

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Promulgation of Rules for Minimum) Case No. 99-1611-EL-ORD
Competitive Retail Electric Service Standards)
Pursuant to Chapter 4928, Revised Code.)

ENTRY ON REHEARING

The Commission finds:

- (1) On July 6, 1999, the governor of the state of Ohio signed Amended Substitute Senate Bill No. 3 (SB3). That legislation, among many things, established a starting date for competitive retail electric service in the state of Ohio. The Commission is required, pursuant to Section 4928.10, Revised Code, to establish minimum competitive retail electric service requirements for the protection of consumers. By entry issued December 21, 1999, the Commission issued for comment staff's proposed rules to comply with SB3. Initial comments were due by January 31, 2000, and reply comments were due by February 14, 2000.
- (2) On April 6, 2000 the Commission issued its Finding and Order (Order) in this matter adopting proposed minimum competitive retail electric service standards in Chapter 4901:1-21, Ohio Administrative Code (O.A.C.) and enforcement standards in Chapter 4901:1-23, O.A.C.
- (3) Applications for rehearing were timely filed by Columbus Southern Power Company and the Ohio Power Company (jointly referred to as American Electric Power or AEP); Dayton Power & Light Company (DP&L); FirstEnergy Corporation (FirstEnergy); Exelon Energy, Mid-Atlantic Power Supply Association, Strategic Energy L.L.C., and Unicom Energy, Inc. jointly as the Midwest Marketers Coalition (MMC); the Ohio Consumers' Counsel (OCC); the Ohio Environmental Council (OEC) and Sustainable Energy for Economic Development of Ohio (SEED Ohio).
- (4) Pursuant to Rule 4901-1-35, O.A.C., memoranda contra various aspects of the applications for rehearing were filed by FirstEnergy, OCC and MMC on May 15, 2000 and by the OEC and Unicom Energy Services, Inc. (Unicom) on May 18, 2000.

Rule 1 Purpose and Scope¹

- (5) Rule 1(C) allows a competitive retail electric service (CRES) provider to apply to the Commission for a waiver of any rule in Chapter 4901:1-21, O.A.C., and directs the requesting CRES provider to serve notice of the waiver request upon OCC and the “affected electric distribution utility(ies).” AEP requests that the language be modified or, in the alternative, clarified to require service upon all electric distribution utilities (EDUs) in whose service territory the CRES provider operates.

We find merit in AEP’s request and, therefore, have altered Rule 1(C) to require that the CRES provider service notice of any waiver upon all Ohio EDUs.

Rule 2 General Provisions

- (6) As adopted, Rule 2(A) prohibits CRES providers from engaging in “unfair, misleading, deceptive, or unconscionable acts or practices.” AEP contends that the Commission’s authority to promulgate rules under Section 4928.10, Revised Code, is limited to rules to prevent “unfair, deceptive, and unconscionable acts and practices....” Accordingly, AEP claims the term “misleading” is confusing and should be deleted from Rule 2(A).

We disagree. As we stated in the Order, the Commission believes that, in light of the broad consumer protection authority granted the Commission, it is appropriate and necessary to include the term “misleading” in Rule 2(A). We find that the terms “misleading” and “deceptive” legally denote different degrees of unacceptable standards of conduct for CRES providers.

Rule 3 Definitions

- (7) FirstEnergy requests that the definition of CRES provider, adopted at Rule 3(A)(11), be revised to clarify that the EDU is not required to be certified to provide the standard offer

¹ Hereinafter the proposed rules in this chapter will be referred to merely by rule number without including Ohio Administrative Code designation. In other words, proposed Rule 4901:1-21-01, O.A.C., will be referred to merely as Rule 1.

service to customers. The Commission agrees and the definition of CRES provider has been revised accordingly.

Rule 5 Marketing and Solicitation

- (8) MMC requests rehearing of Rule 5(A)(1)(c), which requires a CRES provider to include in its marketing materials a statement that the customer will incur EDU charges and provide the monthly amount of such charges for the average residential customer using 750 kWh of electricity. MMC contends that it is not feasible to present the required information through the mass media and, thus, Rule 5(A)(1)(c) will require the CRES provider to customize its marketing material in each EDU's service territory. Further, MMC argues Rule 5(A)(1)(c) makes telephonic and internet enrollment complicated and costly and the rule will cause confusion for residential customers who do not receive service under "average" residential rates. For these reasons, MMC requests that Rule 5(A)(1)(c) be eliminated.

The primary purpose of Rule 5(A)(1)(c) is to ensure the customer understands that, in addition to the CRES provider's charges, additional charges will be incurred for the distribution of electric service. Given that a competitive electric retail market is a new process for electric customers, we believe it is imperative that customers, particularly residential customers, have an estimate of the charges they will continue to incur from the EDU. For those customers whose distribution charges are substantially different from that of the average residential customer, the CRES provider may provide a more realistic estimate of the EDU charges or include additional information to allow customers to more accurately determine their distribution charges. We believe Rule 5(A)(1)(c) to be a feasible requirement for CRES providers offering service in the service territory of multiple EDUs, given that the information need only be included in marketing materials accompanying the contract, rather than within the contract itself. Therefore, the CRES provider may prepare an estimate of the charges for each EDU and include one or all of the estimates with the appropriate marketing materials depending on the potential customer's location. Accordingly, MMC's request for rehearing of Rule 5(A)(1)(c) is denied.

- (9) DP&L requests that Rule 5 be clarified to state that the EDU is not responsible for maintaining the “do not call” list and to clarify that the “do not call” list referenced in Rule 5(C)(4) and (5) is not the same as the mass customer list discussed at Operational Support Workgroup sessions.

Adopted Rule 5(C)(4) does not require or imply that the EDUs will be responsible for maintaining the “do not call” list but merely requires CRES providers to obtain the list. We also clarify that the “do not call” list referenced in Rule 5 is not the same mass customer list to be provided to CRES providers for marketing purposes. The Commission will maintain and distribute the “do not call” list. A subsequent entry will be issued informing CRES providers how to obtain the “do not call” list.

- (10) OCC asserts the Commission erred by not prohibiting joint advertising between EDUs and their affiliates. The Commission will further address joint advertising in a future proceeding.

Rule 6 Customer Enrollment

- (11) Rule 6(A) directs the CRES provider to coordinate customer enrollment with the EDU “in accordance with the procedures set forth in the applicable electric distribution utility’s tariff.” MMC contends that the Commission erred by not requiring EDUs to coordinate customer enrollment pursuant to uniform procedures established by the Commission.

We note that this is the same issue raised by MMC in its comments and addressed by the Commission in the Order. As previously stated, while the Commission supports the concept of uniform enrollment practices, we believe it is more efficient to allow the EDUs to individually tailor tariff enrollment practices to be filed, reviewed and approved by the Commission. Company specific tariffs and the collaboration of the Operational Support Planning Work Groups (OSP Work Groups) will ensure a level of consistency in the customer enrollment process throughout the state, where appropriate, and the flexibility to take into account the differences between EDUs where necessary.

- (12) MMC asserts that the Commission erred by requiring that the generation resource mix and environmental characteristics be supplied on each contract. MMC misreads the plan language of the rule. Rule 6(C)(1)(b) merely requires that such information be provided with enrollment documents, not necessarily within the four-corners of the contract itself. However, we clarify that, pursuant to Rule 9(B), if the CRES provider offers more than one contract for power supplies, the CRES provider must disclose the appropriate generation resource mix and the environmental characteristics for each such contract.
- (13) MMC also requests rehearing of Rule 6(C)(1)(d), which states “immediately upon obtaining the customer’s signature, CRES providers shall provide the applicant a legible copy of the signed contract.” MMC interprets Rule 6(C)(1)(d) to require the CRES provider to send a copy of that signed contract back to the customer. MMC requests that the rule be revised to allow the marketer to either advise customers to make a copy for their records or send a contract with attached copies so customers can keep a copy.

The Commission notes that Rule 6(C)(1)(d) merely requires that the CRES provider provide the customer with a copy of the signed contract and is applicable when the CRES provider attempts to enroll customers by mail, facsimile or by direct solicitation. If the CRES provider sends only one copy of the contract to the prospective customer, once the signed copy is received by the CRES provider, the CRES provider should then immediately send a copy of the signed contract to the customer. The CRES provider may give the customer multiple copies of the contract and direct the customer to retain a copy for their records. The customer will have a signed copy of the contract if it is transmitted to the CRES provider by facsimile. If, however, the one copy of the contract is sent to the customer by mail, the CRES provider must ensure that the customer has a copy of the signed contract and mail a copy of the signed contract to the customer.

- (14) AEP notes that only the internet enrollment section, Rule 6(C)(3)(c) and (d), include a prohibition on the CRES provider not to initiate enrollment with the EDU prior to the completion of the enrollment transaction with the customer. AEP requests that a similar provision be added to

the provisions for direct solicitation and telephone enrollment.

We note that a similar provision for enrollment by mail, facsimile and direct solicitation was adopted at Rule 6(C)(1)(f) and a provision has been added at Rule 6(C)(2)(d) for telephonic enrollment.

- (15) As adopted, Rule 6(C)(2) requires a CRES provider enrolling customers by telephone to record the conversation, including certain details and the customer's acknowledgment thereof. MMC contends that the Commission erred by failing to include the use of third-party verification for telephonic enrollment. Further, MMC states that only the third-party verification conversation need be recorded. Moreover, MMC claims that the Commission erred by requiring CRES providers to provide too much information during telephonic enrollment, especially the generation resource mix and environmental characteristics.

Regarding the recording of the enrollment conversation, the Commission notes that a recording allows the Commission to verify that the necessary disclosures were made to the customer. On the other hand, third-party verification for telephonic enrollment without the statement of the terms and conditions and the customer's acknowledgement of same merely verifies that the customer intended to enroll for electric service.

As to disclosure of the generation resource mix and environmental characteristics, we agree with MMC that the information required by Rule 9 will be cumbersome and confusing to provide by telephone. Accordingly, provision (j) of Rule 6(C)(2)(a)(v) has been deleted. We note that Rule 6(C)(2)(b)(i) has been clarified to specifically require that the CRES provider mail or otherwise provide the customer the generation resource mix and environmental characteristics disclosure data with the contract within one calendar day following telephonic enrollment.

- (16) We note that Rules 6(C)(2)(a)(vii) and 6(C)(3)(b)(iii) have been revised to clarify that the customer should contact the EDU to rescind the contract and the EDU will provide the customer with a cancellation number to confirm cancellation of the contract. Further, the Commission finds Rule

6(C)(3)(c) to be unnecessary given our adoption of the EDU customer notice requirement and its 7-day rescission period. Accordingly, Rule 6(C)(3)(c) has been deleted.

Rule 8 Customer Access & Complaint Handling

- (17) MMC asserts that the Commission erred to the extent that Rule 8(A)(4) requires CRES providers to maintain a 24-hour capability to process contract cancellations. In light of the Commission's adoption of the EDU customer notice process, customers will contact the EDU to rescind their contracts. Therefore, the CRES provider need not maintain a 24-hour capability to accomplish this purpose and Rule 8(A)(4) is unnecessary and should be deleted. Accordingly, MMC's request for rehearing is granted.
- (18) MMC, as supported by FirstEnergy, claims that Rule 8(B) sets unrealistic deadlines by requiring complaint investigation status reports every 5 days. FirstEnergy contends that, with electric restructuring, customer complaints will likely involve the EDU and will therefore be more complex. Accordingly, FirstEnergy reasons that more time is necessary to process CRES customer complaints and proposes at least 7 days.

The Commission finds that the requirements of Rule 8(B) are consistent with those for the EDU adopted in the Electric Service and Safety Standards (ESSS) at Chapter 4901:1-10, O.A.C. The EDU will be coordinating the investigation and providing the required 5-day status reports unless the complaint relates exclusively to the CRES provider. We agree that complexities caused by electric restructuring may lengthen the time required to complete the processing of a CRES/EDU complaint. However, we believe these complexities only increase the need for the customer to receive status reports at 5-day intervals.

- (19) OCC claims the Commission erred by not requiring OCC's name and telephone number to be provided on customer notifications of complaint procedures.

In accordance with Section 4928.10(C), Revised Code, OCC's name and telephone number will be listed on the customer's bill, as provided in Rule 14(B)(13). Accordingly,

residential customers will be informed of how to contact OCC.

Rule 9 Environmental Disclosure

- (20) FirstEnergy requests rehearing of Rule 9 asserting that the disclosure requirements in the rule exceed legislative requirements. The legislation contained certain specific minimum requirements, which are incorporated within the rule. Language was further added to the rule in order to facilitate the implementation of the legislative requirements. The rule therefore does not exceed any legislative requirements.

Paragraph (B)

- (21) MMC contends that if the CRES provider is not making any environment claims, a “slice of the system” or “regional benchmark” disclosure of the CRES provider’s generation resource mix and environmental characteristics should be sufficient and will minimize costs for CRES providers.

Section 4928.10(F), Revised Code, specifically states that:

the rules shall require that the electric utility, electric services company, electric cooperative, or governmental aggregator provide, or cause its billing and collection agent to provide, a customer with standardized information comparing the projected, with the actual and verifiable, resource mix and environmental characteristics.

The legislation does not make any distinction between suppliers who make an environmental claim and those who do not. Therefore, we have interpreted the legislation to require all service providers to provide the generation resource mix and environmental characteristics of the electricity they supply to customers.

Paragraph (C)

- (22) FirstEnergy and MMC contend that quarterly comparisons of actual to projected data are not practical or required by the legislation. More specifically, MMC states actual data will

not be available for several months, and argues an annual true up is sufficient. FirstEnergy, likewise, interprets the legislation to require only an annual comparison.

In adopting Rule 9, the Commission was sensitive to the delay that might be experienced when compiling the actual data. Therefore, the final rule, as approved by the Commission, contained additional time for gathering and compiling the actual data. However, we find an annual comparison of actual to projected data does not comply with the legislative requirement concerning the comparison of actual to projected data. We further find that FirstEnergy has misinterpreted the legislation. The Commission determined that the legislation requires the comparison to be made "not less than annually or not less than once during the contract period if the contract period is less than one year, and prior to any renewal of a contract." To comply with the legislation, the annual true-up suggested by FirstEnergy would assume that all contracts will be for a term of at least one year and that they will all expire at the same time. Such an assumption is not realistic. Contracts will potentially be for terms of less than 12 months, and contract expirations will likely not all be synchronized.

- (23) MMC also claims that quarterly comparisons of actual to projected data is inconsistent with the settlement process for renewables across the country. Further, according to MMC, quarterly comparisons can be misleading since temporary deviations may result in projections that appear deceptive.

The Commission acknowledges that, while the quarterly comparisons may highlight a temporary deviation from the projection, the rolling nature of the compilation of actual data will mitigate any deviation to the extent the deviation is temporary. If, however, the deviation is not temporary, then it is appropriate for the comparison to reflect the deviation. Accordingly, the Commission continues to support the approach of quarterly comparisons of actual to projected data. Such an approach will demonstrate if the actual experience mirrors the projections provided to customers at the time they entered the contract, as we believe the legislation intends.

Further, quarterly comparisons comply with the legislative requirements outlined in SB3. Section 4928.10(F), Revised

Code, requires a comparison of actual to projected data no less than annually and at least once during the term of a contract if the contract is less than one year. Thus, quarterly comparisons satisfy both provisions of the legislation. The legislation also requires a comparison to be provided to customers prior to any renewal of a contract. Disclosing a comparison of projected to actual environmental disclosure information quarterly will ensure that customers have a relatively recent comparison on which to base their decision whether to renew the electric service contract. Finally, the legislation requires the environmental disclosure to be completed four times per year. The quarterly comparisons, containing both actual and projected data, are consistent with the requirements for both the disclosure of the projected data and the comparisons. Accordingly, we find this provision of Rule 9 to be appropriate as adopted in the Order.

Paragraph (D)

- (24) FirstEnergy requests that the rules allow more flexibility in terms of format and permit supplier discretion as long as required information is conveyed. The OEC also argues that suppliers should not be permitted to exercise their discretion when selecting textures/patterns for use in the pie charts because the legislation calls for standardization and, thus, charts should be standardized to facilitate customer choice.

Section 4928.10(F), Revised Code, directs that an electric service provider:

cause its billing and collection agent to provide, a customer with standardized information comparing the projected, with the actual and verifiable, resource mix and environmental characteristics....

The Commission, therefore, finds it necessary for the environmental disclosure information to be consistent. Further, we find standardizing this information better facilitates comparisons by customers. We have revised Rule 9(D)(2)(a) to require the consistent, standardized presentation of the generation resource mix and environmental characteristics.

- (25) OCC, MMC, SEED Ohio and the OEC claim that adopted Rule 9(D)(2)(b) will result in misleading information being provided to customers, particularly with regard to the "actual" environmental characteristics. The commentors assert that the categories of environmental impacts are so broad as to make the data meaningless without some qualification. Further, the commentors assert that the generic assumptions as to environmental impact are not the same thing as "actual" impacts and, therefore, the rule falls short of the legislative intent. MMC, SEED Ohio and the OEC also argue that the rule exaggerates environmental impacts from renewables and understates the impacts from fossil fuels.

The Commission finds merit in several of the arguments presented by OEC, OCC, and SEED. The Commission has therefore modified the rule to include more details concerning the environmental characteristics, thereby improving a customer's ability to conduct meaningful comparisons of the electric service options. However, the Commission has retained the categories of environmental impacts to be provided because the impacts provide insight into the less quantifiable environmental impacts to which customers would not otherwise have ready access.

- (26) FirstEnergy argues that the legislation requires only that the environmental mix of generation be disclosed to customers before they contract, and thereafter four times a year. FirstEnergy also contends that the disclosure requirements of this rule exceed legislative requirements and that the rule should permit more flexibility in terms of format; the format should be at the supplier's discretion as long as the required information is conveyed.

We believe FirstEnergy misinterprets Section 4928.10(F), Revised Code. This section specifically directs that both generation resource mix and environmental characteristics should be disclosed to customers prior to entering into a contract, and four times per year thereafter. The legislation also clearly requires comparisons of actual to projected data over various time frames.

Further, we find the legislation contained certain specific minimum requirements, which are incorporated within the rule. Language was added to the rule in order to facilitate the implementation of the legislative requirements.

Rule 9, therefore, does not exceed but implements the legislative requirements.

- (27) The OEC contends the benefits of clean coal technology are not recognized by the proposed rules due to the generic approach of communicating the environmental impacts.

The Commission's changes discussed in paragraph 25 make this argument moot. By requiring that details concerning air emissions be disclosed, the environmental benefits of installing clean coal technologies will be clearly illustrated.

- (28) FirstEnergy posits that regional data is not required by the legislation and should, therefore, be removed from Rule 9(D)(2)(c).

The Commission realizes that the regional data is not required by the legislation. However, the regional reference was adopted by the Commission to provide the customer with a meaningful reference of the average generation resource mix and environmental characteristics.

Rule 11 Contract Administration

- (29) AEP notes that the Order discusses rescission of the customer contract via the internet, but that Rule 11(F) only references the EDU's telephone number and mailing address.

In addition to the EDU's telephone number and mailing address, the EDU may offer the internet address or e-mail address as a method to cancel the CRES contract. However, the internet or e-mail address is not a substitute for providing the EDU's telephone number and mail address.

- (30) MMC asserts that the Commission erred in adopting Rule 11(G)(4). As MMC interprets Rule 11(G)(4), price changes require the execution of a new contract, as evidenced by the customer's "wet signature." MMC requests that customers be permitted to accept an offer of contract renewal by "doing nothing."

Rule 11(G)(4), as adopted by the Commission, provides that, for material changes to the contract (excluding price reductions), the CRES provider must notify the customer of such changes and "obtain the customer's consent to such changes

pursuant to any of the enrollment procedures established in Rule 6.” Rule 6 allows the customer to be enrolled, and the contract to be renewed, by mail, facsimile, person-to-person, telephone and internet. We believe that the listed methods to accept or reject renewal of the contract represent efficient and cost-effective procedures to ensure that customers are intentionally rejecting or accepting offers for electric service. We find it inappropriate to allow the customer’s electric service contract to be renewed based on the CRES provider’s failure to receive a response from the customer. We believe a negative response process is likely to lead to confusion because it assumes that the customer received the contract renewal notice.

Rule 12 Contract Disclosure

- (31) As OCC notes in its request for rehearing, Rule 12 does not clearly include a contract disclosure requirement that the customer contact the EDU to rescind the contract. The Commission finds that Rule 12(B)(3) should be amended to state that the customer may rescind the contract by contacting the EDU.
- (32) AEP is opposed to Rule 12(B)(5), which permits the CRES provider to terminate the contract with at least fourteen days written notice for nonpayment. AEP asserts that 30 days is necessary for the customer to find and transfer to a new service provider. Otherwise, AEP claims the customer will likely default to the EDU. Further, AEP argues the customer’s current CRES provider should continue to provide electric service until the transfer is processed to a new service provider. MMC, in its memorandum contra, states that requiring CRES providers to give 30 days notice to customers for nonpayment would create a hardship on CRES providers that do not have the ability to disconnect service for nonpayment.

The Commission believes that, as adopted, Rule 12(B)(5) reflects the EDU’s designation as the provider of last resort. However, the CRES provider is responsible for continuing to provide the customer with electric service until the customer’s next scheduled meter reading. Likewise, the Commission is not requiring, by adoption of this provision, that on the fourteenth day after the notice, the EDU immediately transfer service to itself or another CRES provider. We clar-

ify that the CRES provider must coordinate the sending of the contract termination notice with the EDU's meter reading cycle so that the customer is provided at least 14 days notice that the CRES contract will terminate.

- (33) Adopted Rule 12(B)(6)(a) permits a CRES customer to terminate the contract, without penalty, if the customer moves out of the CRES provider's service area, or into an area where the CRES provider charges a different price. DP&L takes issue with the implication that a customer's CRES contract for service may transfer to another location within the same EDU's service territory. DP&L contends that its billing system is unable to transfer service from one address to another address. The company claims that currently, the customer's old account would be closed and a new account at the new service address would be established. DP&L suggests that CRES contracts should provide that, if the CRES customer relocates within the service territory, the contract would expire. However, if the customer selects the same CRES provider at the customer's new location within the service area, the customer would have the option to receive the CRES provider's service at the same terms, conditions and duration of the former contract.

We understand that the EDUs may not be immediately prepared to transfer a CRES provider's customer's electric service from one location to another within the EDU's service area. However, the rule represents the Commission's goal for "seamless" transfers of service. The Commission expects the OSP Work Group will address the timing, method and process to implement "seamless" transfers of electric service.

- (34) OCC asserts that the Commission erred by failing to require, pursuant to Rule 12(B)(9), that OCC's name and telephone number be included on all contracts.

As stated above with regard to Rule 8, Section 4928.10(C), Revised Code, requires OCC's name and telephone number to be listed on the customer's bill. Accordingly, Rule 14(B)(13) was adopted. Residential customers will, therefore, be informed about how to contact OCC. Including OCC's name and telephone number on all CRES contracts will likely confuse nonresidential customers whom OCC does not represent.

- (35) As adopted by the Commission Rule 12(B)(11) provides that a CRES customer's electric "service shall begin with the first meter reading after the processing of the request by the EDU." AEP asserts the language should be modified to state "service shall begin on the next switch date after processing of the request by the EDU." AEP posits that the proposed language accommodates EDUs that will coordinate the transfer with the next meter read date and EDUs that will coordinate the transfer at the first of the next month. In its memorandum contra, MMC contends AEP's proposal would cause inconsistency in the enrollment process for AEP companies and cause enrollment delays.

We find AEP's proposed language to be too open-ended. The proposed language would permit the EDU to substantially delay the transfer of a customer's service. Since a CRES provider's billing is dependent on the EDU's meter reading, we believe service should begin with the first meter reading after the EDU processes the request. However, we have revised the language of Rule 12(B)(11) merely to acknowledge that the CRES provider and the EDU must have sufficient time, prior to the customer's meter reading, to process and complete the customer's transfer of service.

- (36) MMC asserts that the Commission erred in its adoption of Rule 12(B)(13) to the extent that it does not include the term

“if applicable” in regards to deposit requirements. We believe it is imperative that the customer be informed of the credit, deposit and collection procedures associated with the CRES provider’s service. Rule 7 permits CRES providers to require a deposit or other demonstrations of creditworthiness as a condition of providing service. The customer should be informed of such requirements even if they are not imposed on the customer. Accordingly, MMC’s request for rehearing of Rule 12(B)(13) is denied.

Rule 13 Net Metering Contracts

- (37) AEP contends that Section 4928.67, Revised Code, does not contemplate net metering by CRES providers and, therefore, Rule 13 should be eliminated.

The Commission disagrees with AEP. Section 4928.67(A)(1), Revised Code, states in pertinent part:

Beginning on the starting date of competitive retail electric service, a retail electric service provider in this state shall develop a standard contract or tariff providing for net energy metering.

We believe that this section refers to both the CRES provider and the EDU. Furthermore, the broad term “electric service provider” is used throughout Section 4928.67, Revised Code. Interpreting the legislation to prohibit customer-generators from receiving service from CRES providers could stifle electric competition. Our interpretation of Section 4928.67, Revised Code, is substantiated by the use of the words “contract or tariff” in the legislation. CRES providers shall develop net metering contracts, whereas the EDUs will amend their tariffs to include net metering provisions. We understand that some CRES providers may not be able to determine their aggregate peak customer demand, but, to the extent they have this ability, we believe CRES providers should be allowed to use it to limit the amount of electricity subject to net metering.

- (38) DP&L contends that adopted Rule 13(F) is unlawful and unreasonable in that it prevents the EDU from recovering transmission and distribution costs, transition charges and other costs from net metering customers. Similarly,

FirstEnergy argues that as adopted Rule 13 may be interpreted in a manner that would result in the confiscation of the EDU's property; the denial of the opportunity to recover the EDU's costs associated with providing transmission and distribution services to customers; violates the prohibition against discounting transition costs in accordance with Section 4928.37, Revised Code, permits customer-generators to avoid paying all taxes and other government-imposed charges and cause other customers to subsidize the cost of the electric service received by the customer-generators.

We note that Rule 13(F) is applicable to CRES providers offering net metering and a similar provision, applicable to the EDU, was adopted by the Commission in 99-1613 at Rule 4901:1-10-28, O.A.C. Thus, in addition to the discussion of net metering addressed in this case, 99-1613, also includes a discussion of net metering. We find That the premise of DP&L's and FirstEnergy's arguments were previously Addressed in the Finding and Order issued in 99-1613. Thus, we deny DP&L's and FirstEnergy's applications for rehearing on this issue.

- (39) DP&L also argues that the crediting and use of electricity by net metering customers should be a time differentiated process. More specifically, DP&L posits that the time energy is supplied and when energy is produced by the customer and placed on the electric grid should be differentiated as peak and non-peak. Unicom claims that requiring hourly metering documentation would force customer-generators to install, at their own expense, sophisticated metering devices whose cost alone may impede the development of customer generation.

The Commission believes that the intent of the legislation is to balance the benefits of electric customer-generation, including the customer-generator's capital investment and the benefits to the electric-consuming public, against the possibility that other customers will be required to subsidize customer-generators. Thus, although we do not wish to mandate time-of-day metering, we wish not to preclude EDU's recognizing the time-differentiated value of electricity, so long as that is done in a nondiscriminatory manner within the same rate class.

Rule 14 Customer Billing and Payments

- (40) AEP raised in its comments, and again in its application for rehearing, that the EDU should not be obligated to provide consolidated billing for CRES providers. We find that, pursuant to the electric service and safety standards (ESSS) adopted in 99-1613 at Rule 4901-10-29(G), O.A.C., EDUs are required to offer consolidated billing to CRES providers in the EDU's carrier-to-carrier tariff. Further explanation of the Commission's rationale for this requirement is addressed in 99-1613.
- (41) OCC argues that the Commission erred by not requiring CRES bills to distinguish between actual and estimated consumption. FirstEnergy asserts in its memorandum contra that the CRES provider will not need to distinguish between actual and estimated consumption since such information will appear on the EDU portion of the bill.

With consolidated billing, FirstEnergy is correct that the EDU portion of the bill is required to state if the charges are based on actual or estimated electric consumption. If, however, the CRES provider issues its own bill, the bill should indicate whether the charges are based on actual or estimated electric consumption. Thus, Rule 14(B) has been amended to state whether CRES charges are based on actual or estimated usage.

- (42) Rule 14(B)(7) requires that the CRES customer bills include "a notice in bold-face type containing a clear explanation for any change of providers, rates, terms, or conditions of service" for two consecutive bills following the occurrence of any such change. DP&L notes that an EDU, which performs billing for a CRES provider, will not have access to the CRES contract to meet the requirements of Rule 14(B)(7).

First, the Commission notes that the CRES provider is responsible for compliance with the billing requirements listed in Rule 14. The Commission foresees that the CRES provider will submit to the EDU any rate change information necessary to bill the customer. However, it may be necessary for the CRES provider to notify the CRES customer by separate mailing of any change in terms or conditions of

service that are not necessary for the EDU to bill the customer. Rule 14(B)(7) effectuates the requirements of Section 4928.10(C)(5), Revised Code.

- (43) AEP asserts that, to avoid confusion, Rule 14(B)(9)(b) should be revised to replace the term “commercial” with “nonresidential.” The Commission agrees and Rule 14 has been revised accordingly.
- (44) DP&L states that the order in which partial payments are applied to a customer’s account, pursuant to Rule 14(F), is unreasonable and unfair. Rule 14(F) requires that, when the CRES provider acts as the billing agent of the EDU, partial payments be applied in the following manner:
 - (1) First, to prior and current regulated distribution charges;
 - (2) Second, to prior and current regulated transmission charges;
 - (3) Third, to prior EDU standard offer generation charges; and
 - (4) Fourth, to prior and current CRES provider charges.

This order, according to DP&L, may result in a customer’s disconnection because payments are not applied to the oldest regulated debt first. DP&L contends that its proposed order of posting payments to the customer’s account should also be adopted in the ESSS in 99-1613. FirstEnergy notes that current standard offer generation charges were not included in the payment posting order and should be added to Rule 14(F)(3) for consistency.

The intent of the rule clearly was not to encourage the disconnection of a customer’s electric service by failing to require the application of partial payments to the oldest regulated debt first. Accordingly, the Commission agrees that Rule 14(F)(3) should be amended. Upon further consideration of the concerns raised, we find that partial payments should be applied to the customer’s account in the following order:

- (1) To prior distribution, standard offer generation, and transmission charges;

- (2) To current distribution, standard offer generation, and transmission charges;
- (3) To prior CRES provider charges;
- (4) To current CRES provider charges; and
- (5) To other prior and current nonregulated charges.

Rule 14(F) has been revised accordingly.

Chapter 4901:1-23 Electric Reliability, Safety and Customer Service Standards Enforcement

4901:1-23-04 Settlement agreements and stipulations.

- (45) OCC argues that the Commission erred by delegating enforcement authority to the Commission staff. More specifically, OCC contends that Rule 4901:1-23-04(B), O.A.C., allows the EDU or CRES provider to enter into a stipulation with the staff without Commission approval or any notice to the public. OCC posits that the rule undercuts a customer's ability to obtain relief from injuries sustained due to violations of the service standards. OCC also argues, as a separate issue for rehearing, that the Commission erred in delegating enforcement responsibility to the staff. OCC contends that the Commission's enforcement authority applicable to electric service providers is set forth in various sections of Chapter 49 of the Revised Code. However, OCC posits that none of the provisions of Chapter 49 permit the Commission to delegate the resolution of electric utility violations to the staff. FirstEnergy notes in its memorandum contra that the rule will expedite the resolution of alleged noncompliances and misunderstandings. FirstEnergy also contends that the Commission has the authority to delegate enforcement responsibilities given that the rule is for probable noncompliances rather than actual violations.

The Commission disagrees with OCC's reasoning. First, we note that, only where the agreement provides for the payment of a forfeiture or payment of \$1,000 or less, is the agreement accepted by the Commission and enforceable on the electric service provider upon its execution. Pursuant to Sections 4905.54 and 4928.16(B)(2), Revised Code, for each day's failure to comply with the rules or Commission order, the EDU or CRES provider may forfeit to the state \$1,000,

and each days continuance of the violation is a separate offense. With this in mind, the Commission believes that, in such limited circumstances, the staff is perfectly capable of resolving such probable noncompliances of Commission rules or orders. We emphasize that resolution of the probable noncompliances does not circumvent the rights of a customer to bring a complaint to the Commission. Accordingly, OCC's request for rehearing of Rule 4901:1-23-04(B), is denied.

- (46) Finally, AEP requests that the Commission provide with the entry on rehearing: a redline version of the final rules which depicts any revisions to the rules made as a result of rehearing; a list of all changes attached to the entry on rehearing; or a list of all changes posted on the Commission's web site.

The Commission has made an attempt to note all significant changes within the text of this entry. However, a redline version of the rules, as revised pursuant to this entry on rehearing, are attached and will be posted to the Commission's web site.

It is, therefore,

ORDERED, That, in accordance with the above findings, the applications for rehearing and requests for clarification of issues are granted to the extent indicated and as discussed above. It is, further,

ORDERED, That, in all other respects, the applications for rehearing and requests for clarification are denied. It is, further,

ORDERED, That proposed Chapters 4901:1-21 and 4901:1-23, are revised as discussed above and attached hereto and adopted; and the adopted revised rules shall be filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That the adopted rules attached herein be effective as of the earliest date permitted by law. Unless otherwise ordered by the Commission, the review date for Chapters 4901:1-21 and 4901:1-23 shall be September 30, 2002. It is, further,

ORDERED, That a copy of this entry and the rule revisions and adoptions, as attached herein, be served upon all parties who filed comments in this docket.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Craig A. Glazer

Judith A. Jones

Donald L. Mason

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Promulgation of Rules for Minimum) Case No. 99-1611-EL-ORD
Competitive Retail Electric Service Standards)
Pursuant to Chapter 4928, Revised Code.)

SEPARATE OPINION OF COMMISSIONER DONALD L. MASON

Although I am agreeing with the majority in this case, I do have some reservations about Rule 4901:1-21-09, Environmental Disclosure. The Commission is requiring the disclosure of air emissions information. There is no statutory requirement that such information be provided to customers. If the General Assembly had intended that such information absolutely had to be provided to consumers, the requirement would have been included in the legislation.

The manner in which air emissions is required to be disclosed could result in misleading information being provided to consumers. An Ohio generator or any other generator using Ohio coal could operate entirely within U.S. and Ohio EPA air quality regulations by using air emission credits, yet the graph would display the generator in a negative light. Therefore, in addition to giving misleading information to consumers, the rule as adopted could actually work against other statutory and regulatory tools that the General Assembly and the U.S. and Ohio EPA have created for the specific purpose of allowing the continued production and consumption of Ohio coal.

Although I am not dissenting from the entry in this case, I would have preferred that the air emissions requirement not been revised from that approved in the opinion and order.

Donald L. Mason
Commissioner

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Promulgation of Rules for Minimum) Case No. 99-1611-EL-ORD
Competitive Retail Electric Service Standards)
Pursuant to Chapter 4928, Revised Code.)

SEPARATE OPINION OF COMMISSIONER JUDITH A. JONES
CONCURRING IN PART AND DISSENTING IN PART

While I agree with much of the entry I strongly disagree with Rule 4901:1-21-09, Environmental Disclosure. It has been my hope that Ohio would have used more sense resulting in a balanced approach to the environmental issues.

A carefully crafted compromise was approved in the finding and order issued in this case on April 6, 2000. Modifications to the rule approved today will, in my opinion, prove not to be beneficial to the state of Ohio, while at the same time providing little or no additional useful information to consumers. The rules will be getting final review by the Joint Committee on Rule Review, so the legislature will make the final determination on these rules.

Section 4928.10, Revised Code, requires that the Commission's rules include the approximate generation resource mix and the environmental characteristics of the power supplies. The rule adopted by the finding and order issued on April 6 complied with the statutory requirement. The revision being approved today goes beyond the statutory requirement by requiring a comparison of air emissions to a regional average. Proponents of environmental disclosure typically think the consumer should have complete information on which to make choices. I agree, to the extent required by statute. However, the information should be complete and accurate. Cost is a major component of information that consumers should have, yet the increased environmental costs are not included in the proposal. It is nearly impossible to provide accurate information because the generation mix changes over time and therefore the emissions data becomes outdated. The more information that we require to be compiled and provided to consumers may result in outdated, irrelevant data being provided because of the difficulty in gathering all the relevant data in a timely manner. The more data required to be compiled also increases the burden on those required to provide the information to the consumers.

The descriptions of environmental characteristics provided are incomplete. While an exhaustive list would be cumbersome, the partial descriptions are potentially misleading. Further, the environmental disclosure proposal before the Commission today includes very general emission information. This particular impact has been singled out unfairly and can be misconstrued.

An important element that is being overlooked is the potential impact on the economy of and the economic development in the state of Ohio. Coal provides the source of 90% of the generation of electricity in the state. It is the least expensive source for generation. While I fully support providing customers the option of choosing non-fossil fuel generation, it should be clear to them that their choice likely will include a higher price tag. No economic gain will be realized by requiring the air emission levels to be provided. The Commission's revised rule will do more harm than good to the economy of and the economic development in the state of Ohio.

I believe that the revised rule requiring disclosure of air emissions is ill conceived and gives little additional information of value to the consumer.

Therefore, I am voting against this rule because I believe that Ohio would be better served if the rule had not been revised to require disclosure of the air emissions.

Judith A. Jones
Commissioner