energy Choices* Fact Sheet. OCC should therefore be provided with the rate and cost information that CRES providers are using to market to residential consumers. In addition, CRES providers should be required to provide copies of all offers to Commission Staff and OCC to permit reviews that will ensure customers are protected from unconscionable terms. Paragraph D should be modified as follows:

PROPOSED RULE CHANGE:

- (D) For the purposes of market monitoring and providing the public comparative information from ALL OF CRES providers’ residential ~~standard~~ contract offers, CRES providers shall furnish to the director of the service monitoring and enforcement department or the director’s designee AND OCC the following information, transmitted by e-mail or facsimile within four calendar days of making such offers to Ohio customers:

4901:1-21-05 Marketing and Solicitation.

CRES providers are required by paragraph B to provide copies of promotional and advertising materials that are targeted towards residential and small commercial customers to the Commission or Staff upon request. As the statutory representative for

residential consumers, OCC should also be provided with copies of promotional and advertising materials targeted to residential customers. Customers routinely make inquiries with the OCC about suppliers and different offers that may be available in their service area. Having copies of the promotional and advertising materials available at OCC is beneficial in being responsive to questions that consumers may have. This rule should be modified as follows:

PROPOSED RULE CHANGE:

- (B) A CRES provider's promotional and advertising material that is targeted for residential and small commercial customers shall be provided to the commission or its staff AND OCC within five calendar days of a request by the commission, ~~or~~ its staff, OR THE OCC.

Paragraph C identifies several limitations in the type of marketing in which CRES providers can engage. CRES providers are prohibited from a number of marketing practices including contacting customers via telephone that have registered on the FTC "do not call" registry. However, there is not a direct prohibition against CRES providers contacting customers that have requested to be removed from the eligible-customer list that is maintained by the electric utilities as described in Rule 4901:1-10 (F). Customers that object to being incorporated on the eligible customer list should not be contacted by CRES providers. A new rule (C) (11) should be added as follows:

PROPOSED RULE CHANGE:

- (11) MAKING SOLICITATIONS TO RESIDENTIAL CUSTOMERS THAT HAVE REQUESTED WITH THEIR ELECTRIC UTILITY TO BE REMOVED FROM THE ELIGIBLE CUSTOMER LISTING.

4901:1-21-06 Customer Enrollment.

The current rules in paragraph B limit PIPP customers and former PIPP customers that are on arrearage crediting programs from being served by CRES providers.

Arrearage crediting programs are available for customers that are no longer income eligible for PIPP to help repay debt that accrued while they were on the program. In many instances, these customers are just slightly over the income guidelines and would benefit greatly from any reduction in energy costs. Therefore, OCC recommends that the restriction on former PIPP customers that are on the PIPP arrearage crediting programs be eliminated so that these customers can contract with CRES providers.

Paragraph B also requires CRES providers to return customers that are subsequently approved for the PIPP program to the electric utility. However, the rule specifies that any switching fee be added to arrearages and not current charges. Imposing a switching fee to return customers to the electric utility energy assistance program is inappropriate. These customers are generally facing financial hardship at the time when they apply for the PIPP program. Having to pay switching fees may discourage some customers that should be on PIPP from applying for the program. In addition, since the switching fees are transferred to the arrearages, all customers have to pay that debt through the Universal Service Fund (USF). The USF has increased dramatically over the last several years and every effort must be made towards preventing such increases in the future. Switching fees for PIPP customers that are returning to the electric utility should be absorbed as a cost of business by CRES providers and electric utilities, just as the costs are absorbed for customers who move, and not be separately assessed to customers. This would be consistent with the legislative policy to address at-risk customers.

Paragraph B should be modified as follows:

PROPOSED RULE CHANGE:

- (B) Percentage of income payment plan (PIPP) customers will be coordinated exclusively by the Ohio department of development pursuant to section 4928.54 of the Revised Code.
- (1) CRES providers are prohibited from knowingly enrolling PIPP ~~and arrearage crediting program~~ customers.
 - (2) Customers pending enrollment with a CRES provider who subsequently become approved for PIPP ~~or the electric utility's arrearage crediting program~~ shall not be switched to the CRES provider.
 - (3) Electric utility customers who have switched to a CRES provider and subsequently become approved for the ~~electric utility's~~ DEPARTMENT OF DEVELOPMENT'S arrearage crediting program shall not be switched to the CRES provider.
 - (4) ~~Until the Ohio Department of Development has in place a mechanism for the administration and operation of the low-income customer assistance programs,~~ Customers who have switched to a CRES provider and subsequently become approved for PIPP shall be transferred to the electric utility's standard ~~offer service~~ SERVICE OFFER at the next regularly scheduled meter read date after the electric utility receives notice of the customer's participation in PIPP. ~~Any switching fees shall be added to the customer's arrearages, not current charges.~~ SUCH CUSTOMERS SHALL NOT BE ASSIGNED SWITCHING FEES.

OCEA proposes that the Commission substitute the phrase "opt-in" for the word "automatic" in existing Ohio Adm. Code 4901:1-21-06(C), the phrase "automatic governmental aggregation pursuant to division (A) of section 4929.20" means an opt-out government aggregator:

an ordinance or resolution under this division shall specify whether the aggregation will occur only with the *prior, affirmative, consent* of each person owning, occupying controlling, or using an electric load center proposed to be aggregated *or will occur automatically for all such persons pursuant to the opt-out requirements of* division (D) of this section. (Emphasis added).

Since R.C. 4929.21 is addressing two exceptions to the proof of notice requirement, OCEA asserts the proposed change was meant to refer to opt-out governmental aggregations, not opt-in. OCEA thus suggests keeping the word “automatic” in place because the phrase “automatic governmental aggregation” is used again in existing Ohio Adm. Code 4901:1-21-11(A). If modification of the term “automatic” is used, it should be changed here and in Ohio Adm. Code 4901:1-21-11(A) as follows:

PROPOSED RULE CHANGE:

Ohio Adm. Code 4901:1-21-06(C)

CRES providers are prohibited from enrolling potential customers without their consent and proof of that consent as delineated in paragraph (D) of this rule. This requirement does not apply to AUTOMATIC ~~opt-in~~ governmental aggregation pursuant to division(A) of section 4928.20 of the Revised Code and PIPP customers who will be coordinated exclusively by the Ohio department of development pursuant to section 4928.54 of the Revised Code.

Paragraph D requires CRES providers to retain copies of audio recordings of customer enrollments for a period of one-year after the contract is terminated. The one-year requirement for retaining audio recordings may be insufficient to answer questions that residential customers have about the nature of the terms and conditions of their service with the CRES provider in the future. In addition, the cost for electronic media and storage of audio recordings may not represent as significant a cost today as it once did.

OCEA supports the change proposed by Staff to allow customers to request copies of the audio recordings on their own behalf. Customers, as a party to the contracts, should have the same access provided to regulators.

PROPOSED RULE CHANGE:

- (D) Residential and small commercial enrollment,
 - (2) Telephonic enrollment
 - (b) Following telephonic enrollment, the CRES provider shall comply with all of the following:
 - (ii) Retain the audio recording of the customer's enrollment for ~~one~~ TWO yearS after the contract with the customer is terminated;

4901:1-21-07 Creditworthiness and Deposits.

Paragraph A requires CRES providers to establish reasonable and nondiscriminatory creditworthiness standards and permits the imposition of deposits or other reasonable demonstration of creditworthiness as a condition for providing service. In addition, residential customers can demonstrate financial responsibility for electric service through a number of different methods according to Ohio Adm. Code 4901:1-17. There is no reason why the same standards should not apply for CRES service. Ohio Revised Code 4933.18 mandates that customers be provided options for deposits including being a financially responsible freeholder and having a guarantor for service. The law also limits the amount of the deposit to an average monthly bill for the commodity plus thirty percent. This rule should be amended as follows to reflect these changes.

PROPOSED RULE CHANGE:

- (A) Each competitive retail electric service (CRES) provider must establish reasonable and nondiscriminatory creditworthiness standards and may require a deposit or other reasonable demonstration of creditworthiness from a customer as a condition of providing service. In the application of such standards, deposits, or creditworthiness procedures, the CRES provider shall:

- (1) Disclose in service contracts with customers its policies regarding creditworthiness **OPTIONS DESCRIBED IN OHIO ADMINISTRATIVE CODE 4901:1-17 INCLUDING** ~~and~~ deposits, ~~including~~ the amount of any deposit **AS AN AVERAGE ANNUAL MONTHLY BILL PLUS THIRTY PERCENT**, the allocation of the deposit, and the return of any deposit balance.
- (2) Accept a reasonable and nondiscriminatory cash deposit **WHEN REQUIRED** as sufficient evidence of the customer's creditworthiness to initiate service.

4901:1-21-09 Environmental Disclosure.

The OCEA proposed that the language at Ohio Adm. Code 4901:1-10-31 (above) should be replicated here (this is the section for electric utility environmental disclosure). As stated above, S.B. 221 identifies at R.C. 4928.01.(A)(31)(a) the definition of a net metering system, using the Staff's proposed language. However, at R.C. 4928.01.(A)(34)(b) the definition of "Advanced energy resource" includes "Any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities;" The term "cogeneration" is more expansive than the term "microturbine", and inclusion in the rules defining net metering contracts better achieves the stated purpose of S.B. 221.

We further recommend the preservation of some language at 10-31 which was omitted in the CRES section as follows:

PROPOSED RULE CHANGE:

- (C) Determination of environmental disclosure data
 - (1) Contents of environmental disclosure data
 - (a) Approximate generation resource mix.

CRES providers shall specifically identify each of the following generation sources used in the generation of power and the

PERCENTAGE OF TOTAL LOAD AND QUANTITY OF MWH'S FOR EACH SOURCE: biomass power, coal-fired power, hydro power, natural gas-fired power, COGENERATION, nuclear power, oil-fired power, other sources, solar power, wind power, and unknown purchased resources.

CRES providers shall exercise all reasonable efforts to identify the power source or resources used to generate the power in question and shall maintain documentation sufficient to demonstrate the steps taken to make such identification. NOTHING IN THIS SECTION SHALL BE USED TO LIMIT THE CRES PROVIDERS USE OF SUPPLEMENTARY INFORMATION TO PROVIDE ADDITIONAL INFORMATION WHICH IT FEELS IS PERTINENT TO PROVIDING UNDERSTANDING OF THE RESOURCE MIX, DEPENDENCE ON SPECIFIC RESOURCES AND POTENTIAL OPPORTUNITIES TO IMPROVE THE COST OR ENVIRONMENTAL IMPACT OF THE MIX OF RESOURCES USED.

Environmental disclosure remains an important customer education tool.

However, the disclosure provisions need to accurately describe the characteristics of the fuel. In addition, inclusion of the word "cogeneration" should be included in the list to complete the list of resources identified in S.B. 221 as public policy objectives:

PROPOSED RULE CHANGE:

(D) Environmental disclosures to customers

(2) Format

(b) A table shall be provided which illustrates the typical environmental characteristics associated with the generation resource categories detailed in paragraph (C)(1)(a) of this rule.

The general categories and assumptions to be depicted in the table are as follows:

Biomass power – results in ~~air emissions and solid waste~~ MIXED OXIDES OF NITROGEN (NOX) AND FINE PARTICULATE (PM 2.5) EMISSIONS.

Coal-fired power – results in ~~air emissions and solid waste~~ MIXED OXIDES OF NITROGEN (NOX), SULPHUR DIOXIDE (SO2), FINE PARTICULATE (PM 2.5 EMISSIONS, CARBON DIOXIDE EMISSIONS, AND SOLID TOXIC AND HAZARDOUS WASTE.

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Natural gas-fired power – results in ~~air~~ MIXED OXIDES OF NITROGEN , FINE PARTICULATE (PM 2.5) AND CARBON DIOXIDE emissions, and solid TOXIC AND HAZARDOUS waste.

* * *

Oil-fired power – result in ~~air~~ MIXED OXIDES OF NITROGEN, SULPHUR DIOXIDE, FINE PARTICULATE (PM 2.5) EMISSIONS , CARBON DIOXIDE emissions, and solid TOXIC AND HAZARDOUS waste.

* * *

COGENERATION – RESULTS IN MIXED OXIDES OF NITROGEN (NOX), SULPHUR DIOXIDE (SO2), FINE PARTICULATE (PM 2.5 EMISSIONS, CARBON DIOXIDE EMISSIONS, AND SOLID TOXIC AND HAZARDOUS WASTE.

4901:1-21-09 (D)(2)(f) and (i).

OCEA proposes the following two sections to be inserted into Section (D)(2).

The first section below seems to fit between (e) and (f) while the second would make sense as the final section: (D)(2)(f) will provide an understanding of the benefits of efficiency and renewable provisions in S.B. 221. (D)(2)(i) ensures that customers and interested parties will be able to evaluate progress over time.

(D) Environmental disclosures to customers

(2) Format

- (f): THE CRES PROVIDER SHALL REPORT THE ANNUAL AND CUMULATIVE ENVIRONMENTAL BENEFITS AND PERCENTAGE OF LOAD REDUCTION FROM THE ENERGY EFFICIENCY KWH SAVINGS RESULTANT FROM PROGRAMS DEVELOPED UNDER THE REQUIREMENTS OF S.B. 221. THE CRES PROVIDER SHALL ALSO REPORT SEPARATELY THE ANNUAL AND CUMULATIVE ENVIRONMENTAL BENEFITS AND PERCENTAGE OF LOAD GENERATED FROM THE RENEWABLES ENERGY PROVISIONS DEVELOPED UNDER THE REQUIREMENTS OF S.B. 221.
- (fg) Each CRES provider shall maintain records detailing the magnitude of each environmental characteristic associated with the power offered under the contract. Such details shall be provided to customers and commission staff upon request and may be included on a CRES provider's website.
- (gh) A CRES Provider may include other information that it feels is relevant to the required environmental disclosure data, provided this additional information is distinctly separated from the required information. CRES providers shall maintain sufficient documentation to permit verification of the accuracy of any additional information that is disclosed.
- (i) THE CRES PROVIDER SHALL INCLUDE ON THE CUSTOMER BILL INSERT OR ALTERNATIVE MAILING A WEB PAGE LINK WHICH CONTAINS ALL THE DATA REQUIRED FOR THE CURRENT ENVIRONMENTAL DISCLOSURE PLUS AN ARCHIVE OF PREVIOUS DISCLOSURE STATEMENTS. THE CRES PROVIDER AT ITS DISCRETION MAY PROVIDE AN ALTERNATIVE FORMAT FOR ENVIRONMENTAL DISCLOSURE DATA SUCH AS A SPREADSHEET OR CHART WHICH PROVIDES THE SAME QUALITATIVE AND QUANTITATIVE DATA IN A MORE COMPACT

4901:1-21-10 Customer Information.

OCEA supports the Staff proposal to change paragraph (B) to prohibit the disclosure of customer account numbers without written consent, electronic authorization or in compliance with a court or commission order, with a list of appropriate exceptions.

CRES providers are prohibited pursuant to paragraph C from disclosing social security numbers without written consent from the customer unless the disclosure is related to electric utility or CRES provider credit evaluations, electric utility or CRES provider credit reporting or collections, participation in PIPP, or assignment of CRES contracts. CRES providers should not be disclosing social security numbers for credit evaluations without customer consent. In addition, social security numbers should not be disclosed to other CRES providers as part of an assignment process without explicit consent from the customer. Paragraph (C)(3) should be deleted because it is already addressed in Ohio Adm. Code 4901:1-21-10(B)(2). This rule should be modified as follows:

PROPOSED RULE CHANGE:

(C) CRES providers shall not disclose a customer's social security number without the customer's written consent or without a court order, except for the following purposes:

- (1) A CRES provider's own credit evaluation WHEN A CUSTOMER GRANTS PERMISSION TO THE CRES PROVIDER TO DEMONSTRATE FINANCIAL RESPONSIBILITY.

* * *

~~(4) Assignment of a customer contract to another CRES provider.~~

4901:1-21-11 Contract Administration.

Paragraph C requires CRES providers to maintain copies of individual customer contracts for no less than two years from when each such contract terminates. However, customers may have questions about the terms and conditions of a previous CRES contract after the two years have expired. Having the contracts available upon customer request for a period of not less than three years should help reduce the instances where contracts are not available. This rule should be amended as follows:

PROPOSED RULE CHANGE:

- (C) CRES providers shall maintain copies of individual customer contracts for no less than ~~two~~ THREE years after each such contract terminates.

CRES providers are required to provide prior notice to the director of the service monitoring and enforcement division and the ELECTRIC UTILITY in the service area affected before assigning contracts to another CRES provider. Prior notice of assignments should also be made to the OCC if residential customers are being assigned to another CRES provider. This advance notice helps OCC adequately prepare for questions and concerns from the public. Paragraph D should be amended as follows:

- (D) In its administration of residential and small commercial contracts, a CRES provider shall also comply with the following requirements:
 - (1) A CRES provider shall not assign a customer contract(s) to another CRES provider without:
 - (a) Providing a minimum of fourteen days written notice to the director of the ~~consumer services~~ service monitoring and enforcement department or the director's designee, OCC, and any affected electric utility before the contract assignment. Such notice shall include:

This is also the time to revisit current rules regarding contract renewals. The current rules sanction a process that allows the imposition of a new contract with new terms, referred to as a renewal, based on a consumer's failure to respond to two mailings. This approach violates traditional common law and contract principles and fails to protect consumers from significant changes in rates or terms. In order to protect consumers, Ohio should follow legal precedent rather than the 'take it or leave it' approach used by credit card companies when changing terms or interest rates. OCEA recommends the following changes:

PROPOSED RULE CHANGE:

(F) Contract renewals

- (2) ~~For contracts that contain an early termination or cancellation option with no fee for early termination or cancellation, the~~ CRES providers shall, in a separate notice, notify customers of such expiration at least forty-five days, but not more than ninety days, in advance of the contract expiration date. Such notice shall accurately describe or highlight any changes, and state that the customer contract will renew UNDER THE NEW TERMS ON A MONTH-TO-MONTH BASIS at the specified rate unless the customer affirmatively cancels the contract OR AFFIRMATIVELY AGREES TO A REVISED CONTRACT AS REQUIRED BY SECTION 4901:1-21-06.. Such notices must clearly and accurately describe the manner in which the customer may cancel OR RENEW the contract. ~~and the time during which the customer must act to cancel the contract.~~
 - (a) ~~The notice shall be made by separate mailing (envelope or postcard), the front cover of which shall state: "The important notice regarding your electric service contract."~~
 - (b) ~~The notice shall, at a minimum, state any renewal period and how the customer may terminate, renew, and/or extend the contract.~~

- (c) ~~The renewal period for contracts with renewal provisions shall not exceed the initial contract period.~~
- (3) For contract renewals that contain an early termination or cancellation option with a fee of twenty-five dollars or less for early termination or cancellation, the CRES provider shall provide the customer with two separate notices that accurately describe or highlight any changes; and state that the customer contract will renew at the specified rate unless the customer affirmatively cancels the contract. Such notices must clearly and accurately describe in understandable language the manner in which the customer may cancel the contract and the time during which the customer must act to cancel the contract. The first notice shall be in writing in accordance with the requirements of this rule ~~and shall be provided at least forty five days, but no more than ninety days in advance of the contract expiration date.~~ The second notice shall be in writing and ~~made by separate mailing in accordance with paragraphs (F)(2)(a) to (F)(2)(c) of this rule.~~ The second notice shall be provided at least thirty five days prior to contract expiration and must contain the rate at which the customer contract will renew, or in the case of a variable rate, the applicable formula
- ~~(4) For contract renewals that contain an early termination or cancellation option with a fee greater than twenty five dollars for early termination or cancellation or which contain no option for early termination or cancellation, the CRES provider shall notify the customer of any changes, describe or highlight each change, and also obtain the customer's affirmative consent to such changes pursuant to any of the enrollment procedures established in rule 4901:1-21-06 of the Administrative Code. In addition, the CRES provider shall notify the customer that no response will result in the customer automatically reverting to the EDU unless the customer chooses another CRES provider. The notice shall be provided at least forty five days, but not more than ninety days in advance of the contract expiration date, and comply with paragraphs (F)(2)(a) to (F)(2)(c) of this rule. This paragraph shall not apply to contract renewals which renew on a month to month basis.~~

~~(G) The CRES provider shall furnish written notice to residential and small commercial customers of pending contract expiration between forty five and ninety days before the contract expires. Such notice shall be made by separate mailing (envelope or postcard), or by conspicuously placed bill message or bill insert. The front cover of such mailing shall contain the following statement: "Important notice regarding your electric service contract's expiration." This notice may be combined with a renewal notice specified in paragraph (G) F of this rule. This paragraph does not apply to the expiration of contract periods of one month or less.~~

~~If the contract does not contain an automatic renewal clause, the notice shall include a statement that the customer will automatically default to the EDU's standard offer service if the customer does not re-enroll with the current CRES provider or enroll with another CRES provider.~~

4901:1-21-12 Contract Disclosure.

The rules in paragraph A limit the number of times that customers can request payment history without charge. There is no reason why the limitation exists where billing history can only be requested twice without charge in any 12 month period. Customers should have access to billing history whenever it is needed and should not be discouraged from requesting the information because of fees. This rule should be modified as follows:

PROPOSED RULE CHANGE:

- (A) All competitive retail electric service (CRES) provider customer contracts shall include, but not be limited to, the following information:
 - (2) A notification that the customer has the right to request from the CRES provider, ~~twice within a twelve month period,~~ up to twenty-four months of the customer's payment history without charge.

The contents of a CRES contract must disclose certain circumstances in which CRES providers cannot assess a penalty if the customer terminates the contract.

However, the language does not include CRES customers that enroll in the PIPP program. These customers should not be assessed a penalty because of their current financial condition. This rule should be amended as follows:

PROPOSED RULE CHANGE:

- (B) All CRES provider contracts with residential and small commercial customers shall include, but not be limited to, the following information (to be stated in clear and understandable language):
 - (6) The customer's right to terminate the contract without penalty in any of the following circumstances:
 - (c) **THE CUSTOMER ENROLLS IN THE PERCENTAGE OF INCOME PAYMENT PLAN PROGRAM. (PIPP)**

The rules require disclosure that CRES providers are not allowed to disclose social security numbers except in specific circumstances. CRES providers should have to disclose specifically why they are requesting the social security number. There shouldn't be just blanket statements to this effect in the contract. In addition, if the social security number is not required for the customer to have service, the CRES provider should be prohibited from requesting this information. A demonstrated satisfactory credit standing with the electric utility should constitute satisfactory credit with a CRES provider.

Contracts by CRES providers are required to have a statement that if customers switch back to the electric utility, the same rates, terms, and conditions that apply to other electric utility customers may not apply. This language is overly broad and suggests that multiple standard offer services and rates may be available. This may lead customers to not switch to a CRES provider because of the potential for harm if they return to the

electric utility. This language should be eliminated from the contract disclosure statements. Paragraph B should be amended as follows:

PROPOSED RULE CHANGE:

- (B) All CRES provider contracts with residential and small commercial customers shall include, but not be limited to, the following information (to be stated in clear and understandable language):

~~(13) — If the contract contains an automatic renewal provision and the terms of such provision do not require the customer's affirmative consent, a conspicuous, highlighted statement indicating that the CRES provider can renew this contract without the customer's affirmative consent even when there is a change in the rate or other terms and conditions.~~

Paragraph (B)(17) discusses the prohibition for a CRES to disclose a social security number and identifies three exceptions. This language parrots 4901:1-21-10(B) with the exception that (B)(17) leaves off governmental aggregators. To be consistent, this section should mirror 4901:1-21-10(B) as follows:

PROPOSED RULE CHANGE:

- (B) All CRES provider contracts with residential and small commercial customers shall include, but not be limited to, the following information (to be stated in clear and understandable language):

(167) A notification that the CRES provider is prohibited from REQUESTING OR disclosing a customer's social security number and/or account number(s) without the customer's WRITTEN consent except for the CRES provider's own collections and credit reporting, participation in programs funded by the universal service fund pursuant to section 4928.54 of the Revised Code, GOVERNMENTAL AGGREGATION PURSUANT TO SECTION 4928.20 OF THE REVISED CODE, or assigning a customer contact to another CRES provider;

4901:1-21-13 Net-metering contracts.

OCEA proposes to modify the first “may” in section (A) to “shall” to be consistent with the removal of the one percent of utility peak load net-metering cap language in amended S.B. 221.

PROPOSED RULE CHANGE:

- (A) An electric services company providing retail electric generation service ~~may~~ SHALL offer net metering to its customers by developing a contract for net metering that is consistent with the requirements of rules 4901:1-21-11 and 4901:1-21-12 of the Administrative Code. Such contract shall be made available upon a request to qualifying customers.

Senate Bill 221 identifies at R.C. 4928.01.(A)(31)(a) the definition of a net metering system, using the Staff’s proposed language. However, at R.C. 4928.01.(A)(34)(b) the definition of “Advanced energy resource” includes “Any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities;” The term “cogeneration” is more expansive than the term “microturbine”, and inclusion in the rules defining net metering contracts better achieves the stated purpose of S.B. 221.

PROPOSED RULE CHANGE:

- (A)(1) A qualifying customer generator is one whose generating facilities are:
 - (a) Fueled by solar, wind, biomass, landfill gas, COGENERATION, hydropower, or use a microturbine or a fuel cell.

PROPOSED RULE CHANGE:

- (d) ~~Intended primarily to offset part or all of the customer generator's requirements for electricity.~~

4901:1-21-14 Customer Billing and Payments.

Paragraph C of the rules requires that CRES bills must be accurate and understandable and be rendered at intervals consistent with the bill. Staff has proposed that electric utility bills be rendered monthly and OCC has suggested that a billing month be defined as 28-32 days. This rule should be amended as follows:

PROPOSED RULE CHANGE:

- (C) Residential and small commercial customer bills issued by or for CRES providers shall be accurate and understandable, be rendered at monthly intervals ~~consistent with those of the customer's electric utility~~ FOR SERVICE IN THE PROCEEDING 28-32 DAYS, and contain sufficient information for customers to compute and compare the total cost of competitive retail electric service(s). Such bills shall also include:

CRES providers that bill their charges separately from the ELECTRIC UTILITY must make provisions for acceptance of payments from customers that do not have checking accounts and that rely on cash payments. There are an increasing number of customers that make payments directly to the company or authorized agents of the company. A new paragraph is required as follows:

PROPOSED RULE CHANGE:

- (I) CRES PROVIDERS SHALL MAKE ARRANGEMENTS FOR ACCEPTING CASH PAYMENTS AT BUSINESS OFFICES AND OTHER APPROPRIATE LOCATIONS WITHIN THE SERVICE TERRITORY AT NO COST TO THE CUSTOMER. THE CRES PROVIDERS SHALL ADHERE TO ALL COMMISSION RULES REGARDING PAYMENT CENTERS FOR ELECTRIC UTILITY CUSTOMERS.

4901:1-21-17 Opt-out Disclosure Requirements.

The requirement to utilize a customer list within 30 days will cause undue hardship upon the governmental aggregators. Lists from an electric utility are not ready to use upon receipt. These lists need scrubbed to remove the “do not aggregate” customers and any others the governmental aggregation chooses to remove, such as those, for example, who already have a lower rate than what the aggregation is offering. Only after a list is scrubbed can the list of eligible households be generated and then sent out to be printed. Printing over 100,000 opt-out notice packages can take awhile, and therefore it is suggested that the time limit be increased to no less than sixty days.

PROPOSED RULE CHANGE:

- (D) List of eligible governmental aggregation customers.
 - (2) The governmental aggregator shall use ITS BEST EFFORTS TO USE the list of eligible aggregation customers to distribute its op-out notices within ~~thirty~~ SIXTY days of the date the list is ~~generated by~~ RECEIVED FROM the electric utility.

Paragraph D includes a number of issues associated with disclosing customer account numbers and social security numbers – see Ohio Adm. Code 4901:1-21-17(D)(4). Government aggregators should not have access to social security numbers unless the government aggregator has a specific purpose for the information and has requested written consent from the customer for obtaining the information from an electric utility. Government aggregators should not disclose social security numbers or account numbers for any reason without written consent form the customer.

Paragraph E includes a number of different types of customers that are not eligible for government aggregation. This list does not include PIPP customers or customers that subsequently become eligible for PIPP after being part of a government aggregation.

In addition, the rules do not specify that customers that enroll in PIPP should not be assessed switching fees for returning to the electric utility or be assessed any early termination charges. A list of eligible customers is only as good as the list generated by the electric utility. Governmental Aggregators do not have access to the electric utility's data and take no part in generating the list. As such a Government Aggregator cannot know whether a given customer is a mercantile customer, a PIPP customer or whether a customer has a special arrangement... etc., unless the electric utility indicates so. Therefore, placing a burden on Government Aggregators to exclude various types of customers from its opt-out roster, as the proposed rules currently do, is impossible to comply with. A Government Aggregator must rely upon the list given to it by the electric utility. To that end, the following suggested rule changes are put forth to clarify the interplay between a Government Aggregator and the electric utility's culmination of the customer list.

This rule should be amended as follows:

PROPOSED RULE CHANGE:

- (1) Each governmental aggregator shall ensure that only eligible customers **AS IDENTIFIED BY THE ELECTRIC UTILITY** are included in its aggregation. For the purposes of this rule the following customers are not eligible and shall not be included in an aggregation:

* * *

(h) A PIPP CUSTOMER OR AGGREGATED CUSTOMER THAT SUBSEQUENTLY ENROLLS ON PIPP.

A Government Aggregator should not be held responsible for sending its opt-out materials to a customer that appears on the electric utility's list. Therefore, the following language should be stricken:

PROPOSED RULE CHANGE:

- (2) If accounts of customers who appear on the commission's "do not aggregate" list, ~~accounts from outside the governmental aggregator's governmental boundaries, accounts of customers who have opted out of the aggregation, accounts of customers in contract with an electric services company, accounts of customers with a special arrangement under Chapter 4901:1-38 of the Administrative Code, or accounts of mercantile customers who did not opt into the governmental aggregation~~, are switched to the governmental aggregation, the governmental aggregator shall promptly inform the customer and take all necessary actions to have the customer switched back to the customer's former service provider. In addition, if the customer's former rate was less than the rate charged by the governmental aggregator, then the governmental aggregator shall reimburse the customer for the difference between the customer's former rate and the governmental aggregator's rate multiplied by the customer's usage during the time that the customer was service by the governmental aggregator.

Finally in Ohio Adm. Code 4901:1-21-17(E)(4), a Government Aggregator should not be held responsible for trying to determine which mercantile customers have become ineligible without proper notification from the electric utility. Therefore, the following language should be stricken:

PROPOSED RULE CHANGE:

- (4) If a mercantile customer was enrolled in an opt-out governmental aggregation program that the mercantile customer subsequently became ineligible for, UPON

NOTIFICATION FROM THE ELECTRIC UTILITY, the governmental aggregator shall remove the mercantile customer from the governmental aggregation program at the next opt-out opportunity that is available to the customer under section 4928.20 of the Revised Code unless that mercantile customer affirmatively consents to remain in the governmental aggregation program.

4901:1-21-18 Consolidated Billing Requirements.

Paragraph C establishes requirements for CRES providers that bill customers for both CRES and electric utility charges. According to the rules, bills only need to be rendered at regular intervals as opposed to the monthly intervals that is required if the electric utility performs the billing. In addition, OCEA has proposed that “month” be further defined as billing for the 28-32 days of usage before the bill was rendered. This rule should be amended as follows:

PROPOSED RULE CHANGE:

- (C) Consolidated bills shall be accurate, ~~rendered at regular intervals~~ *ON A MONTHLY BASIS BETWEEN 28 AND 32 DAYS*, and shall contain clear and understandable form and language. All consolidated customer bills issued by or on behalf of an electric utility and a CRES provider must include at least the following information:

CRES providers that bill both CRES charges and electric utility charges should have to make provisions for acceptance of cash payments at company offices or authorized agents. These are capabilities that electric utilities currently provide and customers should not have fewer options to pay electric utility charges as a result of a CRES provider deciding to render a consolidated bill. There are an increasing number of customers that make payments directly to the company or authorized agents of the company. A new paragraph is required as follows:

PROPOSED RULE CHANGE:

- (K) CRES PROVIDERS SHALL MAKE ARRANGEMENTS FOR ACCEPTING CASH PAYMENTS AT BUSINESS OFFICES AND OTHER APPROPRIATE LOCATIONS WITHIN THE SERVICE TERRITORY AT NO COST TO THE CUSTOMER.

V. UNIFORM ELECTRIC INTERCONNECTION SERVICE -- CHAPTER 4901:1-22

4901:1-22-01 Definitions.

There is significant disagreement among the electric distribution utilities regarding the definition of “market based.” The electric utility’s tariff filings in the 05-1500 and follow-on cases revealed that utilities in the same RTO relied upon different definitions of market based. These different definitions resulted in vastly different charges for backup service by utilities in the same market. The rules should be revised to specify that market based means the delivery price of electricity to the local delivery area where the customer will take power from the regional transmission organization (RTO).

This modification also requires the PUCO to approve utility filed backup tariffs. Market based backup tariffs have been filed with the Commission as per the new rules coming out of Case No. 05-1500 but the Commission has not acted on them. The FE and DPL rates are especially problematic.

PROPOSED RULE CHANGE:

- (D) “Backup electricity supply” means replacement electric power supplied to an applicant by the ELECTRIC UTILITY EDU at a tariff rate or alternatively, as a market-based option TARIFF APPROVED BY THE COMMISSION AND BASED ON THE PRICE OF ELECTRICITY AT THE LOCAL DELIVERY AREA OF THE RTO AT THE TIME THAT THE PURCHASE IS MADE or by a competitive retail electric service provider of the applicant’s choice at a rate to be determined between the provider and the applicant.

4901:1-22-04 General Provisions.

The proposed revisions to the General Provisions section are to make this rule consistent with Ohio Adm. Code 4901:1-10-20(D)(4).

PROPOSED RULE CHANGE:

(A) Prohibitions

- (1) In accordance with the electric distribution utility's code of conduct adopted pursuant to section 4928.17 of the Revised Code, an ~~EDU~~ ELECTRIC UTILITY or its affiliates shall not use, without the customer's consent, such knowledge of proposed interconnection service to prepare competing proposals to the interconnection service that offer either discounted rates in return for not providing the interconnection service or competing generation. **THE USE BY AN AFFILIATE, OR THE TRANSFER OF SUCH INFORMATION BETWEEN ELECTRIC UTILITY AND AFFILIATE, WITHOUT THE CUSTOMER'S CONSENT SHALL CONSTITUTE A VIOLATION OF 4901:1-10-20(D)(4).**

OCEA's modification to Ohio Adm. Code 4901:1-22-04(B)(3) places a limit on the amount of time a utility can take to process an application that is complete and requires no modifications.

PROPOSED RULE CHANGE:

(B) Application processing

- (3) The ~~EDU~~ ELECTRIC UTILITY shall automatically provide each applicant with a written notice of the ~~EDU's~~ ELECTRIC UTILITY'S receipt of an application within three business days after the application has been received. The notice of receipt shall include the following:
 - (b) A target date for processing the application. **IN NO INSTANCE, SHALL THE TARGET DATE FOR PROCESSING THE APPLICATION EXCEED 30 DAYS IN CASES WHERE THE APPLICATION IS COMPLETE AND NO MODIFICATIONS ARE**

NEEDED. WHERE CHANGES ARE NEEDED,
THE UTILITY SHALL INCLUDE TARGET
DATES FOR COMMUNICATING THIS
INFORMATION TO THIS APPLICANT.

OCEA also proposes to change Ohio Adm. Code 4901:1-22-04(B)(5)(c) which ensures that the PUCO has notification of any significant pattern of failure to approve applications for net metering, and that the public has ability to access such records in order to determine whether real barriers to net metering and the purposes of S.B. 221 exist.

PROPOSED RULE CHANGE:

- (B)(5)(c)** AT THE END OF ANY CALENDAR MONTH DURING WHICH AN ELECTRIC UTILITY PROVIDES A NOTIFICATION TO AN APPLICANT UNDER SECTION 4901:1-22-04 (B)(5)(A) THE ELECTRIC UTILITY SHALL PROVIDE A COPY OF EVERY SUCH NOTIFICATION TO THE PUCO. THE PUCO SHALL MAINTAIN A RECORD OF ALL SUCH APPLICATION REJECTIONS AVAILABLE FOR INSPECTION BY ANY INDIVIDUAL UPON REQUEST.

Ohio Adm. Code 4901:1-22-04(E) should be referencing R.C. 4928.01(A)(32) .

PROPOSED RULE CHANGE:

- (E) Disposal of excess energy produced by the applicant's distributed generation.
- (1) An applicant proposing to install a self-generator as defined in division (A0(33)(32) of section 4928.01 of the Revised Code for the purposes of selling excess electricity to retail electric service providers as a competitive service to the extent not preempted by federal law must first seek certification of managerial, technical and financial capability consistent with section 4928.08 of the Revised Code.

OCEA's proposed modification also places a limit on the amount of time a utility can take to supply customers with an estimate of the timetable and applicant's cost for construction or system upgrades.

PROPOSED RULE CHANGE:

- (F) Construction or system upgrades of the ~~EDU's~~ ELECTRIC UTILITY'S system.
 - (1) Where construction or system upgrades of the ~~EDU's~~ ELECTRIC UTILITY'S system are required by the applicant's installation of a distributed generation facility, the ~~EDU-ELECTRIC UTILITY~~ shall provide the applicant with an estimate of the timetable and the applicant's cost for the construction or system upgrades, consistent with the provisions of this chapter AND WITHIN 30 DAYS OF THE ORIGINAL INTERCONNECTION APPLICATION.

OCEA's proposed change to Ohio Adm. Code 4901:1-22-04(E) places a limit on the amount of time a utility can take to sign a contract with an applicant that notifies the utility to go ahead with construction or system upgrades.

PROPOSED RULE CHANGE:

- (F) Construction or system upgrades of the ~~EDU's~~ ELECTRIC UTILITY'S system.
 - (2) If the applicant desires to proceed with the construction or system upgrades, the applicant and ~~EDU~~ ELECTRIC UTILITY shall enter into a contract, WITHIN 14 DAYS OF THE APPLICANT'S NOTIFICATION, for the completion of the construction or system upgrades.

VI. ELECTRIC RELIABILITY, SAFETY AND CUSTOMER SERVICE – CHAPTER 4901:1-23

A. Introduction

The Commission once explained that the Staff’s private notice of noncompliance procedure is intended to “expedite resolution of alleged violations and avoid extended and protracted litigation.”³⁷ This explanation does not justify the loss of due process to those who are harmed but are never made whole through the secretive procedures. Most importantly, the secret process does not provide Staff with all the factual information necessary to appreciate the scope and the seriousness of service problems. In fact, in one case the private notice of noncompliance procedures delayed resolving the distribution service problems.³⁸ In that case, the notice of noncompliance procedures benefited only the companies in allowing them to delay resolution of the problem until the Commission was forced to open more public dockets because the notice of noncompliance procedures failed to resolve all of the problems.

Keeping electric utility compliance problems confidential until the Commission approves a settlement only serves to create distrust with the public the Commission is supposed to serve. In fact, the Staff’s investigation should never be considered complete until after a noticed public hearing through which the Staff can benefit from the customer’s descriptions of their experiences with the service of the utility or CRES provider. Keeping the investigation confidential gives the appearance of avoiding facts that the investigator does not want to pursue or gives the appearance of protecting the

³⁷ *In the Matter of the Commission’s Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1611-EL-ORD, Finding and Order (April 6, 2000).

³⁸ *In the Matter of the Commission’s Consideration of a Settlement Agreement between the Staff of the Public Utilities Commission of Ohio, Columbus Southern Power Company and Ohio Power Company*, Case No. 03-2570-EL-UNC.

utility or CRES provider at a cost to the customers. For this reason, the Staff should pursue public input as part of its investigation and the purpose and scope of the Chapter should be revised to include a provision for a public hearing, accordingly:

B. Comments and Proposed Changes

4901:1-23-01 Purpose and Scope.

PROPOSED RULE CHANGE:

(B) This chapter also governs customer service, reliability, and safety proceedings of the public utilities commission of Ohio to:

(1) Investigate and determine an electric utility's or competitive retail electric service provider's compliance with Chapters 4901:1-21 and /or 4901:1-10 of the Administrative Code and commission order issued thereunder

(2) PROVIDE FOR PUBLIC INPUT INTO THE INVESTIGATION OF AN ELECTRIC UTILITY'S OR COMPETITIVE RETAIL ELECTRIC SERVICE PROVIDER'S COMPLIANCE WITH CHAPTERS 4901:1-21 AND/OR 4901:1-10 OF THE ADMINISTRATIVE CODE AND COMMISSION ORDER ISSUED THEREUNDER

4901:1-23-02 Staff Notice of Probable Noncompliance, Proposed Corrective Action, and Proposed Forfeiture.

The Staff should not issue a notice of probable noncompliance or make recommendations regarding corrective action until after a public hearing is held.

Moreover, the Staff's investigation should not be hidden from the public, especially not the customers of the utility or the CRES provider. For this reason, the proposed provisions under Rule 2 should be revised to state:

PROPOSED RULE CHANGE:

- (A) After an inspection, investigation, or complaint and A PUBLIC HEARING, a staff notice of probable noncompliance ~~may~~ SHALL be issued FILED. ~~The Staff notice of probable noncompliance may be issued~~ WITH A PROPOSED CORRECTIVE ACTION AND/OR PROPOSED FORFEITURE.

- (B) The staff ~~may issue~~ SHALL FILE an amended notice of probable noncompliance, proposed corrective action, or proposed forfeiture at any time prior to the commencement of a compliance proceeding or other commission proceeding brought pursuant to rule 4901:1-23-05 of the Administrative Code, in order to modify or include additional probable noncompliance or violations, facts, proposed forfeitures, and proposed compliance orders. Once the commission initiates a compliance or other proceeding pursuant to rule 4901:1-23-05 of the Administrative Code, this rule does not prevent the staff during the course of such proceeding, from seeking a finding of violations not listed in the staff notice or amended staff notice of probable noncompliance (or rescinding or refraining from seeking a finding of violations) or from seeking a corrective action or proposed forfeiture that varies from previous staff notices issued under this rule, provided that the staff's proposed findings and/or violations relate to the same incident, type of incident, investigation, or audit(s). provided that the staff's proposed findings and/or violations relate to the same incident, type of incident, investigation, or audit(s) AND ARE FILED WITH THE COMMISSION.

4901:1-23-04 Settlement Agreements and Stipulations.

After an investigation that includes a public hearing, the Staff will be better equipped to reach a reasonable settlement agreement with the utility or the CRES provider. The Staff and the utility or the CRES provider could then file the settlement with the Commission for approval. If any party wishes to contest the settlement agreement, they could file comments with the Commission asking for an adjustment to the settlement agreement or to request a hearing. Then, in response to those comments, the Commission could approve, reject or modify the settlement agreement as it deems necessary. Accordingly, Rule 4 should be revised to state:

PROPOSED RULE CHANGE:

- (A) If staff and the electric utility or competitive retail electric service provider reach agreement regarding the violation of a rule within this chapter, or Chapters 4901:1-21 or 4901:1-10 or the Administrative Code, the violation of a commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, then the agreement must be reduced to writing in a settlement agreement. Such agreement shall be signed by an officer of the company or its attorney and the assistant attorney examiner who serves as legal counsel for the commission staff. Except as otherwise provided in paragraph (B) of this rule, the settlement agreement shall not be effective until both of the following have occurred:
- (1) The stipulation is filed with the commission for consideration pursuant to a compliance proceeding **ALONG WITH A REQUEST FOR COMMENTS ON THE STIPULATION;**
 - (2) **PARTIES HAVE A 30 DAY OPPORTUNITY TO FILE COMMENTS ON THE STIPULATION;**
 - (23) The stipulation is **EITHER** approved by **OR MODIFIED BY THE** by the commission and made the order of the commission.

VII. CERTIFICATION TO OPERATE AS A COMPETITIVE RETAIL ELECTRIC SERVICE – CHAPTER 4901:1-24

OCEA has no comments on this section.

VIII. MARKET MONITORING -- CHAPTER 4901:1-25

4901:1-25-01 Definitions.

The language of paragraph (O) incorrectly refers to a definition in (M) of Ohio Adm. Code 4901:1-22-02 to define the term “Interconnection service customer.” Ohio Adm. Code 4901:1-22-02(J) is the correct reference.

PROPOSED RULE CHANGE:

- (O) “Interconnection service customer” shall have the same meaning as it has in paragraph (J) of rule 4901:1-22-02 of the Administrative Code.

4901:1-25-02 Market Monitoring - Reporting Requirements.

On April 25, the Federal Energy Regulatory Commission issued Order No. 2001, a final rule establishing revised public utility filing requirements. The requirement to file quarterly transaction reports summarizing a utility’s market-based rate transactions and sales agreements that conformed to the utility’s tariff was replaced by a requirement to file Electric Quarterly Reports (EQRs). Therefore OCEA proposes the following changes:

PROPOSED RULE CHANGE:

- (A)(1)(f) Those reporting entities that file quarterly ELECTRIC QUARTERLY REPORTS ~~transaction~~ reports with the federal energy regulatory commission (FERC) should submit a copy of its current FERC ELECTRIC quarterly ~~transaction~~ report to the commission in the same form that it filed the report with the FERC.

OCEA proposed the following change to correct a typo:

PROPOSED RULE CHANGE:

- (A)(2)(d)(iii) Identification of any and all conditions being imposed upon the applicant by the electric utility for approval of each request, and the electric utility’s assessment of options that may be available for meeting such conditions.

IX. CONCLUSION

OCEA appreciates the opportunity to submit comments regarding rules proposed in an Entry date July 23, 2008. OCEA requests that the Commission carefully consider these comments and the comments of other interested parties in an effort to best implement the provisions contained in S.B. 221.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments by the Ohio Consumer and Environmental Advocates have been served via First Class Mail, postage prepaid, to the following persons who submitted comments in response to the Public Utility Commission of Ohio's July 2, 2008 request for comments on the adoption of proposed rules for Ohio Adm. Code Chapters 4901:1-35 through 4901:1-38 on this 12th day of August, 2008.

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