

**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.)

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

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I. INTRODUCTION

A. Preliminaries

The Ohio Consumer and Environmental Advocates¹ (Collectively “OCEA”) jointly submit these reply comments to comments filed by other parties addressing the 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 proposed by OCEA and not adopt the revisions of other parties that represent narrow self-interests as opposed to the public interests that are represented by the broad coalition that is OCEA.

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.

This pleading also addresses comments filed in response to the three questions posed by the Commission in its July 23, 2008 Entry.² OCEA requests that the Commission consider the responses provided to the questions in the Commission's deliberations on the proposed rules.

B. The Commission's Questions

MAIFI Should be Retained as an Outage Frequency Measurement to Ohio Adm. Code 4901:1-10-11 and Added to Ohio Adm. Code 4901:1-10-10.

As OCEA stated in its initial comments:

[t]he 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 agrees with the Ohio Hospitals Association ("OHA") that MAIFI should be included as measure of performance because "they measure reliability and may be predictors of future, more significant adverse events."³ As OHA notes, power interruptions can have devastating effects on the provision of patient care.⁴ OCEA also supports the recommendation of the Greater Cincinnati Health Council ("GCHC") that, not only should the measurement for MAIFI be included in the performance measures adopted by the Commission, but such performance should be posted on the

² In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-24, and 4901:1-15 of the Ohio Administrative Code, Case No. 06-653-EL-ORD, Entry at 2-3 (July 23, 2008).

³ OHA comments at 1.

⁴ OHA comments at 1.

Commission’s public website periodically.⁵ OCEA believes, as does GCHC, that “In the absence of such data the PUCO Staff, the legislature, the effected customers and the general public have no way to determine the performance of the utilities or the effectiveness of improvements to the system and services.”⁶

The electric utilities that supported the elimination of MAIFI as a performance measure while at the same time ignoring the fact that the measure has been included as one of the distribution circuit reliability measures for years in Ohio Adm. Code 4901:1-10-11.⁷ OCEA does not support the elimination of MAIFI as a circuit reliability measure. The measure is of greater importance today than in the past and neither the PUCO Staff nor the electric utilities have provided any support for its elimination. OCEA has additional comments below regarding the elimination of MAIFI in its Ohio Adm. Code 4901:1-10-11(C)(3)(e).

II. ~~ELECTRIC COMPANIES~~ UTILITIES⁸ – CHAPTER 4901:1-9

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

A. Introduction

As stated in the Initial Comments, OCEA’s proposed adjustments to the rules included insights provided in the Commission’s Opinion and Order in the Line Extension Cases, PUCO Case Nos. 01-2708-EL-COI, et al., dated November 7, 2002 (“Line

⁵ GCHC comments at 3.

⁶ Id.

⁷ Dayton Power and Light Company (“DP&L”) comments at 2-3 , Duke Energy Ohio (“Duke”) comments at 10; and Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company (Collectively “FirstEnergy”) comments at 3-4.

⁸ The term “electric utilities” rather than “electric companies” is used throughout the proposed rules.

Extension Order”). The rules should also reflect the statutory provisions contained in S.B. 221.

Several commentators directed their attention to the sub-sections of proposed Rule 4901:1-9-07, while the OHA commented on the entirety of the Rule by requesting a special provision for “secondary electric lines connected to hospitals.”⁹ OHA argues that hospitals deserve such special attention, and implicitly state that non-hospital customers similarly served are less deserving. The OHA fails to provide any legal basis for a special *financial* treatment (or any other special treatment) for hospitals regarding line extensions,¹⁰ and does not provide an explanation of the means by which the PUCO should judge other similarly situated customers less worthy of the special financial treatment. The OHA’s argument for special treatment under the new rules should be rejected.

B. Reply Comments and Proposed Changes

The Line Extension Order paid particular attention to the definition of line extensions (covered under Section (A) of Rule 4901:1-9-07) in order to limit the costs claimed by utilities as part of line extensions.¹¹ 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 customers), which are driven by the customer’s load

⁹ OHA comments at 2.

¹⁰ The only mention of hospitals in S.B. 221 is R.C. 4928.67 regarding net metering.

¹¹ 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”) at 37-38 (“Proper costs of line extensions”).

addition.”¹² FirstEnergy’s Comments propose that the PUCO Staff-drafted rules be changed to expand the definition to “include [] rights of way, and . . . upgrades associated with existing facilities.”¹³ AEP argues for inclusion of “tree trimming and right-of-way expenses.”¹⁴ The suggested expansion of line extension costs runs counter to the PUCO’s efforts in the Line Extension Order to limit such claims, and the utility suggestions should be rejected. It would be an error to create policies that assign costs for maintaining lines on a customer by customer basis which is what these suggestions debut.

Both AEP and FirstEnergy would expand the application of the proposed rule regarding “line extensions” to circumstances where load is expanding for an existing customer.¹⁵ Expenditures occasioned by load expansions are, on their face, not line “extensions.” The limitation to the ever expanding scope claimed for expenditures on “line extensions” was an important Commission directive in the Line Extension Order. The Commission should again ensure that the definition of “line extension” and the application of the rules regarding line extensions apply only to new service and not to expanded service.

FirstEnergy also appears to ask for expansion of the definition of “line extension” to include “a term broader than ‘meter’ . . . to cover other possible scenarios...”¹⁶ The PUCO Staff’s proposed rules do not rule out inclusion of costs for equipment used to

¹² Id. at 38.

¹³ FirstEnergy comments at 6.

¹⁴ AEP comments at 2.

¹⁵ FirstEnergy comments at 6 (“upgrades associated with existing facilities”); AEP comments at 2 (“new or expanding loads”).

¹⁶ FirstEnergy comments at 6.

serve a customer who, using FirstEnergy’s example, owns its “[own] substation or other equipment.”¹⁷ The purpose for using “meter” in the rule is to designate the point of interface between the utility’s facilities and the facilities of the customer. Such a designation is needed to provide a clear definition for line extensions, and FirstEnergy has not argued that the PUCO Staff-drafted rule fails to accomplish that objective.

AEP proposes definitions that strike at the heart of the purpose of line extensions. AEP proposes the elimination of “service laterals” from the definition of “line extension” in Rule 4901:1-9-07(A). The definition proposed by AEP for the exclusion is unclear (a fault on its own¹⁸), but appears to cover the incremental facilities required on the path between a distribution pole and the customer’s meter. This is an essential part of a line extension that was the subject of the Line Extension Order, and should not be excluded from the definition in the new rules.

Section (B) of the PUCO Staff-drafted rules regarding “applicability” appears to be based upon the provision immediately following what is now section R.C. 4928.02(N). OCEA’s Initial Comments proposed changes to more closely track the new statutory language that refers to “line extensions.” AEP, on the other hand, would expand the language of the rule to cover “transmission . . . service” to customers.¹⁹ The PUCO Staff-drafted rule correctly reflects the distribution nature of line extensions, even where the

¹⁷ Id.

¹⁸ The definition proposed by AEP does not state the end point for a “service lateral,” and includes reference to “approximately 100 feet” of conductor. AEP comments at 4. The result is an unclear definition that is subject to a variety of interpretations across companies and within a service territory (i.e. discrimination).

¹⁹ AEP comments at 2 - 5.

point of departure from the utility’s facilities is at a transmission voltage.²⁰ The PUCO Staff-drafted rule should be retained, subject to the revision proposed by OCEA in the Initial Comments.

Section (D) was the subject of numerous comments by FirstEnergy revealing a non-cooperative policy that is inconsistent with the practices of other Ohio electric utilities. FirstEnergy states that it opposes the provision of itemized cost estimates for line extensions.²¹ The detail required by the itemization of “major material and service component[s]” in Rule 4901:1-9-07(D)(1) is unlikely to “breach contractual agreements” regarding vendor pricing of equipment.²² The PUCO Staff-drafted rule is consistent with the Commission’s approval of the stipulations for AEP and Monongahela Power in the Line Extension Order.²³

Similarly, FirstEnergy’s opposition to partial installation of line extensions by qualified contractors is out of step with the practices of other electric utilities. The Line Extension Order recognizes the contribution that can be made by such qualified contractors, and the Commission approved such practices in the Line Extension Order for both AEP and Monongahela Power.²⁴ FirstEnergy’s argument that its labor contracts would be violated by permitting contractors to work on line extensions is an effort at self regulation. The proper, legal analysis of such contracts is that restrictive provisions that violate Ohio law, such as properly promulgated rules in the Ohio Administrative Code,

²⁰ See proposed Rule 4901:1-9-07(A)(6) that includes, as a possible point of departure from the utility’s facilities, an “existing transmission . . . line.”

²¹ FirstEnergy comments at 7.

²² Id.

²³ Line Extension Order at 16 (AEP) and 18 (Monongahela Power).

²⁴ Id. at 16 (AEP) and 19 (Monongahela Power).

are unenforceable. FirstEnergy's contract provisions must give way to the extent that they come in conflict with the policy stated by the Commission in its quasi-legislative capacity.

Section (E) regarding line extension charges should reflect the same changes that were discussed earlier in connection with the definition of "line extension." AEP would limit utility payment obligations upon the use of line extension facilities by other customers to "end-use customers only."²⁵ Such inequitable payment arrangements would be factored into the cost of housing development homes. The ultimate result would be inequitable payment for line extension costs by new customers in developments compared with the payments by other new customers. AEP's proposed limitation should be rejected.

FirstEnergy characterizes Section (E) as requiring electric distribution utilities to "loan customers . . . funds."²⁶ The proposed rule does not require the extension of a loan to customers, but provides rate case recovery as the principal means by which utilities obtain recovery for expenditures to expand and improve their distribution systems. FirstEnergy's objections to this rate case mechanism for the recovery of costs is also the subject of objection regarding Section (F) of the proposed rule.²⁷ However, this mechanism is well known by the utilities regulated in Ohio for expenditures on line extensions and other forms of improvements. FirstEnergy's objections would rewrite the rate case regulatory structure in Ohio, a matter that extends well beyond the recently proposed rules and one that should be addressed by FirstEnergy at the General Assembly.

²⁵ AEP comments at 3.

²⁶ FirstEnergy comments at 9.

²⁷ Id. at 10.

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

A. Introduction

OCEA’s reply comments for the proposed rules on Ohio Adm. Code Chapter 4901:1-10 Electric Service and Safety Standards place particular emphasis on the electric utilities and other parties’ comments concerning:

- Establishing clear and meaningful distribution reliability performance standards for each electric utility based on their historical performance as opposed to the current arbitrary reliability “targets”;
- Enabling more public participation and influence in establishing reliability standards and monitoring compliance with these standards rather than relying on a nonpublic PUCO Staff and utility negotiation process;
- Improving the proposed definition for major event so that reliability data can be better measured and reported;
- Providing disclosure language within electric utility tariffs that better defines the electric utility responsibilities related to damages; and
- Improving consumer protection standards in protecting customer information, call wait times, cooperating with competitive providers, and eliminating charges for payments made to authorized agents.

B. The Commission Should Adopt Performance Standards in Lieu of the Current “Targets”.

OCEA is pleased that the PUCO Staff recommended that the Commission should develop *standards*, rather than negotiated *targets*.²⁸ OCEA agrees with DP&L’s initial comments filed on June 8, 2007, during the first round of comments in this proceeding, which stated that “[t]he Commission's role should be to establish meaningful reliability

²⁸ OCEA comments at 3 and 67.

standards.”²⁹ (Emphasis added) A more inclusive process to develop such standards has now been recommended by the PUCO Staff. The Commission, however, should also ensure that public involvement is retained in the compliance and enforcement process as well. The actual performance of the utilities is, if anything, more important than the establishment of the standards. The public has a right to know if the standards are actually met.

While these utility-specific standards may be adopted in a more public fashion, it remains critical that failure to meet established standards should have real consequences. Merely developing standards in lieu of targets is meaningless if the rules do not mandate a level of compliance necessary to meet the constructs of adequate service.

OCEA does not agree with the arguments of DP&L that these proposed rules limit the electric utilities’ discretion regarding their operations. The PUCO Staff-proposed rules as well as the alternatives proposed by OCEA and other parties, propose merely that the electric utilities provide some *minimum* level of service to consumers. The ESSS are not overly prescriptive regarding the means by which the minimum level of service required by the rules is achieved. Consumers pay for and are entitled to reliable, safe, and efficient service.³⁰ The Commission is responsible for ensuring that such service is delivered.

C. The Commission Staff Should not be the Sole Arbiter of the Performance Standards.

Should the Commission adopt the PUCO Staff’s most recent proposed amendments to Ohio Adm. Code 4901:1-10-10, OCEA and other stakeholders would

²⁹ DP&L comments at 2 (June 8, 2007).

³⁰ R. C. 4928.02.

finally play a role in the development of “standards” for the electric utilities. Any process that results in determining the level of reliability, or unreliability, that consumers can expect from an electric utility should be open and subject to comment from affected parties.

However, the existing and proposed rules still bestow an enormous amount of authority on the PUCO Staff. In initial comments, filed in June of 2007 during the first round of comments on PUCO Staff’s proposed revisions to the ESSS, OCEA noted that the ESSS, as proposed, lack transparency.³¹ As currently proposed, at least twenty-five rules in the PUCO Staff’s ESSS amendments still designate a single staff person, for example:

- The sole recipient of installation and answer time reports;³²
- The sole recipient of anti-tampering and anti-theft plans of the electric utility;³³
- The sole recipient of action plans regarding missed performance targets;³⁴ and
- The sole recipient of proposed methods to measure circuit performance and sole arbiter of the adequacy of such methods.³⁵

In the rules proposed on July 23, 2008, the PUCO Staff remains the only party in many areas that is provided enough information to oversee the compliance of the electric utility’s service. Given the recent history of electric utilities failing to meet their

³¹ Consumer Groups comments at 4-7 (June 8, 2007).

³² Ohio Adm. Code 4901:1-10-09(A) and (B).

³³ Ohio Adm. Code 4901:1-10-20(A).

³⁴ Ohio Adm. Code 4901:1-10-10(D).

³⁵ Ohio Adm. Code 4901:1-10-11(B)(2), 4901:1-10-11(B)(3), 4901:1-10-11(B)(4), 4901:1-10-11(C)(1), and 4901:1-10-11(D).

negotiated performance targets and the affects of those failures on both the residential and business customers OCEA asks for a more transparent process.

The Commission should not lose sight of the fact that the utilities' obligation to serve for which they are compensated through rates established by this Commission is premised on adequate service. 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. Therefore, all the information set forth above that under this proposal would go only to one staff person, should instead be docketed and made available to the public.

D. The Definition of “Major Event”, as Contained in IEEE Standard 1366-2003, Should not be Adopted.

AEP and FirstEnergy recommend in their initial comments that the Commission adopt the definition of “major event” proposed by the PUCO Staff.³⁶ The companies support the PUCO Staff-proposed rule based on the definition of “major event” contained in section 3.1.2 and 4.5 of IEEE Standard 1366-2003.³⁷ The IEEE definition proposed by the PUCO Staff and supported by AEP and FirstEnergy is referred to as the “2.5 beta methodology.”³⁸ As a general matter, OCEA opposes the adoption of definitions or standards that are not accessible to consumers. IEEE definitions and standards, as well as the rationale utilized in developing them, are only available by subscription or for a substantial fee.

³⁶ The proposed definition of “major event” is contained in Rule 4901:1-10-01(P). See AEP comments at 6; and FirstEnergy comments at 11.

³⁷ “IEEE” is the Institute of Electrical and Electronics Engineers, Inc.

³⁸ The entire justification and rationale for the development of the IEEE definition of “major event” is contained in Annex B of IEEE Std. 1366-2003. Standard 1366-2003 (“IEEE Std. 1366”) is entitled “IEEE Guide for Electric Power Distribution Reliability Indices.”

OCEA recommends that the Commission adopt the definition of “major event” as proposed in OCEA’s initial comments:³⁹

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.

The definition of “major event” recommended by OCEA, or some variation of it, is employed by many utilities and/or imposed by a number of state public utilities commissions.⁴⁰ It appears that no state has seen fit to employ the “2.5 beta

³⁹ OCEA comments at 30.

⁴⁰ New York and Pennsylvania Commission use the “10%” standard recommended by 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 EDUs. More than one-third of the respondents utilized a variation of the definition of “major event” recommended by OCEA.

methodology.” OCEA’s recommended definition, however, 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; and
- Entities that adopt the methodology will calculate indices on a normalized basis for trending and reporting. They will further classify the major event days separately and report on those days through a separate process.⁴¹

OCEA’s definition of “major event” is understandable to all stakeholders, including consumers. The IEEE definition, in contrast, is overly complicated and difficult to understand. The definition, in fact, is not easy to apply for non-engineers. Second, OCEA’s definition of “major event” is specific and can be calculated by each utility using the same process. Third, the definition recommended by OCEA is fair to all electric utilities regardless of geography, size, or design. Fourth, the nature of the definition of “major event” recommended by 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. 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 PUCO 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 PUCO Staff, and given that it would be “unique” in terms of what other states have adopted in this regard, the adoption of this overly

⁴¹ IEEE Std. 1366, Annex B, at 26.

complicated and unproven approach would not be appropriate. Finally, OCEA has made a minor modification to the definition for “major event” as proposed in its Initial Comments. The modification reflects the need for an electric utility to support the use of the “major event” exclusion to ensure that related outages were beyond its control.

OCEA recognizes 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. The application process contemplated in PUCO Staff’s proposed amendments to Ohio Adm. Code 4901:1-10-10 would be a logical forum for ensuring that OCEA’s proposed definition of major event is incorporated into the calculation of performance standards.

E. The Criticism over “Automatic” Violations and Exculpatory Language is Misplaced.

DP&L and AEP voice concerns about certain “automatic violations” that are contained within the proposed rules that result in a lack of due process for the electric utilities.⁴² DP&L argues that there should be a rebuttable presumption of a violation so that utilities have an opportunity to prove that it is not in violation of the ESSS.⁴³

The concerns stated by DP&L and AEP are misplaced. These companies do not clearly state the alternatives they favor. First and foremost, no automatic penalties have been proposed for failure to meet any of the PUCO Staff-proposed ESSS. Second, OCEA is confident that the Commission has and will continue to provide the electric utilities with ample opportunity to rebut any findings that a provision of the ESSS has

⁴² DP&L comments at 2-3.

⁴³ DP&L comments at 3.

been “violated.” In order to pursue an electric utility’s failure to meet annual reliability standards, the rule must set forth the standard and explicitly state that a failure to meet the standard is a violation of the rule. At that point, the Commission has a wide range of informal and formal enforcement options which OCEA does not at this time propose to change.

4901:1-10-01 Definitions:

Comment about definition (F) – Critical Customer

OCEA agrees with GCHC’s proposed change to the definition of “critical customer.”⁴⁴

“Critical customer” means any HOSPITAL, NURSING HOME OR LONG-TERM FACILITY AS DEFINED IN R.C. 3701.01 OR ANY customer or consumer on a medical or life-support system who has provided appropriate documentation to the electric utility that an interruption of service would be immediately life-threatening.

Comment about definition (P) – Governmental Aggregation Program

OCEA agrees with Northeast Ohio Public Council’s (“NOPEC”) comments and proposed change to the definition of “Governmental aggregation program.”⁴⁵

Comment about definition (U) -- Postmark

The PUCO Staff proposed a definition for postmark that included the recording of the actual date in which an item is deposited in the mail. OCEA supports the definition for postmark as proposed by the PUCO Staff. There are a number of different consumer protections in the rules where time requirements for customers to initiate some action are

⁴⁴ GCHC comments at 4.

⁴⁵ NOPEC comments at 3.

triggered based on when the item is mailed. Relying upon the date on a letter or imprint on a bill, which may not contain a date, is not necessarily affording customers sufficient time to respond. Electric utilities may experience delays in mailing the materials to customers which would result in customers having less time to respond. The postmark date is an effective item to use for these purposes because the delivery to the customer is no longer under the control of the electric utility. OCEA notes that the Commission recently adopted the identical definition in the Minimum Telephone Service Standards (“MTSS”).⁴⁶ In addition, the Commission addressed the timing issues associated with non-traditional postmarks in the Minimum Gas Service Standards by requiring that all bills without postmarks be mailed no later than the day listed on the bill.⁴⁷

Comment about definition (Y) -- Sustained Outage

AEP recommends that the definition of “sustained outage” in proposed Rule 4901:1-10-01(Y) should be modified to agree with the IEEE Std 1366-2003 definition 3.11 for “loss of service” so that “partial power” outages are considered as sustained outages.⁴⁸ The above-cited definition of “loss of power” reads, in pertinent part: “A complete loss of voltage on at least one normally energized conductor to one or more customers.” OCEA agrees with AEP that the definition of “sustained outage” should be modified to include a provision that “partial power” outages of greater than five minutes

⁴⁶ *In the Matter of the Review of the Commission’s Minimum Telephone Service Standards Found in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 05-1102-TP-ORD, Application for Rehearing (July 11, 2007). (“MTSS AFR”).

⁴⁷ Ohio Adm. Code 4901:1-13-11 (C).

⁴⁸ AEP comments at 6. “An example of a partial power situation is when a residential customer loses one conductor of their 120/240-volt service. It basically interrupts one side of the customer’s breaker box, but the other side often works fine. Half of the customer’s lights do not work and any 240-volt appliances (heat pump/AC, oven, water heater, and clothes dryer) will not work since the customer only has partial-voltage service.”

should also be categorized as “sustained outages.”⁴⁹ While partial power may result in some home appliances being able 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. This does not count the outage minutes associated with partial power outages that will result in the collection and reporting of inaccurate data.

Comment about definition (BB) – Voltage Excursions

OCEA agrees with the comments of GCHC relating to the definition of “voltage excursions.”⁵⁰ A single set of voltage standards should be adopted by the Commission. As GCHC states in its comments “[v]oltage excursions can result in damage and or loss of equipment and service.”⁵¹ Accountability for problems caused by voltage variance is important to the public safety and the reliability of the electric distribution system. The Commission should adopt GCHC’s recommendations.

Proposed additional definition – Microturbine

Ohio Advance Energy (“OAE”) has proposed the following definition of “microturbine:”⁵²

“Microturbine” MEANS AN INTEGRATED SYSTEM COMPRISED OF A GAS TURBINE ENGINE, A COMBUSTOR, A RECUPERATOR OR REGENERATOR, A GENERATOR OR ALTERNATOR, AND ASSOCIATED BALANCE OF PLANT COMPONENTS WHICH CONVERTS A FUEL INTO ELECTRICITY AND THERMAL ENERGY, AND OTHER FORMS OF COGENERATION.

⁴⁹ AEP comments at 7.

⁵⁰ GCHC at 5-6.

⁵¹ Id.

⁵² OAE comments at 4-5.

OAE cites 26 U.S.C.S. § 48 as a reference for the definition and states that the term should be broadly defined “to encourage implementation of distributed generation across customer classes and promote the use of alternative energy resources. OCEA agrees with OAE that the definition be broadly defined and recommends that the Commission adopt the proposed definition with OCEA’s edits.⁵³ This revised language is consistent with the Ohio Farm Bureau’s recommendation that net-metering definitions should be expanded to recognize any possible new technology that could provide on-site generation.

4901:1-10-02 Purpose and Scope – “Statutorily Authorized”

AEP argues that Subdivision (B)(1) should recognize the legal limits on Commission authority.⁵⁴ AEP recommends that this limitation can be accomplished by adding language to the rule indicating that the Commission’s power is limited to that “statutorily authorized.” OCEA disagrees with the recommendation. The PUCO is a creature of statute.⁵⁵ The general revision of the ESSS does not exceed the Commission’s authority and all such revisions are subject to a test against statutes regarding their validity. The addition of the language proposed by AEP is unnecessary.

Comment about Rule 4901:1-10-02(F)

Duke opposes the rebuttable presumption disclaimer regarding customer complaints about the adequacy of service.⁵⁶ OCEA disagrees with Duke’s comments. There should not be a rebuttable presumption of an electric utility’s adequacy of service

⁵³ OAE comments at 3.

⁵⁴ AEP comments at 7.

⁵⁵ Akron & Barberton Rd. Co. v. P.U.C.O, 165 Ohio St. 316, 319 (1956).

⁵⁶ Duke comments at 4.

in circumstances where compliance is measured on a system-wide basis, when individual customers file complaints with the Commission. A rebuttable presumption of adequacy of service would unfairly shift the burden to the consumer in such instances. An individual customer could well be receiving inadequate service even when an electric utility as a whole is providing adequate service in the entirety of its service territory, as measured by company-wide reliability data. The Commission should retain the language proposed by the PUCO Staff.

OCEA disagrees with FirstEnergy's comments regarding the use of system-wide data to establish a rebuttable presumption that an individual customer is receiving adequate service.⁵⁷ The proposed language added by the PUCO Staff merely affirms that individual customers may be receiving inadequate service, even if an electric utility's service meets system-wide performance standards. In any complaint proceeding under R.C. 4905.26, customers still bear the burden of proving that the service provided by the electric utility to their residence is inadequate. The Commission should retain the PUCO Staff's proposed language.

4901:1-10-02: Purpose and Scope -- Limitation on Liability

Duke opposes the PUCO Staff's proposed constraints on limitation of liability language in electric utility's tariffs.⁵⁸ Duke also asserts that the constraints limit the electric utilities discretion and interfere with its ability to manage its business.⁵⁹ Duke recommends that the Commission modify the PUCO Staff's proposed language to provide "deference" to the utilities that are "complying with the PUCO Staff's business

⁵⁷ FirstEnergy comments at 13-14.

⁵⁸ Duke comments at 4-5.

⁵⁹ Id.

requirements.⁶⁰ Duke also reiterates its comments from the 2007 rulemaking that electric utilities should be permitted to tariff language “which is binding on the Commission in complaint proceedings.”⁶¹

DP&L maintains that uninterruptible power cannot be achieved at reasonable rates, especially considering acts of God and other events outside the control of the utility.⁶² Therefore, DP&L claims that this section of the rule be deleted.

OCEA disagrees with the positions of AEP, Duke and DP&L. OCEA recommend that the Commission adopt the recommendations of the Industrial Energy Users-Ohio (“IEU”), set forth in IEU’s initial comments in relation to the 2007 proposed rules, regarding the limitation of liability clauses in electric utility tariffs.⁶³ OCEA agrees with IEU that while the PUCO Staff’s attempt to reduce the confusion surrounding liability clauses is to be commended,⁶⁴ such efforts are in vain. IEU cites Supreme Court precedent which dictates that “[a] public utility cannot limit its liability from its own negligence through an exculpatory clause when providing a required service to a consumer”⁶⁵ but “[a] utility may limit its liability through an exculpatory clause when providing a service that it is not legally obligated to provide.”⁶⁶ OCEA agrees with IEU’s recommendation that the Commission should either require the removal of the limitation

⁶⁰ Id.

⁶¹ Id. at 5.

⁶² DP&L comments at 4-5.

⁶³ IEU comments at 3-4. (June 8, 2007).

⁶⁴ Id. at 5.

⁶⁵ *Berjian, D.O., Inc. v. Ohio Bell Tel. Co.*, 54 Ohio St. 2d 147, 153-154 (1978).

⁶⁶ Id. at 155-156.

on liability clauses or require language that such clauses only apply to services that are not required under Ohio law.⁶⁷ In other words, limitation of liability clauses in electric utility tariffs should not apply to the provision of regulated services. Consumers have a right to terms and conditions within a tariff that accurately reflect the responsibilities of the electric utility. These rights extend to knowledge that electric utilities have responsibility and liability for the service provided.

OCC also agrees with the comments of the Competitive Suppliers regarding Ohio Adm. Code 4901:1-10-02(G) and exculpatory clauses in tariffs that potentially limit electric utility liability.⁶⁸ The PUCO Staff-proposed rule reads:

No tariff of an electric utility shall incorporate exculpatory clauses that purport to limit or eliminate liability on the part of the electric utility to its customers or others as a result of its own negligence when providing a regulated service, No electric utility tariff shall incorporate provisions which purport to establish liability on the part of the electric utility's customers for acts or failures to act involving an electric utility's facilities, which are beyond the control of the customer. Any contrary provisions in an electric utility's tariff now on file with the commission shall be eliminated.

The Competitive Suppliers cite a prior Commission case in which the Commission reviewed whether exculpatory clauses should be included in tariffs.⁶⁹ The Commission stated that approval by the Commission, of limitation of liability language “does not constitute a determination by the Commission that the limitation of

⁶⁷ IEU comments at 4 (June 8, 2007).

⁶⁸ The Competitive Suppliers are comprised of Constellation NewEnergy, Inc., Direct Energy Services, LLC, and Integrys Energy Services, Inc.

⁶⁹ *In the Matter of the Investigation into Limitation of Liability Clauses Contained in Utility Tariffs*, Case No. 85-1406-AU-COI, Finding and Order (October 6, 1987).

liability imposed by the Company should be upheld in a court of law.”⁷⁰ OCEA also supports the Competitive Suppliers’ proposed revision to the PUCO Staff-proposed rule:

No tariff OR AGREEMENT of an electric utility shall incorporate exculpatory clauses that purport to limit or eliminate liability on the part of the electric utility to its customers or others, INCLUDING CRES PROVIDERS, as a result of its own negligence, GROSS NEGLIGENCE, OR INTENTIONAL MISCONDUCT when providing a regulated Service, NOR SHALL ANY AGREEMENT BETWEEN AN ELECTRIC UTILITY WITH A CRES PROVIDER REQUIRE INDEMNITY OF THE UTILITY WITH RESPECT TO CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE ELECTRIC UTILITY’S NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. No electric utility tariff shall incorporate provisions which purport to establish liability on the part of the electric utility’s customers for acts or failures to act involving an electric utility’s facilities, which are beyond the control of the customer. Any contrary provisions in an electric utility’s tariff now on file with the commission shall be eliminated.

AEP commented extensively on the proposed revision to Ohio Adm. Code 4901:1-10-02(G) but such comments appear targeted to the PUCO Staff’s language in the first iteration of the proposed rules issued on April 4, 2007. The PUCO Staff’s latest proposed revision to the rule is quite different. As such, OCEA has no reply to AEP’s comments.

4901:1-10-03 Records

Presumption of Guilt

AEP opposes the “presumption of guilt” that the rule attaches to a recordkeeping failure and found the duty to keep records to demonstrate compliance with recordkeeping

⁷⁰ Competitive Suppliers comments at 5.

provisions is too vague.⁷¹ AEP also proposes that should the rule be adopted it should be prospective in nature.⁷²

FirstEnergy expresses concern with the lack of a standard for demonstrating compliance with the rules of the chapter, as well as the lack of guidance concerning how that determination would be made.⁷³

OCEA disagrees with the comments of AEP and FirstEnergy and agrees with the PUCO Staff's modification to the rule. OCEA notes that the MTSS, just adopted by the Commission, have an identical requirement.⁷⁴ Enforcement of the ESSS is dependent on the recordkeeping of the electric utilities. The failure to keep records which document compliance with the rules renders the ESSS unenforceable and meaningless. The PUCO Staff proposed language does allow the electric utilities the opportunity to rebut the presumption of noncompliance.

4901:1-10-04 Equipment for Voltage Measurement and System Voltage and Frequency Requirements

OCEA agrees with the comments of OHA and GCHC that a single set of voltage standards should be developed for all electric utilities.⁷⁵ OCEA agrees that variations in voltage can be particularly problematic for hospitals and health care facilities.⁷⁶ OCEA

⁷¹ AEP comments at 10.

⁷² Id.

⁷³ FirstEnergy comments at 15.

⁷⁴ The new rule, Ohio Adm. Code 4901:1-5-11(A), is pending approval by the Joint Committee on Agency Rule Review.

⁷⁵ OHA comments at 3; and GCHC comments at 6.

⁷⁶ OHA comments at 3.

recommends that the Commission develop such voltage standards and incorporate them in the ESSS.

Comment about Rule 4901:1-10-04(B)(3)

OCEA agrees with GCHC that voltage excursions should be included in setting voltage performance standards.⁷⁷ As GCHC notes, should the voltage excursion be outside the control of the utility, the electric utility can provide this information to the Commission.

Comment about Rule 4901:1-10-04 (B)(4)

OCEA also recommends that the Commission adopt GCHC’s recommendation to adopt common standards regarding voltage ranges and that it is not enough for electric utilities to “reasonably ensure” that delivery ranges are acceptable.⁷⁸

4901:1-10-07 Outage Reports

OCEA agrees with OHA and GCHC that the outage-related information required by Ohio Adm. Code 4901:1-10-07(A) should be posted on either the electric utility’s website or the Commission’s website within 24 hours in addition to be provided to the Commission’s outage coordinator.⁷⁹ The outage information is particularly relevant because the outages reported pursuant to this rule affect a large number of customers for a lengthy period of time. OCEA also agrees that critical life support locations, as defined

⁷⁷ GCHC comments at 6.

⁷⁸ Id.

⁷⁹ OHA comments at 5.

in R.C. 3701.01, such as hospitals, long term care facilities and nursing facilities should be included in the list of reportable locations in Ohio Adm. Code 4901:1-10-07(A)(4).⁸⁰ While OCEA is uncertain as to what precise duration of an interruption of service should qualify as an outage, the comments of OHA and GCHC indicate that the Commission should review the four-hour requirement. The impact of a four-hour outage on a health care facility could be catastrophic.

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

Comments about Rule 4901:1-10-08(B)(17)

FirstEnergy and AEP argue that several provisions of Ohio Adm. Code 4901:1-10-08 should be modified to remove any requirement that the electric utilities report, or perform an assessment on the implementation of “part” of their respective emergency plans.⁸¹ OCEA disagrees with the comments of AEP and FirstEnergy regarding this reporting requirement. Presumably, an electric utility evaluates its response to an emergency plan that is put into action to assess and improve its performance. It is doubtful that such an assessment follows only a full implementation of the emergency plan. The electric utilities merely need to share the results of these assessments with the Commission. The Commission is entitled to be fully informed of the emergency-preparedness of the electric utilities and the impact on customers.

In our initial comments, OCEA recommended that the emergency plan be made available for review by OCC and that copies of related reports be made available to

⁸⁰ GCHC comments at 7.

⁸¹ FirstEnergy comments at 17; .and AEP comments at 12.

OCC.⁸² The emergency plan provides the detail that is necessary to assess an electric utility's ability to respond to public demands following a major emergency. As the legal representative for the residential electric customers in the state, OCC needs a copy of the plan and reports to perform its statutory role in ensuring quality and reliable service.

4901:1-10-08(J)

OCEA agrees with OHA and GCHC that Ohio Adm. Code 4901:1-10-08(J) should be amended to include hospitals, nursing homes, and long-term care facilities in the required emergency exercises.⁸³ OCEA also agrees with GCHC:

- 1) That the utilities be required to participate fully in annual communitywide emergency response drills.
- 2) That the utilities' participation be assessed and reported in the same manner as all other participants.
- 3) That each electric utility shall coordinate the implementation of its emergency plan with the county or regional emergency management authority for each occurrence.
- 4) That the basic electric utility emergency plan less only proprietary information, but including key contact persons information be made available to the county or regional emergency management authority, to all effected police and fire organizations and to all hospitals served by that utility.⁸⁴

The Commission should adopt the recommendations of GCHC and incorporate the recommendations with the existing proposed rule in order to integrate the electric utilities emergency response with other emergency responders and providers.

⁸² OCEA comments at 40.

⁸³ OHA comments at 3-4; and GCHC comments at 8.

⁸⁴ GCHC comments at 8-9.

4901:1-10-09 Minimum Customer Service Levels

Comments about Rule 4901:1-10-09(B)

AEP supports the change in customer call wait time from sixty to ninety seconds.⁸⁵ Interestingly enough, AEP provided no rationale for why they support the change in answer time to ninety seconds. An average call answer time of ninety seconds means that a large number of customers can expect to wait for periods of time much longer than ninety seconds before the call is even answered. In addition, the degradation in call answer time doesn't necessarily mean that customers can expect to reach a representative of the electric utility after waiting for such long periods of time. In fact, customers can experience lengthy delay even when having the phones answered by automated answering systems.

In initial comments, OCEA objected to changing the average call answer time from sixty seconds to ninety seconds.⁸⁶ This 50% degradation in average call answer time was not supported with any rationale from the PUCO Staff. OCEA is unaware of any reports that electric utilities provided to the PUCO Staff indicating difficulty in achieving the current average sixty seconds answer time. Furthermore, OCEA is unaware of any contacts with the public indicating that the sixty seconds average answer has been an issue. 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.

⁸⁵ AEP comments at 13.

⁸⁶ OCEA comments at 43.

The Commission should disregard the PUCO Staff's proposal to change the average call answer time from sixty seconds to ninety seconds. In addition, the Commission should adopt OCEA's recommendation for clarifying that the average sixty seconds answer time should be to reach a representative of the electric utility and not just an answering system. Finally, the Commission should adopt OCEA's recommendation to require electric utilities to provide customers the option to have a call-back from the electric utility when call answering times exceed sixty seconds. There is no public benefit to changing a standard that provides customers with worse instead of better service.

OCEA agrees with the comments of OHA and GCHC that the performance of the electric utilities relative to the minimum customer service levels contained in Ohio Adm. Code 4901:1-10-09, should be posted on the electric utility's public website or the PUCO's public website.⁸⁷ As OHA and GCHC note, hospitals are required to publicly report their performance on many critical performance measures.⁸⁸ The performance of the electric utilities in providing service to its customers is a matter of public interest and should be available to customers to ensure they are receiving the level of service they pay for.

General Comments on Proposed Reliability Rules, Chapters 4901:1-10-10 and 4901:1-10-11

Initially, OCEA notes that our initial comments proposed merging Ohio Adm. Code 4901:1-10-10 and 4901:1-10-11 which entailed rewriting the rules for clarity and

⁸⁷ OHA comments at 4; and GCHC comments at 9.

⁸⁸ Id.

cohesion.⁸⁹ OCEA's replies will track the PUCO Staff's proposed rules, as initially commented on by all parties.

AEP supports the elimination of SAIDI and ASAI in (B)(1).⁹⁰ Neither AEP nor the PUCO Staff provided justification for eliminating SAIDI as a reliability measurement. OCEA strongly disagrees with the Commission Staff's decision to remove SAIDI from Rule 26. SAIDI is a measure of the duration of an outage across 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."⁹¹ 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.⁹² Without SAIDI there is no comprehensive measure for how well the overall distribution system is performing. OCEA also supports the recommendation of OHA that the electric utilities' performance relative to the standards in this rule, be posted on the Commission's website within a timely manner from when the Commission has receipt of the electric utilities' reports.⁹³

⁸⁹ OCEA comments at 62-66.

⁹⁰ AEP comments at 13.

⁹¹ IEEE Std. 1366 at 17.

⁹² IEEE Std. 1366, Annex B, at 28.

⁹³ OHA comments at 4.

4901:1-10-10 Distribution System Reliability

Comment about Rule 4901:1-10-10(B)(1)

As OCEA noted above, as well as in the Consumer Groups' initial comments in 2007, the performance measures for SAIDI and MAIFI should be included in this rule.⁹⁴

(B) Service reliability indices and minimum performance standards.

(1) The service reliability indices are as follows:

"CAIDI," or the customer average interruption duration index, represents the average interruption duration or average time to restore service per interrupted customer. CAIDI is expressed by the following formula:

CAIDI = Sum of customer interruption durations ÷ Total number of customer interruptions

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.

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:

"SAIFI," or the system average interruption frequency index, represents the average number of interruptions per customer. SAIFI is expressed by the following formula:

⁹⁴ Consumer Groups comments at 67-79 (June 8, 2007).

SAIFI = Total number of customer interruptions divided by the
Total number of customers served

Comment about Rule 4901:1-10-10(B)(2)

OCEA recommends that the Commission require the electric utilities to file an application proposing its new performance standards not later than 90 days after the effective date of these rules. Each of the electric utilities has filed, or is expected to file, applications with the Commission to implement the provisions of SB 221. New performance standards should be established during approximately the same timeframe. It is critical for the Commission to establish firm performance standards for each electric utility prior to the approval of any Electric Security Plan (“ESP”).

(2) Each electric utility in this state shall file with the commission an application to establish company-specific minimum reliability performance standards. EACH ELECTRIC UTILITY SHALL FILE AN APPLICATION TO ESTABLISH ITS COMPANY-SPECIFIC PERFORMANCE STANDARDS WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THIS RULE.

Comment about Rule 4901:1-10-10(B)(2)(a)

FirstEnergy requests clarification concerning how the enumerated factors will be incorporated into performance targets.⁹⁵ Initially, OCEA recommended that the *targets* referenced by FirstEnergy be replaced by *standards*. The concern regarding precisely how an exhaustive list of factors should impact the development of a particular electric utility’s reliability standards is unwarranted. OCEA continues to support measures of reliability that are company-specific. Such company-specific standards, however, should be developed with the input of interested parties.

⁹⁵ FirstEnergy comments at 11.

Comment about Rule 4901:1-10-10(B)(4)(b)

AEP and FirstEnergy request clarification regarding the use of customer surveys in developing performance targets as required by proposed rule 4901:1-10-10 (B)(4).⁹⁶ OCEA addressed the issue of the customer perception surveys in initial comments.⁹⁷ OCEA believes that customer perception surveys should play a role in providing important insight to the Commission and other stakeholders about the perceptions customers have about their electric service. Furthermore, surveys can help assess levels of understanding customers have about charges on their bill, service options, and perceptions about their electric utility. However, customer perception surveys should not be utilized in the development of reliability standards such as those contained in this PUCO 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 targets.

Comment about Rule 4901:1-10-10(B)(4)(c)

OCEA supports the PUCO Staff's exclusion of transmission outages from the reporting required in Ohio Adm. Code 4901:1-10-10(B)(4)(c). Rule 10 specifically addresses *distribution* system reliability and the reporting should reflect that. OCEA, therefore, disagrees with both FirstEnergy and GCHC that the measures include

⁹⁶ AEP comments at 13; and FirstEnergy comments at 18.

⁹⁷ OCEA comments at 54.

transmission-related outage data.⁹⁸ There are provisions in Ohio Adm. Code 4901:1-10-27(C) that address transmission performance. Including transmission and distribution reliability reporting in a rule targeted to distribution reliability is confusing and contrary to the intent of the rule.

Comment about Rule 4901:1-10-10(B)(7)

AEP supports the use of an automatic approval provision for establishing electric utility performance targets.⁹⁹ In addition, AEP proposes that the PUCO Staff should be required to provide a detailed explanation if the proposed standards are not accepted.¹⁰⁰ For all of the reasons identified earlier in these comments, the OCEA urges the Commission to establish reliability performance standards as opposed to reliability targets as proposed by the PUCO Staff. The development of measurable reliability standards will go a long way towards enabling more meaningful reliability benchmarks in Ohio and guard against any arbitrary approval that is required by the PUCO Staff alone. OCEA recommends that the Commission should affirmatively approve the targets rather than continue an automatic approval process. AEP's suggestion that the PUCO Staff provide an explanation for disapproving targets is reasonable.¹⁰¹ The Commission, however, should require that any such explanation be filed with the Commission so that public input can be obtained.

⁹⁸ FirstEnergy comments at 18-19; and GCHC comments at 9.

⁹⁹ AEP comments at 14.

¹⁰⁰ AEP comments at 10.

¹⁰¹ Id.

AEP cites the potential of a possible hearing if no “rejection statement” is issued by the PUCO Staff.¹⁰² Apparently, AEP has not read the PUCO Staff’s proposed amendments to Ohio Adm. Code 4901:1-10-10 issued with the Commission Entry on July 23, 2008. The Commission Staff’s proposed revisions to the rule would require the electric utilities not only to file an application with the Commission to establish performance *standards*, but would also require the filing of workpapers to support the proposed standard, a technical conference to explain the rationale for its proposed standards to intervening parties, and a notice and comment period. Ohio Adm. Code 4901-10-10(B)(2) – (B)(7).

Comment about Rule 4901:1-10-10(C)

OCEA agrees with GCHC that the annual report required by this rule be posted to either the utility’s website or the PUCO’s website “together with any deficiencies and related action plans.” The customers of the electric utilities have a right to be fully informed regarding the quality of service they are paying for.

Comment about Rule 4901:1-10-10 (E)

AEP opposes the provision that a failure to meet a performance target for two years would be a violation of the rule.¹⁰³ AEP also commented that this sort of auto-enforcement mechanism would discourage electric utilities from setting aggressive targets and foster disagreement between the Commission and the electric utilities.¹⁰⁴

DP&L argues that variability in system reliability is to be expected, and that the two consecutive years’ language should be changed to three consecutive years to avoid

¹⁰² Id.

¹⁰³ AEP comments 14.

¹⁰⁴ Id. at 15.

the electric utility being blamed for events that are outside of its control.¹⁰⁵ DP&L refers to a “penalty” being applied after the three consecutive years of noncompliance referenced above.¹⁰⁶

OCEA does not agree with the concerns of the electric utilities. The electric utilities’ arguments suggest that the Commission’s reliability rules should consist of a reliability “target” negotiated with the PUCO Staff and not otherwise subject to public review and comment. Furthermore, the utility comments suggest that the rule should not provide for enforcement of any of these “targets” but if the rule must do so, the electric utility should be allowed up to three years to fail to meet the target prior to any formal action to assure compliance. This is simply ludicrous. If a customer fails to pay a deposit, would the utility give him or her three years to come up with the funds? Regulations such as these exist because they are needed to ensure the integrity of the system for which customers are paying their hard earned cash. Service reliability such as what is being suggested here, in the private sector would never be tolerated by customers who would shop elsewhere. Monopolies should not be allowed operate on a significantly inferior standard where captive customers have no such options. This approach is not reasonable, nor does it constitute fair reliability regulation. Three years is simply too long a timeframe for an electric utility to be out of compliance and allowed to provide less than adequate service. When noncompliance occurs, the utility should be required to remedy the situation as quick as possible and regulators should not create a policy that allows the inadequate service to persist. For the customers who bear the brunt of service inadequacies, three years is hardly acceptable.

¹⁰⁵ DP&L comments at 6-7.

¹⁰⁶ Id.

OCEA supports an open and transparent process to establish reliability standards for each electric utility. These standards should be met annually and the failure to meet any standard should be subject to Commission enforcement, which we acknowledge reflects a wide range of options. The discretion should lie with the response to the nature and scope of the “violation” and should not allow the utility to repeatedly fail to meet the required reliability standards before taking any action. The electric utilities should have input in the development of the standards. The reliability indices reflect an annual average of the entire electric utility service territory. The fact that the standards are annual averages means that unique and random events are masked by the average of thousands of outage events. The purpose of the rule and the standards is to measure the utility’s management of outage events, a function directly within their control.

Comment about Rule 4901:1-10-10(G): Distribution Circuit Performance

OCEA notes that in OCEA’s comments we proposed to merge Ohio Adm. Code 4901:1-10-10 and Ohio Adm. Code 4901:1-10-11.¹⁰⁷ However, for readability, OCEA’s reply to the initial comments of the other parties will continue to refer to the rule number as originally proposed by the PUCO Staff. Based on the comments of many of the parties regarding circuit reliability, OCEA has modified Ohio Adm. Code 4901:1-10-10 as proposed in our initial comments to include many of the provisions that the PUCO Staff initially proposed as part of Ohio Adm. Code 4901:1-10-11.

PROPOSED RULE CHANGE:

- (G) EACH ELECTRIC UTILITY SHALL FILE WITH THE COMMISSION, A PROPOSED METHOD TO CALCULATE CIRCUIT PERFORMANCE, BASED ON

¹⁰⁷ OCEA comments at 62.

THE SERVICE RELIABILITY INDICES DEFINED IN PARAGRAPH (B)(1) OF RULE 4901:1-10-10 OF THE ADMINISTRATIVE CODE. AN ELECTRIC UTILITY MAY REVISE THE METHOD IT USES FOR CALCULATING CIRCUIT PERFORMANCE, (- STARTING WITH THE NEXT SUCCEEDING CALENDAR YEAR) BY FILING SUCH REVISIONS AND SUPPORTING JUSTIFICATION FOR SUCH REVISIONS WITH THE COMMISSION. SUCH REVISIONS SHALL BE FILED SIMULTANEOUSLY WITH THE DIRECTOR OF THE-SERVICE MONITORING AND ENFORCEMENT DEPARTMENT.

(H) 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 FILE WITH THE COMMISSION, NO LATER THAN NINETY DAYS AFTER THE END OF ITS REPORTING PERIOD, A REPORT WITH THE COMMISSION THAT IDENTIFIES THE WORST PERFORMING EIGHT PER CENT OF THE ELECTRIC UTILITY'S DISTRIBUTION CIRCUITS DURING THE PREVIOUS TWELVE-MONTH REPORTING PERIOD. THE REPORT SHALL SIMULTANEOUSLY BE SUBMITTED TO THE DIRECTOR OF THE SERVICE MONITORING AND ENFORCEMENT DEPARTMENT.

(2) UNLESS OTHERWISE APPROVED BY THE COMMISSION, EACH ELECTRIC UTILITY'S REPORTING PERIOD FOR PURPOSES OF PARAGRAPH (A) 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 (A) 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 (SAIDI) DETERMINED ACCORDING TO PARAGRAPH (B)(1) OF RULE 4901:1-10-10 OF THE ADMINISTRATIVE CODE.
- (I) MOMENTARY AVERAGE INTERRUPTION FREQUENCY INDEX (MAIFI) DETERMINED ACCORDING TO PARAGRAPH (B)(1) OF RULE 4901:1-10-10 OF THE ADMINISTRATIVE CODE.
- (J) 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.

- (K) 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.
- (L) THE TOTAL NUMBER OF OUTAGES EXPERIENCED DURING THE REPORTING PERIOD, TOGETHER WITH AN EXPLANATION OF THE CAUSE OF EACH SUCH OUTAGE.
- (M) THE TOTAL NUMBER OF OUTAGES EXPERIENCED DURING THE REPORTING PERIOD, TOGETHER WITH AN EXPLANATION OF THE CAUSE OF EACH SUCH OUTAGE.
- (N) 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.
- (O) EACH ELECTRIC UTILITY SHALL SUBMIT THE REPORTS, REQUIRED BY THIS RULE, ON ELECTRONIC MEDIA, IN A FORMAT PRESCRIBED BY THE COMMISSION.
- (P) 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.

- (1) 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.
- (2) 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.
- (3) 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.

OCEA has proposed merging Ohio Adm. Code 4901:1-10-10 and Ohio Adm. Code 4901:1-10-11. OCEA's reply comments, however, are numbered to correspond with the commenters initial comments.

Proposed Rule 4901:1-10-11(B)(1)

OCEA strongly disagrees with FirstEnergy's recommendation to include transmission outages in the calculation of circuit performance data.¹⁰⁸ The rule is intended to measure the performance of the circuit – not transmission outages. Further

¹⁰⁸ FirstEnergy comment at 18.

reliability complaints regarding outages on the transmission system should be categorized as such and should not reflect on an electric utility's distribution system reliability.

OCEA concurs with GCHC that major storm data should not be excluded from the calculation of circuit reliability unless the reliability of the circuit *with* major storm data excluded is added as a separate circuit performance measurement.¹⁰⁹

Proposed Rule 4901:1-10-11(C)(3)

OCEA recommends that the Commission adopt the recommendation of OHA and GCHC to include “the number of critical customers including hospitals and medical facilities on the circuit” as part of the electric utilities’ reporting on worst-performing circuits.¹¹⁰

Comments about Rule 4901:1-10-11(C)(3)(e)

While OCEA acknowledges that SAIDI is the product of CAIDI times SAIFI, the breakdown of the frequency and duration of outages on circuits provides invaluable information to the Commission and the public. Since SAIDI is, in fact, the product of the measures noted above, the information is readily available to the electric utilities and should be provided. Also, even though SAIDI is the underlying measurement for the PUCO Staff’s proposed measure for “major event”, OCEA does not support the “2.5 Beta Method” for determining major events.¹¹¹ The Commission should not accept FirstEnergy’s recommendation to eliminate the reporting of CAIDI and SAIFI as circuit performance measures.

¹⁰⁹ GCHC comments at 10.

¹¹⁰ OHA comments at 4; and GCHC comments at 11.

¹¹¹ OCEA Reply comments (above) at 12.

AEP supports the fact that the PUCO Staff has removed the MAIFI provision in current rule (C)(3)(d) because the equipment to measure for the MAIFI index is not yet installed.¹¹² DP&L approves of the deletion of MAIFI.¹¹³ DP&L applauds the Commission for recognizing that reporting on this index is unnecessary.

OCEA is opposed to the elimination of MAIFI as a measurable performance standard. MAIFI provides an important indication of how often customers are experiencing momentary interruptions in service. Momentary interruptions are not just a source of annoyance for customers, but can also damage expensive electronic equipment and appliances. MAIFI should also be of value to the electric utilities in being able to predict where maintenance action including vegetation management may be necessary. OCEA is also opposed to a circumstance of any electric utility that does not have an Outage Management System (“OMS”) in place for recording of outages of less than 5 minutes. The Commission must ensure that electric utilities are reporting MAIFI to the extent available. For those EDUs that do not have OMS available to record momentary outages, the Commission should require that the electric utilities file a plan within 30 days of the Order in this case to assure future reporting compliance.

Comments about Rule 4901:1-10-11 (C)(3)(h)

AEP also opposes a requirement to report detailed explanations of individual outage causes pertaining to (C)(3)(h).¹¹⁴ AEP notes that outages are sorted by OCEA recommends that a well defined set of outage codes be established that enable more consistent reporting of outage causes. Ambiguity in the definition of the outage codes

¹¹² AEP comments at 21.

¹¹³ DP&L comments at 2.

¹¹⁴ AEP Comments at 17.

can result in errors in the reporting, as well as prevent a comparative analysis of historical trends for each electric utility and in comparing electric utility performance.

Comments about Rule 4901:1-10-11(C)(3)(k)

OCEA agrees with the Ohio Farm Bureau Federation (“OFBF”) comments relating to Section (C) of Ohio Adm. Code 4901:1-10-11 regarding the reporting of the electric utilities’ worst performing circuits.¹¹⁵ In particular, OCEA supports OFBF’s recommendation that the action plan submitted by the electric utility as part of Ohio Adm. Code 4901:1-10-11(C)(3)(k) should also be provided to governmental officials of the localities served by these worst-performing circuits.¹¹⁶ The electric utility should also be required to provide regular updates to such officials until the worst-performing circuits are upgraded.

Comments about Rule 4901:1-10-11(D)

AEP proposes that if the PUCO Staff rejects an electric utility action plan, that the PUCO Staff provide the electric utilities with a detailed statement of its reasoning.¹¹⁷ OCEA agrees that any rejection of an action plan should have a detailed explanation. However, OCEA asserts that the Commission should have regulatory oversight of the action plans and that all such plans should be subject to public review.

Comments about Rule 4901:1-10-11 (F)

AEP expressed concerns about the provision in Paragraph (F) that would make inclusion of a given circuit for three consecutive months a violation of the rule and notes that the PUCO Staff’s stated intention in modifying the rule was to create compliance

¹¹⁵ OFBF comments at 3-4.

¹¹⁶ Id. at 3.

¹¹⁷ AEP comments at 17.

incentives for the electric utilities.¹¹⁸ AEP also notes that this proposal is an example of another “automatic” enforcement provision that lessens the discretion of the electric utility.¹¹⁹ It noted that the solution to a problem circuit might be very expensive and not justified.¹²⁰ AEP proposes that the Commission eliminate the change in Section (F) whereby the inclusion of a circuit under Section (C) for three consecutive reporting periods constitutes a violation.¹²¹ AEP argued that this would frustrate the flexibility that the PUCO Staff seems to favor, and that it precludes the electric utility from providing explanation/clarification for poor circuit performance.¹²² AEP proposed new language to accommodate its concerns.¹²³ DP&L also cautions the Commission about creating an automatic violation, particularly since many events are out of an electric utility’s control.¹²⁴ DP&L also commented that certain circuits may continue to be amongst the worst-performing circuits for different reasons including car accidents, animals, or faulty cutouts exposure.¹²⁵ FirstEnergy also opposes the PUCO Staff’s proposed revision to the rule because sometimes the reasons a circuit continues to appear on a worst-performing circuits list are beyond the utilities’ control.¹²⁶ FirstEnergy also argues that circuits are

¹¹⁸ Id.

¹¹⁹ Id. at 16.

¹²⁰ Id.

¹²¹ AEP comments at 18.

¹²² Id. at 16.

¹²³ Id. at 17.

¹²⁴ DP&L comments at 7.

¹²⁵ Id.

¹²⁶ FirstEnergy comments at 16.

not “normalized” according to the number of customers served by the circuit so some large circuits will be difficult to remove from the list.¹²⁷

OCEA proposed in initial comments an approach that does not rely on repeated appearance on a worst circuit list, but a failure to meet the minimum standard requirements when a circuit appears on such a list.¹²⁸ Furthermore, our comments suggested that the failure of a circuit to meet annual reliability standards should result in a remediation plan.

OCEA maintains that circuit performance is a function of an annual average and if in fact the design of the circuit causes poor reliability versus other circuits serving other customers, such should be the focus of the remediation plan. No problematic circuit should be allowed to persist without remediation, let alone for three consecutive years. Rather, the appearance of a circuit on the “list” should result in a proposed compliance plan in the electric utility’s Annual Report with enforceable deadlines and milestones to achieve remediation within a reasonable time. Such an approach moves the focus from appearance on the list to the achievement of the compliance plan. Furthermore, the electric utilities are well aware that a “violation” of an ESSS rule does not result in any automatic fines or penalties of any kind. The electric utilities are permitted to supply any information to the PUCO Staff and the Commission to mitigate or refute the nature and extent of the violation. Finally, the rules and standards in Ohio Adm. Code 4901:1-10 are meant to establish *minimum* performance measures. Failure to achieve a minimum standard of performance for a circuit over such an extended period of time is unacceptable.

¹²⁷ Id. at 22.

¹²⁸ Consumer Groups’ comments at 80 (June 8, 2007).

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

Comments to Rule 4901:1-10-12(B)(3)(a)

The PUCO Staff has proposed that information concerning deferred payment plans and low-income plans be included in the customer rights and obligations pamphlet. Like OCEA, the PUCO Staff recognizes that customers need to be informed about their rights to utilize payment plans and access to low income assistance programs. Electric utilities aren't opposed to having this information in the pamphlet. However, the utilities are opposed to providing any thing more than a "quick guide" level of detail about the plans. OCEA believes the electric utilities opposition is unfounded and that the customer rights and obligations pamphlet is an appropriate document for describing rights for payment plans and low income programs. The economic situation in Ohio is troubling and more and more customers are in need of these accommodations. Using the customer rights and obligations pamphlet as a mechanism to educate the public on their rights is certainly appropriate.

Comments to Rule 4901:1-10-12(F)(1)(b) and (F)(2)(c)

The PUCO Staff proposed rules prohibit electric utilities from disclosing a customer's account number or social security number ("SSN") without written consent, electronic authorization, or without a court or commission order except for collections and credit reporting, participation in programs funded by the universal service fund and governmental aggregation. DP&L suggests the Commission add the Home Energy Assistance Program ("HEAP") and Emergency Home Energy Assistance Program ("E-HEAP") to the list of exceptions. DP&L contends that it may need to disclose social security numbers to the community action agencies and ODOD to verify customer identity. OCEA opposes this change because the electric utilities should only have social

security numbers for the limited number of customers that chose to demonstrate financial responsibility using one of the options prescribed in Ohio Adm. Code 4901:1-17. Use of the social security number for any other purpose circumvents the reason why the electric utility has the information in the first place. The HEAP application notifies customers of their privacy and the disclosure of their SSN is mandatory to receive the energy assistance benefits. Use of social security numbers between the electric utilities and the community action agencies is unnecessary.

OCEA believes that DP&L's comment highlights the potential for an even more systemic problem with the manner in which electric utilities are collecting social security numbers. Customers are not required to provide social security numbers as a condition for obtaining service. Yet, utilities routinely request social security numbers from their customers. Identity theft issues are a major national issue and some of the problems can be avoided by electric utilities not collecting information that they do not need as a condition for providing service. OCEA supports the Commission making a statement through the ruling in this case that electric utilities are prohibited from requesting social security numbers from customers unless the customer provides this information as an option to demonstrate financial responsibility per the provisions of Ohio Adm. Code 4901:1-17.

Section 4901:1-10-12(F)(3) proposes to give the customer the right to request up to twenty-four months instead of twelve months of usage history, meter data, and payment history from an electric utility without charge. DP&L does not oppose providing additional usage information but would request the Commission limit the requirement to the most recent twenty-four months as older information is likely to be archived or in

some other format that is difficult and costly to retrieve. OCEA contends that the costs for information storage have dropped substantially as a result of advances in information technology. Therefore, electric utilities should be willing and able to provide at least twenty four months of usage information, meter data, and payment history. There is no reason to limit the information to the most recent twenty four months.

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

Comments to Rules 4901:1-10-20(B)(2)(c), C)(2)(c), (C)(2)(d)(i), (C)(3)(A), and 4901:1-20(C)(3)(b).

The proposed PUCO Staff rules provide customers with the right to request a meeting when contesting service disconnections that involve fraudulent practices, tampering, or unauthorized connections. FirstEnergy comments that most utilities do not have walk-in offices to accommodate these types of meetings. The electric utilities request that the language be changed to allow utilities to provide a contact number to call the appropriate department in lieu of a requirement for an in-person meeting. OCEA opposes this change because allegations of fraudulent activity and/ or theft of service are serious charges that require in-person discussions to enable meaningful resolution of the issues. Electric utilities should have adequate presence in the community to enable in-person meetings to occur. There have been a lot of negative impacts of the utilities closing down local offices that offer opportunities for direct interaction and this is one of them.

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

Comments about Rule 4901:1-10-22(B)

AEP commented that the proposed change in billing frequency from “at regular intervals” to “monthly intervals” can be misleading because billing cycles do not

necessarily align on a monthly basis.¹²⁹ AEP recommended that the Commission could clarify that monthly means a billing period roughly equal to a calendar month.¹³⁰

OCEA addressed this issue in initial comments and suggested that a clarification be made that a billing month be defined as service during the proceeding 28-32 days.¹³¹ This proposed change eliminates any ambiguity in how often bills should be rendered to residential customers. OCEA also disagrees with FirstEnergy's comments regarding OCEA's recommendation that customer bills be provided at "monthly intervals."¹³² The existing and proposed rule that states that bills be provided at "regular" intervals is far too vague and leaves open the possibility that a billing interval could be as long as 40, 50, or even 60 days. The Commission should reject FirstEnergy's recommendation.

Rendering bills for periods of time that are longer than a month results in higher bills that are difficult to manage by customers with fixed incomes. The Commission should adopt OCEA's proposed language that will result in electric bills being rendered at monthly intervals for service during the proceeding 28-32 days. OCEA also notes that the recently adopted Minimum Telephone Service Standards ("MTSS") contain a monthly billing requirement.¹³³

OCEA agrees with the OFBF comments regarding the provision of information on customer bills that advises customers that they might be eligible for PIPP or other

¹²⁹ AEP comments at 18.

¹³⁰ Id.

¹³¹ OCEA comments at 73.

¹³² FirstEnergy comments at 32.

¹³³ Ohio Adm. Code 4901:1-5-07(A).

energy assistance programs.¹³⁴ Such information is vital to some customers who are struggling to maintain their service due to financial difficulties.

Comments about Rule 4901:1-10-22(D)

AEP, DP&L, and FirstEnergy all oppose the elimination of check-cashing businesses as payment agents because a number of their customers utilize such locations to pay their bills.¹³⁵ The companies argue that eliminating check-cashing businesses as payment agents will create hardship for their customers by reducing the number of locations where customers can pay their bills. DP&L requests that the PUCO Staff work with the utility to find other alternatives for customers to pay their bills.¹³⁶ OFBF supports the elimination of check-cashing facilities as payment agents for electric utilities.¹³⁷

OCEA supports the elimination of check-cashing facilities as payment agents for the electric utilities. There are other more appropriate locations, such as grocery stores and pharmacies that were historically used by utilities as payment agents. The electric utilities made business decisions over the years to close their walk-in business offices while implementing fees for customers to merely pay their bill. The responsibility for providing access to payment agents, without exposure to the well-documented financial hardships caused by check-cashing businesses, should fall on the electric utilities. Any additional costs that the electric utilities claim to incur for contracting with additional payment agents should be borne by the utilities that made the decision some time ago to

¹³⁴ OFBF comment at 4.

¹³⁵ AEP comment at 18; DP&L comment at 12; and First Energy comment at 28.

¹³⁶ DP&L comment at 12.

¹³⁷ OFBF comment at 4.

reduce customer options to make payments which particularly affect low-income customers.¹³⁸ After all, the closing of the business offices resulted in savings to the utility that were not necessarily passed on to customers. It would be appropriate to use the savings that resulted in inferior customer service to try and repair that damage to customers.

OCEA also notes that in a separate rulemaking procedure the PUCO Staff has already recommended the elimination of check-cashing facilities as payment agents.¹³⁹

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

Comments about Rule 4901:1-10-26(B)(1)(e)

AEP expressed concern that Rule 28(B)(1)(e) seeks confidential market-affecting information, and so the Commission should rely on PUCO Staff data requests.¹⁴⁰ OCEA does not understand what information contained in the rule is “market-affecting.” Without further clarification from the electric utilities and the PUCO, OCEA opposes the withholding of this information.

Duke, FirstEnergy and DP&L all recommend that the PUCO delete the PUCO Staff’s proposed requirement to provide information on the top ten congestion facilities.¹⁴¹ Duke argues that the information concerns matters that are outside the

¹³⁸ Discussions with utilities indicate that they do not pay authorized payment stations, though they do pay companies that recruit businesses to serve as authorized payment stations. These recruiters may incur additional costs if they do not depend on payday lender chains to provide authorized payment locations but instead focus on local community businesses. Signing up ‘mom and pops’ may take longer but provides greater value to customers.

¹³⁹ Case No. 08-732

¹⁴⁰ AEP comments at 19.

¹⁴¹ Duke comments at 7; FirstEnergy comments at 29; and DP&L comments at 14.

Commission’s jurisdiction and unduly burdensome.¹⁴² FirstEnergy argues that the PUCO Staff has provided no definition of “congested facilities” and that the information sought may “conflict” with rules regarding the release of such information to the market.¹⁴³ Finally DP&L argues that the information sought is critical infrastructure information which should not be released to the public.¹⁴⁴

OCEA disagrees with the rationale provided by the electric utilities for deleting the requirement that information on the top ten congested facilities be reported as part of the utilities’ investment and improvement plan. The utilities have provided no evidence that the information requested conflicts with the Commission’s jurisdiction or that the provision of such information creates an undue burden. Such information provides valuable insight to the Commission relating to the overall reliability of the distribution system.

4901:1-10-26 (B)(3)(c) and (B)(3)(d)

AEP, FirstEnergy, and DP&L each disagree with the PUCO Staff’s proposed amendments that require the electric utilities to report a variance between budgeted and actual expenditures on the transmission and distribution system in excess of 10%.¹⁴⁵ The utilities claim that providing the information is highly sensitive,¹⁴⁶ or would be burdensome and difficult to provide.¹⁴⁷ OCEA recommends that the Commission reject

¹⁴² Duke comments at 7.

¹⁴³ FirstEnergy comments at 29.

¹⁴⁴ DP&L comments at 14.

¹⁴⁵ FirstEnergy comments at 30; DP&L comments at 14; and AEP comments at 20.

¹⁴⁶ AEP comments at 20.

¹⁴⁷ FirstEnergy comments at 30.

the arguments of the electric utilities. The electric utilities should be required to note discrepancies between their budgeted expenditures and actual expenditures. The rates that are set by the Commission are based on the test year expenditures on the distribution and transmission system. The Commission is entitled to this information as are the customers of the electric utilities whose rates pay for distribution and transmission system maintenance and improvements in the approved rates. Distribution systems remain a monopoly and are regulated as such. There is no competitive impact to providing this information other than identifying when a utility is padding shareholder profits by under-investing in maintenance of its transmission and distribution systems.

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

Comments about Rule 4901:1-10-27(D)

FirstEnergy argues that inserting the word “quality” into the following rule is confusing.¹⁴⁸

(D) Transmission and distribution facilities inspections.

Unless otherwise determined by the commission, each electric utility and transmission owner shall, at a minimum, inspect its electric transmission and distribution facilities (circuits and equipment) to maintain quality, safe, and reliable service on the following scheduled basis:

OCEA disagrees. FirstEnergy asserts that combining “quality” service with “safe and reliable” service somehow creates a new level of expectation of the electric utility.¹⁴⁹

The Commission should reject this argument. In the provision of electric distribution service, reliable service should be complementary with provision of quality service. As

¹⁴⁸ FirstEnergy comments at 30.

¹⁴⁹ Id.

previously noted in these comments, service quality is increasingly important and is as important as safety and reliability to customers.

Comments about Rule 4901:1-10-27(E)

DP&L also opposes the PUCO Staff's proposed rule that failure to meet a performance target for two consecutive years should be considered a violation of the rule.¹⁵⁰ DP&L argues that variability is to be expected and the proposed rule does not account for events outside the utility's control.¹⁵¹ Again, DP&L ignores the fact that failure to comply with a rule *is* a violation of that rule. The electric utilities seem not to understand that rules require compliance. Of course, the utilities have every opportunity to provide the rationale and mitigating circumstances that caused the violation. No automatic penalty attaches to violations of these rules and each electric utility is provided due process through Ohio Adm. Code 4901:1-10-30 and Ohio Adm. Code 4901:1-23 before any penalties or forfeitures can be assessed. DP&L's argument should be rejected.

Comments about Rule 4901:1-10-27(E)(1)

AEP opposes the provision in (E)(1) that makes a failure to comply with a company's own policies a violation of the rule.¹⁵² AEP also comments that the provision would be counter productive and would violate due process because of its vagueness and ambiguity.¹⁵³ AEP proposes penalties for not meeting their own company-specific standards when their standards exceed minimum standard.¹⁵⁴ FirstEnergy argues that the

¹⁵⁰ DP&L comments at 15.

¹⁵¹ Id.

¹⁵² AEP comments at 22.

¹⁵³ Id at 21.

¹⁵⁴ Id.

requirements of this rule could start a trend towards avoiding formalizing programs in an effort to avoid future violations. AEP further argues that if company practices or policies exceed a legal requirement, a company should not be penalized for not meeting its own internal higher standard.¹⁵⁵

OCEA strongly disagrees with the comments of AEP relating to Ohio Adm. Code 4901:1-10-27(E)(1). A violation by an electric utility's inspection and maintenance policies and plans must be a violation of the ESSS. The mandates of the rule are merely that the electric utilities follow their own plans. The plans are reviewed and essentially approved by PUCO Staff. If electric utilities are not subject to violation of these plans, how is any enforcement of inspection and maintenance regimes possible?

OCEA is also incredulous that AEP would suggest that the electric utilities might adopt less stringent reliability plans if required to follow the terms of such plans. The objective must be to provide the reliable service that consumers should have a right to expect. There is no reason for the electric utilities to propose a plan if the goal is not to actually adhere to the plan.

Comments about Rule 4901:1-10-27(E)(4)

AEP also expressed concern about a requirement that all deficiencies in transmission and distribution facilities be corrected within one year.¹⁵⁶ It proposed a change in language from "all remaining deficiencies" to "all remaining significant deficiencies."¹⁵⁷ FirstEnergy and DP&L also oppose the requirement to correct "all

¹⁵⁵ Id. at 21-22.

¹⁵⁶ AEP at 22.

¹⁵⁷ Id.

remaining” deficiencies within one year of the inspection or testing.¹⁵⁸ OCEA recommended a definition of “deficiency” that would focus the correction activity on significant failures or defects.¹⁵⁹ The emphasis of the rule should be to assure correction within a reasonable time and, if longer than one year, should be specifically justified in terms of the resources and actions necessary to achieve the correction. The plan should reflect enforceable actions and milestones.

4901:1-10-28 Net Metering

Comments about Rule 4901:1-28(A)(4)

DP&L proposed changes to address problems associated with meters flowing in two directions is not necessary.¹⁶⁰ OCEA has reviewed the issue with IREC and staff of the National Renewable Energy Laboratory and can find no evidence that indicates that the single register meter experiences accuracy problems when measuring electric flows in two directions. If DP&L is aware of a statistically significant and definitive study on the issue OCEA would be interested in reviewing this information.

Comments about Rule 4901:1-28(A)(6)(c)

OCEA had extensive changes to this section in its initials comments.¹⁶¹ OCEA does not object to DP&L’s recommendation as long as this additional language is added:

AS PER SEC. 4901:1-0-05 (I) (1), IF THE CUSTOMER
GENERATOR REQUESTS ONE ANNUAL READING AND
BILL, THE UTILITY SHALL MAKE ARRANGEMENTS TO
COMPLY WITH THE CUSTOMER REQUEST.

The complete language of Ohio Adm. Code 4909:1-28(A)(6)(c) would be:

¹⁵⁸ FirstEnergy comments at 31-32; and DP&L comments at 15.

¹⁵⁹ OCEA comments at 93.

¹⁶⁰ DP&L comments at 15-16.

¹⁶¹ OCEA comments at 106-107.

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 customer's request, but not more than a calendar years time, any accumulated credits from the previous months shall be refunded to the customer. AS PER SEC. 4901:1-0-05 (I) (1), IF THE CUSTOMER GENERATOR REQUESTS ONE ANNUAL READING AND BILL, THE UTILITY SHALL MAKE ARRANGEMENTS TO COMPLY WITH THE CUSTOMER REQUEST. 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.

Comments about Rule 4901:1-10-28(B)(5)

FirstEnergy requests that this rule be clarified to apply on a per location basis¹⁶² is not necessary and precludes the hospital from applying the tariff for conjunctive billing purposes across various net-metering locations.

Comments about Rule 4901:1-10-28(B)(6)

OHA's request that the PUCO Staff revise the definition of "market" in Ohio Adm. Code 4901:1-10-28(B)(6)(b) is consistent with the comments made by OCEA in its initial comments.

OCEA's initial commented stated:

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.

¹⁶² FirstEnergy comments at 32.

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.¹⁶³

4901:1-10-32 Cooperation with Government Aggregators

OCEA supports NOPEC comments regarding the Government Aggregator provisions of these rules. NOPEC articulately described some of the hurdles facing government aggregators, some of the fundamental requirements stemming from Am. Sub S.B. 221, and it did a commendable job of suggesting alternatives to troubling sections of the proposed codes.

OCEA fully supports NOPEC's position that a just and reasonable POLR charge is critical in order to permit consumers and governmental aggregators to make knowledgeable decisions regarding future electricity obligations.¹⁶⁴ If an electric utility is permitted to set the POLR too high, then governmental aggregators will be pushed into

¹⁶³ OCEA comments at 107-108.

¹⁶⁴ NOPEC comments at 4-6.

bypassing the charge.¹⁶⁵ If not, consumers may opt out of the program from fear of market pricing, well-founded or not, and lose the opportunity to save money on their electric bills. If the purpose of government aggregation is to pool resources and consumers to seek lower-cost electricity, then the way to facilitate this is to keep the POLR at a level commensurate with the liability faced by the utility.

Additionally, OCEA specifically supports NOPEC's suggested additional language to 4901:1-10-32(G).¹⁶⁶ If an electric utility or the Commission are permitted to make modifications to the ESP after government aggregators enter into CRES contracts, the aggregation participants face increased rates out of no fault of their own or the aggregation. The addition of NOPEC's suggested language exempting customers from going back to market if the changes are made to the ESP beyond a governmental aggregator's control should be included.

Lastly, NOPEC proposes the creation of a Governmental Aggregation Generation Credit ("GAGC").¹⁶⁷ The proposed credit seeks to address the harm to shopping through governmental aggregation that would be caused by the creation of any generation cost deferral. The proposed credit would effectively address this problem by ensuring that governmental aggregations would be competing against what is the true and full avoidable generation cost offered by an electric utility. OCEA supports NOPEC's proposal as it promotes the stated intent of Senate Bill 3 and Am. Sub. S.B. 221 of

¹⁶⁵ Id. at 5.

¹⁶⁶ Id. at 12-13.

¹⁶⁷ NOPEC comments at 14-16.

promoting governmental aggregation and advances the opportunity for effective customer choice.

Comments about Rule 4901:1-10-32(B)

DP&L recommended that it is the electric utility's responsibility to provide government aggregators with a listing of all customers residing within the aggregators boundaries be limited to a best effort basis.¹⁶⁸ DP&L argues that the available records are from their billing system and that the capability does not exist to track changes that are made in municipality boundaries or situations where there may be postal overlap.¹⁶⁹

A best effort standard is vague and can result in electric utilities self-determining the level of support that is provided to government aggregators in determining the customers that should be part of the aggregation effort. The current rule proposed by the PUCO Staff is appropriate to impose clear responsibility on the electric utilities to work cooperatively with the government aggregators to provide a listing of the customers that should be part of the aggregation. A list that excludes customers can result in customers not receiving a potential benefit that could be available to them under an aggregation program.

¹⁶⁸ DP&L Comments at 17-18.

¹⁶⁹ Id. at 17.

4901:1-10-33 Consolidated Billing Requirements

Comments about Rule 4901:1-10-33(C) Billing Cycles

In 2007, the “Marketers”¹⁷⁰ commented that bills can be negotiated with customers so that they are provided more frequently than monthly.¹⁷¹ For this reason, Marketers recommends that the Commission retain the current language where bills are rendered at regular intervals rather than requiring them at monthly intervals.¹⁷²

While not specifically addressed in the Marketers initial comments, OCEA assumes that Marketers is referring to more frequent billings for commercial or industrial customers. OCEA is not opposed to CRES providers negotiating different billing periods for commercial and industrial customers. However, as OCEA explained in its initial comments, residential customers should be billed at monthly intervals for service in the preceding 28-32 days.

Comments about Rule 4901:1-10-33(H) Partial Payment Priority

AEP objected to the proposed change in rules concerning the partial payment priorities.¹⁷³ AEP claims that the proposed rule disadvantages them because partial payments would be allocated to CRES charges before being applied to past due charges from the electric utility.¹⁷⁴ AEP further notes that other electric utilities may have agreed to changes in partial payment priorities as part of other cases.¹⁷⁵

¹⁷⁰ The “Marketers” included Constellation NewEnergy, Inc.; Direct Energy Services, LLC, Integrys Energy Services LLC, and Strategic Energy LLC. (June 8, 2007).

¹⁷¹ Marketers comments at 4.

¹⁷² Id.

¹⁷³ AEP comments at 23.

¹⁷⁴ AEP Comments at 14.

¹⁷⁵ Id.

OCEA agrees with AEP that the proposed change in partial payment priorities would result in CRES charges being paid prior to past due distribution charges. This is especially troubling because customers could be disconnected for non-payment of CRES charges. This is a direct violation of proposed rule 4901:1-10-14 (A). This rule states in part that “No Electric Distribution Utility (electric utility) may disconnect service to a residential customer when that customer fails to pay any charges for a nontariffed service, including competitive retail electric service.” This is the reason why OCEA suggested in initial comments that the partial payment priorities for consolidated bills should follow the same priority as bills rendered by the electric utilities that do not include CRES charges.¹⁷⁶ If the electric utility is purchasing CRES receivables, the partial payment priorities should be credited in the most advantageous manner that assists the customer in avoiding disconnection of service. In fact, OCEA has recommended that the electric distribution companies be required to purchase receivables since they are in the best position to collect payments from customers. Moreover, as a result of passage of SB 221, as we move into more government aggregations or other kinds of aggregations that may have a renewable energy component, it will be critical for developers to be able to rely on the receipt of payment for their services to keep their business risks and the concomitant cost in check.

¹⁷⁶ OCEA comments at 122-123.

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

4901:1-21-01 Definitions

Comment about Definition (T) – Governmental Aggregation Program

OCEA agrees with NOPEC’s comments and proposed change to the definition of “Governmental aggregation program.”¹⁷⁷

4901: 1-21-05 Marketing and Solicitation

The Competitive Suppliers take exception to a number of revisions proposed by the PUCO Staff to this provision of the rules.¹⁷⁸ Their comments focus on subsection (C). There is significant criticism regarding the Federal Trade Commission’s “do not call” registry. Soliciting customers on the “do not call” list, when there is no “established business relationship” or a “written permission to call” is unfair and inappropriate.¹⁷⁹ The list is designed to prevent unwanted solicitation. For a CRES provider to ignore the wishes of a potential customer is clearly wrong and arguably counterproductive. Thus, the PUCO Staff reasonably includes failure to abide by the wishes of an individual that has placed his or her name on a “do not call” list in the definition of inappropriate marketing activities.

4901: 1-21-07 Credit and Deposits

The Competitive Suppliers oppose having uniform credit and deposit provisions that are comparable to those applied to electric utilities.¹⁸⁰ In addition, the Competitive

¹⁷⁷ NOPEC comments at 3.

¹⁷⁸ Competitive Suppliers comments at 9-10.

¹⁷⁹ Id. at 9.

¹⁸⁰ Competitive Suppliers comments at 11.

Suppliers allege that uniform creditworthiness and deposit rules will put an end to prepayment discounts, negate a CRES' ability to lower prices for customers with superior credit, and potentially limit competitive choices available to poorer credit customers.¹⁸¹

What the Competitive Suppliers fail to recognize is that the service they provide is no less important because it is provided through a competitive market. The Commission has consistently recognized that energy services are essential and should be available to all on reasonable terms, even when competitive suppliers are involved. The Commission has the authority to regulate marketers and impose reasonable terms and conditions. The application of the rule does not limit the Competitive Suppliers from developing other tools to provide discounts to customers to whom they are marketing. Minimum standards must be applied. R.C. 4928.02 establishes that it is state policy to:

- (A) Ensure the availability to consumers of
...nondiscriminatory, and reasonably priced retail electric service;
- (B) Ensure the availability of unbundled and comparable retail electric service...;
- (C) Ensure diversity of electricity suppliers and suppliers, by giving consumer effective choices of the selection of those supplies and suppliers...:[and,]

* * *

- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment....”

¹⁸¹ Id.

The Commission clearly has authority to regulate deposits. It is within the Commission's discretion to determine that the lack of standards for deposits can constitute discrimination; undermine the concept of reasonable prices; and, prevent effective choices in suppliers. Failure to standardize deposit standards threatens to ghettoize low-income and other customers with poor credit histories. The Commission should adopt a regulatory approach that ensures the most vibrant possible market for all customers, not for the select few. While the Competitive Suppliers opine about how credit standards should not be mandated because competitive pressures will solve the problem, tell that to a customer that cannot obtain a contract because of redlining by competitive suppliers. Moreover, if the commission adopts a requirement that the utilities must purchase the receivables from a CRES, that will obviate the need for a CRES to apply a deposit, since the purchase of receivables eliminates the risk of not collecting on services rendered.

The language of the rules provides marketers with the option of not requiring a deposit, so the concerns of the Competitive Suppliers regarding larger, more sophisticated customers are irrelevant. All the rules require is that CRES providers not discriminate when applying credit standards. They must disclose their credit policies and are prohibited from enforcing a contract between the customer and another CRES provider. Nothing in the rules limits the creativity of marketers, so long as they do not discriminate among like customers.

The CRES providers allege that uniform credit standards will reduce their creativity and flexibility which will result in lower prices to customers. The Competitive Suppliers are in essence making the point that creditworthiness standards should be subjective and be applied as determined appropriate by the CRES provider without

oversight or approval by the Commission. Unfortunately, the Competitive Suppliers offer no proof that customers are advantaged by no oversight. As articulated in OCEA's Initial Comments, there is no reason why the creditworthiness standards for residential customers as enumerated in Ohio Adm. Code 4901:1-17 should not apply to customers of CRES providers.¹⁸² Therefore, the recommendation of the Competitive Suppliers to not have a uniform creditworthiness and deposit rule should be rejected.

4901:1-21-11 Contract Administration

OCEA stands by its initial comments that customers contracts which include substantive changes in material terms and conditions renew on a month-by-month basis only, absent affirmative consent.

4901: 1-21-13 Net-Metering Contracts

OCEA supports the position of Ohio Alternative Energy ("OAE") that CRES providers should be required to offer net-metering contracts.¹⁸³ This is clearly consistent with state policy. Specifically, R.C. 4928.02 (C) requires the Commission to encourage "the development of distributed and small generation facilities while (J) urges incentives to technologies that can adapt successfully to potential environmental mandates, and, (K) which requires the Commission to "encourage implementation of distributed generation across customers classes...governing critical issues such as...net metering." It is inconsistent with state policy to deny customers who choose a competitive supplier the opportunity to self-generate via net metering. CRES providers should be required to offer net-metering contracts.

¹⁸² OCEA comments, at 132.

¹⁸³ OAE comments at 8.

OCEA would add that in addition to standard net metering contracts, the utilities should also be required to offer standard contracts for the purchase of Renewable Energy Credits (“RECs”) for those end use customers who want to sell their RECs to the utility. The REC purchase price for these standard contracts should be contained in a tariff approved by the Commission along with the standard contract. When a customer applies for net metering, the utility should be required to advise the customer regarding the option to sell its RECs and should provide the customer with the standard contract for that as well.

4901: 1-21-14 Customer Billing and Payments

OCEA supports the position of the Ohio Farm Bureau Federation that CRES providers be prohibited from using check-cashing businesses or licensees as authorized payment agents, as proposed in Ohio Adm. Code 4901:1-10-22 (D) and 4901:1-10-33.¹⁸⁴ OCEA also supports the recommendation that authorized payment agents accept payment in cash, money order or credit/debit card.¹⁸⁵

4901: 1-21-18 Consolidated Billing Requirements

Dominion Retail Inc. suggests in initial comments that electric utilities that provide consolidated billing services for CRES providers be obligated to purchase the accounts receivable of CRES providers on mutually agreeable terms and conditions.¹⁸⁶ The Competitive Suppliers suggest that electric utilities purchase the account receivables of CRES providers with no discount.¹⁸⁷ The Competitive Suppliers also note that the

¹⁸⁴ OFBF comments at 7.

¹⁸⁵ Id.

¹⁸⁶ Dominion Retail Inc comments at 4-6.

¹⁸⁷ Competitive Suppliers comments at 16.

purchase of receivables may “implicate broader considerations than those at issue in this docket.”¹⁸⁸ The Competitive Suppliers urge the Commission to defer discussion of the accounts receivable topic to a Commission-sponsored collaborative or workshop process.¹⁸⁹

OCEA believes that the purchase of accounts receivable issue by electric utilities should be incorporated in these rules. OCEA fully supports the emergence of CRES services in Ohio and a balance of rules and processes that can enable a more vibrant competitive market. The purchase of Competitive Retail Natural Gas Suppliers (“CRNGS”) accounts receivable by natural gas companies in Ohio has worked relatively well. OCEA recommends that the Commission support proposals by Dominion Retail Inc. and the Competitive Suppliers to require electric utilities to purchase accounts receivable, but instead of deferring the issue, it should be resolved in these rules.

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

OCEA has no reply comments for this section.

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

4901:1-23-05(E)(2) Commission Proceedings

FirstEnergy objected to the PUCO Staff’s proposed \$10,000 per day fine amount for violations under the Rules.¹⁹⁰ OCEA supports the PUCO Staff’s proposal. The PUCO Staff’s proposal simply tracks the language of R.C. 4905.54 that replaced the

¹⁸⁸ Id. at 16.

¹⁸⁹ Id.

¹⁹⁰ FirstEnergy comments at 34.

previous language that limited fines to \$1,000 per day. FirstEnergy's recommended removal of the PUCO Staff's proposed language contradicts the legislative intent.¹⁹¹ Moreover, FirstEnergy's claim that there has been no undue rash of violations of rules or Commission orders ignores the numerous rule violations alleged and/or proved in recent cases.¹⁹² Accordingly, the PUCO Staff's proposed increase in the fine amount is necessary.

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

4901:1-24-13 Noncompliance with Rules or Orders.

FirstEnergy objected to the PUCO Staff's proposed \$10,000 per day forfeiture amount for violations of the rules in Ohio Adm. Code Chapter 4901:1-24 or with sections 4928.01 to 4928.10 of the Revised Code by any person subject to certification under section 4928.08 of the Revised Code.¹⁹³ OCEA supports the PUCO Staff's proposal. The PUCO Staff's proposal is consistent with other penalty provisions in the code and the proposed Rules, including the forfeiture amount assessed to electric utilities or CRES providers in 4905.54 of the Revised Code and Ohio Adm. Code 4901:1-23-05(E) as addressed in Section VI., above. FirstEnergy's recommended removal of this provision

¹⁹¹ The change in law became effective September 29, 2005.

¹⁹² FirstEnergy comments at 35. Also See *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 and *In the Matter of the Application of Cleveland Electric Illuminating, Toledo Edison Company and Ohio Edison Company for an Increase In Rates*, Case No. 07-551-EL-AIR.

¹⁹³ FirstEnergy Comments at 35.

would create inconsistent forfeiture provisions within the new rules.¹⁹⁴ Accordingly, the PUCO Staff's proposed increase in the forfeiture amount is necessary.

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

OCEA has no reply comments for this section.

IX. CONCLUSION

OCEA appreciates the opportunity to reply to comments filed in response to the 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.

¹⁹⁴ The change in law became effective September 29, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply 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 23, 2008 request for comments on the adoption of proposed rules for Ohio Adm. Code Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-24, and 4901:1-15 of the Ohio Administrative Code on this 29th day of August, 2008.

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