BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Promulgation of Rules for Electric Transition Plans and of a Consumer Education Plan, Pursuant to Chapter 4928, Revised Code.	))))	Case No. 99-1141-EL-ORD

SECOND ENTRY ON REHEARING

The Commission finds:

(1) On November 30, 1999, the Commission adopted a number of rules regarding the manner in which electric transition plan applications should be filed and considered by the Commission. At the same time, the Commission established a general plan for existing electric utility companies to educate consumers about electric restructuring, as required by Section 4928.42, Revised Code.

(2) Section 4903.10, Revised Code, states that any party who entered an appearance in the proceeding may apply for rehearing with respect to any matters determined in said proceeding by filing such a request within 30 days after the entry of the order upon the journal of the Commission.

(3) Between December 15 and 23, 1999, the Commission received five applications for rehearing from:

(a) The Neighborhood Environmental Coalition, Western Alliance, and Parkview Areawide Seniors Inc. (hereinafter jointly referred to as Western Alliance);

(b) The American Association of Retired Persons, Appalachian Peoples' Action Coalition, Citizen Power, Citizens Protecting Ohio, Earth Day Coalition, Enron Corp., Greater Cleveland Growth Association, Industrial Energy Users-Ohio, National Federation of Independent Business-Ohio, Ohio Association of Community Action Agencies, Ohio Citizen Action, Ohio Council of Retail Merchants, Ohio Environmental Council, Ohio Grocers Association, Ohio Manufacturers Association, Ohio Meat Industries Association, Ohio Partners for

Affordable Energy, Ohio Petroleum Council, Safe Energy Communication Council, and Sierra Club – Ohio Chapter (hereinafter jointly referred to as the Consumer Education Alliance and referenced, for shorthand purposes, as CEA);

(c) The Ohio Manufacturers' Association, the Industrial Energy Users-Ohio, Ohio Council of Retail Merchants, Ohio Partners for Affordable Energy, Enron Energy Services Inc., Greater Cleveland Growth Association, and CNG (hereinafter referred to as the Coalition for Choice in Electricity and referenced, for shorthand purposes, as CCE);

(d) The Ohio Council of Retail Merchants, which incorporated the arguments contained in the rehearing applications filed by CCE and the CEA; and

(e) The Industrial Energy Users-Ohio, which incorporated the arguments contained in the rehearing applications filed by CCE.

(4) On January 4, 2000, the Commission granted those five applications for rehearing listed above for the limited purpose of allowing the Commission additional time to consider the issues raised in those applications.

(5) On December 29 and 30, 1999, the Commission received in this docket additional applications for rehearing from The Cincinnati Gas & Electric Company (CG&E), Columbus, Southern Power Company, Ohio Power Company,[1] Ohio Partners for Affordable Energy,[2] The Dayton Power and Light Company (DP&L), Ohio Consumers' Counsel (OCC), and FirstEnergy Corp. (FirstEnergy).

(6) On December 30, 1999, January 3 and 7, 2000, memoranda contra various parts of the applications for rehearing were

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[1] Ohio Power Company and Columbus Southern Power Company are both subsidiaries of American Electric Power Inc. (AEP). They jointly filed an application for rehearing and they will be referenced as "AEP".

[2] The application for rehearing by Ohio Partners for Affordable Energy (Ohio Partners) only incorporated the arguments contained in the rehearing applications filed by CCE and the CEA.

filed by FirstEnergy, AEP, PG&E Corporation (PG&E), OCC, and CCE.

(7) Some of the arguments raised in the applications for rehearing are similar in nature or identical. Therefore, we will group the arguments together as appropriate in order to consider them. We have included headings in bold for ease of reference. Additionally, we wish to make clear that we will refer to those assignments of error raised by CCE and CEA, but it should be understood that we are simultaneously addressing the applications for rehearing filed by the Industrial Energy Users-Ohio, Ohio Council of Retail Merchants, and Ohio Partners. First, we will address the assignments of error related to our conclusions for the consumer education plan.

Consumer Education Plan

(8) Two of Western Alliance's assignments of error allege that the consumer education plan should be modified to: (a) ensure that community-based organizations (CBOs) are able to participate in the consumer education plan, and (b) encourage the utilities to include CBOs in the utilities' individual education plans (including funding for the CBOs). Similarly, CEA argues in its second assignment of error that the Commission should have provided grant funding to CBOs, consumer organizations, trade organizations, and other credible entities. CEA states that the plan is doomed if the utilities seek participation by CBOs, but they cannot participate without funding. CEA also asks the Commission to clarify whether the utilities are permitted to contract with CBOs for consumer education services.

Western Alliance and CEA want the consumer education plan to ensure that CBOs are able to participate in educating the public about electric restructuring, including as participants in the service territory-specific campaigns. The plan we adopted specifically lists partnerships with CBOs as one of the tactics to be employed for the statewide education campaign. In addition, we specifically encouraged the utilities to work with CBOs and to provide CBOs with membership on the service territory-specific advisory groups. We reaffirm those statements. We do, however, clarify that, while the general plan requires that statewide funds not be disbursed through grants, the plan does not address or prohibit the disbursement of some service territory-specific funds through contracts with CBOs to provide services relating to communicating the message of choice. We believe that our education plan emphasizes the value that CBOs can bring to educating the public. In our opinion, the adopted consumer education plan appropriately includes CBOs. We do, however, reserve the right to revisit this issue after one year has passed. We will monitor the level to which CBOs have been utilized by the utilities and make adjustments to the plan as appropriate.

(9) Western Alliance also contends that the consumer education plan should be modified to ensure that environmental interests are "adequately represented in the consumer education plan". In particular, Western Alliance is seeking to ensure that “green energy” is adequately represented. The consumer education plan is designed to promote the choice of electric service in Ohio. It is not intended to promote one form of generation over another, including so-called “green energy”. The education plan will focus on raising the awareness of choice among consumers and providing the tools necessary for consumers to make informed decisions about their electric service. We see no need to modify the consumer education plan as requested by Western Alliance. Despite this conclusion, we note that our staff has proposed and we will consider in the near future a rule that will require, outside of the consumer education plan, the dissemination of information to consumers about generation sources, including “green energy”. *In the Matter of the Commission’s Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1611-EL-ORD (proposed rule 4901:1-XX-09).

(10) CEA argues, in its first assignment of error, that the Commission should have adopted measurable standards with which to evaluate the performance of the plan. CEA states that, without such measurable standards in the plan, there can be no determination as to whether the Commission has met its responsibility to adopt and order a consumer education plan. FirstEnergy states, in its December 30, 1999 memorandum contra, that provision (F) will provide the baseline and continuing research for objectively measuring customer awareness.

The Commission had a responsibility to adopt and order a consumer education plan. We have done that in this docket. While specific, measurable evaluation standards are indeed critical to the success of the program, we believe that those goals cannot realistically be set until the results of a baseline, statewide research study are available to ourselves and to the statewide advisory group. That study is to take place in the spring of this year and goals will be set thereafter.

(11) Additionally, CEA argues that the Commission erroneously placed sole responsibility and authority for the consumer education plan with the utility industry and, thus, is precluding meaningful participation by the advisory groups. CEA's argument is based upon the plan's creation of the advisory groups, but its failure to require incorporation of the work of the advisory groups. FirstEnergy contends that the plan recognizes that Section 4928.42, Revised Code, places the responsibility for education with the electric utilities and, therefore, CEA is improperly seeking to micromanage the education effort and regulate the dispersion of funds. As explained in FirstEnergy's response, it believes that the adopted role for the advisory groups will avoid the pitfalls of a "governance by committee" approach suggested by CEA.

We intend that the advisory groups formed within the service territories will be comprised of members similar in representation to the statewide advisory group, with emphasis on the inclusion of CBOs among their members. We also intend that the role of the territory specific-advisory groups be similar to that of the statewide advisory group, in that the territory specific-advisory groups will provide input to the messages and dissemination of the message within the service territories while being mindful that the campaign must support the statewide campaign. We believe that the coordination of such efforts is best done by the electric utilities within their own areas and ultimately coordinated by Ohio Electric Utility Institute to ensure consistency of message. We remind CEA that the Commission has ultimate supervision of the program. Given that the advisory groups, including CBOs, are given a specific mission and the Commission has a specific oversight role as does the OCC in consultation, we do not agree with CEA's assessment that the utilities were given "sole responsibility and authority" over the consumer education plan. However, given our conclusions and as noted above, we do reserve the right to revisit the progress of the education program and assess the level of involvement of non-utility stakeholders.

(12) CEA also alleges that the Commission should have required the education plans to include information about energy efficiency improvements, net metering, and aggregation. CEA states that the Commission has not met the requirements of Chapter 4928, Revised Code, because, under the adopted plan, only the utilities must agree upon the messages of the campaign. Additionally, CEA contends that the failure to include information about energy efficiency and net metering violates the goals of the state electric policy. Moreover, CEA argues that the campaigns should educate customers on organizational options under the competitive market (not just rely upon the ability to choose a marketer). FirstEnergy argues in response that the campaign's message should be that consumers have a choice and not include multiple themes.

Section 4928.56, Revised Code, requires the Director of the Ohio Department of Development (ODOD) to establish a consumer education program, which provides information to consumers regarding energy efficiency and energy conservation. We said in our November 30, 1999 order that messages of the campaign would be developed with the assistance of the advisory group and that the ultimate plan would not duplicate the efforts of ODOD, but support them. We, again, conclude that, while net metering and aggregation may be messages of the overall campaign, it is the duty of the advisory group, in conjunction with the Commission, OCC, and advertising/PR firms to determine the specific messages of the campaign. This assignment of error is denied.

(13) CG&E alleges, in its last assignment of error, that the Commission should clarify provision (F) of the consumer education plan. CG&E states that it is unclear whether the Commission contemplates service territory-specific research (done by the utilities or via contract) or statewide research that is detailed so as to provide valuable data for the service territory-specific campaigns.

We clarify that all research conducted for the education campaign will be done as part of the statewide campaign and each utility is not required to conduct education and awareness research individually. The statewide research will be conducted such that statistically accurate service territory conclusions may be drawn, as well as statewide conclusions. This does not, however, preclude other research as ordered by this Commission for the purposes of market monitoring.

Processing Rules

(14) In Western Alliance's first assignment of error, it asks the Commission to affirm that public interest groups and ordinary citizens are not going to be shut out of the transition process. Specifically, Western Alliance asks the Commission to clarify that there will be an opportunity for public hearings and public input in either the rules docket or in specific transition plan dockets.

Western Alliance worries that the general public will not be able to participate in the transition plan process. However, Section 4928.32, Revised Code, specifically allows all persons with a real and substantial interest in a proposed transition plan to file with the Commission their preliminary objections to the plan. Moreover, our adopted rules allow intervention. Thus, the process for the transition plans plainly allows interested groups and ordinary citizens to participate in these proceedings, if they choose. Additionally, public notice of the transition plan filings will be made so that the general public can learn of the filing and learn how to obtain further information about a particular utility's proposed application. Thus, the general public not only can participate in the transition plan proceedings, but will also be provided with basic information from which the public can evaluate whether it wishes to participate in the proceedings. Western Alliance also requests that the Commission clarify that there will be public hearings in either this docket or in the individual transition plan application dockets. Public hearings regarding the transition plans are not mandated by Chapter 4928, Revised Code. Rather, Section 4928.32, Revised Code, states that, for those aspects of the proposed plan that the Commission determines reasonably require a hearing, the Commission shall afford a hearing. Our adopted rules correspond with the discretion granted to the Commission by the legislature. Upon review of the transition plan applications, we will determine whether hearings are reasonably required. Nothing in Western Alliance's application for rehearing convinces us that the processing rules should be clarified or modified on this point. For these reasons, we conclude that Western Alliance's first assignment of error should be denied.

(15) Western Alliance argues in its last assignment of error and OCC argues in its first assignment of error that the Commission should ensure public input by scheduling public hearings throughout the state of Ohio. Western Alliance states that public input is important, particularly on the issues of unbundling and the shopping incentive. OCC states that local hearings will not delay the Commission's decision-making process if they are held during or immediately following the evidentiary hearings. OCC suggests a local hearing be held in at least one city in each utility's service area and that the Commission publish notice of such hearings once each week for two consecutive weeks prior to the local hearing. FirstEnergy states in response that local hearings are not necessary, would have little value, and OCC (and other group representatives) can provide input for the general public without holding local hearings.

We have, in part, discussed Western Alliance's and OCC's concern. We noted above that Chapter 4928, Revised Code, does not mandate that the Commission hold hearings in every transition plan proceeding. Upon review of the transition plan applications, we will determine whether hearings are reasonably required. Moreover, in our November 30, 1999 decision, we noted that, due to the statutory time constraints, we would not establish rules to accommodate certain parties, including a rule for holding local public hearings. We continue to believe that our conclusion was correct. This conclusion is justified because of the large scope of the transition plan applications and the fact that several such cases will be pending before the Commission and be subject to the same statutory time constraint. As noted, we will evaluate whether hearings are reasonably required in the transition plan cases at a later time. For these reasons, we deny Western Alliance's last assignment of error and OCC's first assignment of error.

(16) OCC also alleges (in its second assignment of error) that the Commission erroneously failed to establish a rule precluding the transition plan evidentiary hearings from taking

place simultaneously. OCC believes that the Commission should establish an evidentiary hearing schedule at the outset to avoid simultaneous hearings. OCC states that the Commission should at least order that every effort will be made to avoid simultaneous hearings and, if they do occur simultaneously, every effort will be made to not unduly disadvantage parties who experience difficulties as a result. FirstEnergy states that this issue was already considered by the Commission. Also, FirstEnergy argues that the need for hearings, their scope, and schedule thereof are within the Commission's discretion and there is no need to restrict or interfere with that discretion at this point.

We recognize that some parties will have an interest in a number of the transition plan applications and we noted that we would do our best to alleviate the difficulties that the parties will face because of their involvement in multiple dockets. As we have done in the past, we will take efforts to avoid conflicts between the different dockets. However, we will not modify our conclusion to not establish a rule such as that requested by OCC.

(17) OCC's third assignment of error states that the Commission inappropriately failed to include in the rules the requirement that active spreadsheets be provided to any intervening party who requests them. Likewise, CCE alleges in its first assignment of error that the Commission erred in not incorporating in its rules the requirement, set forth in the finding and order, to provide electronic copies of active spreadsheets. FirstEnergy correctly noted in its memoranda contra that Rule 4901:1-20-04(B) does require that active spreadsheets be provided to parties. OCC and CCE have overlooked the last sentence in Rule 4901:1-20-04.

(18) OCC's fourth assignment of error relates to the settlement conference rule, Rule 4901:1-20-08. OCC argues that the adopted rule should have included the rationale/purpose explained by the Commission in the November 30, 1999 Finding and Order. OCC is concerned that our statements in the order regarding the usefulness of having the settlement conference begin at day 60 (rather than at a later time) conflict with the adopted rule language. Also, OCC again advocates that the settlement conference not be held until day 100. FirstEnergy states that it makes sense to meet and

attempt to narrow the scope of the proceedings as early as possible.

We disagree with OCC's statements. We believe that our rationale for scheduling settlement conferences in these cases is reasonable. Moreover, we believe that there is no need to alter the 60-day deadline. We have not declared that the 60-day settlement conferences to be "preliminary" or that the purpose is solely to organize future meetings. Rather, we are requiring the parties to explore settlement and are doing so at a fairly early stage in these cases. We will not assume that holding a settlement at day 60, rather than at day 100, will be fruitless.

(19) OCC states in its fifth assignment of error that the Commission should not have established the intervenors' prefiling deadline 14 days prior to the start of the hearing. OCC prefers that the prefiling deadline for intervenor testimony be seven days prior to the start of the hearing. OCC contends that the seven-day difference will jeopardize the intervenors' ability to prefile complete testimony. OCC also believes that the utilities will have ample time to prepare for the intervenors' witnesses because those witnesses will not testify at the commencement of the hearing. FirstEnergy argues that the intervenor prefiling deadline will not jeopardize the intervenors' ability to file complete testimony since they have ample time to conduct discovery. Additionally, FirstEnergy points out that OCC's preferred seven-day prefiling deadline exacerbates the utilities' ability to adequately depose intervenor witnesses prior to the start of the hearing.

We considered this issue at the time we established our rules. OCC reiterates prior arguments. We believe that the "14 days prior to the hearing" intervenor deadline is reasonable. Also, we are not absolutely convinced that the intervenor witnesses will testify several weeks after the start of the hearing, as OCC suggests. In the past when we have faced multiple complex proceedings, the order of testimony has not followed a strict schedule of all applicant witnesses followed by all intervenor witnesses. We believe that our past experiences in this regard are likely to occur again. Moreover, we are willing to avoid conflicts between the dockets, as OCC requested above. We cannot assume that all electric utility witnesses will testify prior to any intervenor witnesses under such circumstances. For these reasons, we believe that the intervenor prefiling deadline is appropriate.

(20) DP&L and AEP argue that the time frames for responding to intervention requests, discovery requests, and motions are unreasonably short. CG&E takes issue with the intervention response date (Rule 4901:1-20-10) in its eighth assignment of error. FirstEnergy takes issue with the time frame for serving responses to discovery requests (Rule 4901:1-20-11(A)). DP&L suggests that responses to intervention requests (Rule 4901:1-20-10) should be lengthened from five calendar days to recognize that Saturdays, Sundays, and legal holidays are not working days. AEP suggests five business days. CG&E suggests 10 business days from the date of service. DP&L and AEP also suggest that the time frame for serving responses to discovery requests be lengthened from 10 calendar days to 10 business days. FirstEnergy suggests that the time frame to respond to discovery requests be lengthened to 10 days from actual receipt. AEP seeks to lengthen the time for responding to discovery-related motions as well (Rule 4901:1-20-11(C)). With regard to the discovery rule, CG&E contends that Rule 4901:1-20-11 is unreasonable and/or unlawful. In this regard, CG&E states that all discovery rules, except those regarding expedited discovery, must be submitted to JCARR.

OCC disagrees with all of the electric utilities' arguments about the deadlines for responding to discovery requests, intervention requests, and discovery-related motions. OCC states that a rapid "turn around" is necessary given the statutory time line for resolution of these cases. OCC raises a concern that the additional time requested by the utilities will have a cumulative delaying effect and, therefore, the adopted rules should remain. CCE does not oppose extending the time to file responses to intervention requests, as CG&E suggests. However, CCE opposes lengthening the time frame for responding to discovery requests for the same reasons espoused by OCC. CCE notes that the attorney examiner can address those instances in which just cause is shown that producing responses within the 10 calendar day period may be difficult.

We were required under Section 4928.32(A), Revised Code, to expedite discovery in the transition plan proceedings.

DP&L, CG&E, FirstEnergy, and AEP are unhappy with the time frames we selected. We believe that the five-day and 10-day time frames are acceptable time frames. Quite frankly, any expedited time frames that we would establish would be objectionable from the electric utilities' point of view because they are shorter than what is typically applied and the utilities have all suggested different time frames. We have imposed a 10-day time frame for discovery responses in other proceedings and it has worked. We also find the time frame for responding to intervention requests to be reasonable too. We simply do not believe that the utilities need a longer period of time to determine whether they will respond to an intervention request and actually write the response.

(21) Also, CG&E states that the deadline for filing intervention requests is so late that intervenors could effectively intervene after the cut-off date for conducting written discovery requests. CG&E urges the Commission to revise the rules to prevent such gamesmanship and the resulting prejudice. OCC agrees with CG&E's point. Additionally, OCC states that the written discovery cutoff date should be closer to the commencement of the hearing so that intervenors can serve written discovery requests after any supplemental utility testimony is filed. CG&E's point is accurate, but it is something that also exists in our current procedural rules. Moreover, CG&E and OCC are overlooking the fact that depositions can be taken after the cut-off for written discovery and after the intervention deadline. We believe that the intervention deadline we established is acceptable, despite CG&E's and OCC's statements.

(22) AEP alleges in its third assignment of error that Rule 4901:1-20-12 should acknowledge that protective orders will apply through the pendency of the proceedings, through appeals, plus 60 days, or for a period of 18 months, whichever period is longer. AEP states that the adopted rule could essentially allow a protective order to remain in effect for a very short period of time, if a transition plan order is not appealed. AEP believes that such was not the Commission's intention and requests clarification on this point. AEP's point is accurate. We had intended protective orders for the transition plan proceedings to apply through the pendency of the proceedings, through appeals, plus 60 days, or for a period of 18 months, whichever period is longer. Our rule, however,

was not written as clearly as we would have preferred. We do find, however, that, given the flexibility that exists in Rule 4901:1-20-12, we do not need to modify it, in order for us to carry out our intentions. The individual rulings in the transition plan proceedings, which grant protective orders, can specify that those protective orders will apply through the pendency of the proceedings, through appeals, plus 60 days, or for a period of 18 months, whichever period is longer. For this reason, we deny AEP's third assignment of error, but clarify that protective orders in the transition cases can apply through the pendency of the proceedings, through appeals, plus 60 days, or for a period of 18 months, whichever period is longer.

(23) FirstEnergy takes issue with the period of time associated with the Commission's adequacy review, as set forth in Rule 4901:1-20-14(A). FirstEnergy states that, if the review period is 30 days, it will expire after the time period allowed in Section 4928.31(A), Revised Code, for the filing of timely transition plan applications. FirstEnergy states that the Commission should expressly state that a transition plan initially filed within the 90-day period, but supplemented or refiled pursuant to a Commission ruling after the 90-day period, will be considered timely under Section 4928.31(A), Revised Code.

FirstEnergy's concern existed even without our declaration of a 30-day adequacy review in Rule 4901:1-20-14(A). Chapter 4928, Revised Code, required transition plan filings within a relatively short window of time and, thus, any determinations of substantial inadequacy made after that period of time could raise the question of whether subsequent filings can be considered timely under Section 4928.31(A), Revised Code. For that reason, we do not believe that our rule should be modified. Additionally, we do not believe that any advance declaration of compliance with the time element in Section 4928.31(A), Revised Code, is necessary at this point.

Unbundling Rules

(24) As we understand it, CG&E and FirstEnergy allege (in CG&E's first assignment of error and in FirstEnergy's seventh assignment of error) that the definition of "regulatory asset" in Rule 4901:1-20-03, Appendix A, provision (B)(6),

conflicts with Chapter 4928, Revised Code, because the Commission's rule is more restrictive. As we understand it, CG&E and FirstEnergy contend that Sections 4928.01(A)(26) and 4928.40(A), Revised Code, expressly anticipate recovery of regulatory assets beyond those approved in the last rate case. CG&E suggests that either the last sentence of provision (B)(6) be stricken or the Commission clarify that "the rate recovering regulatory assets to be approved in the transition plan cases is the component of the bundled rate approved within the last rate case to recover regulatory assets." Basically, CG&E does not think that the rule should limit the book balance of regulatory assets that may be recovered.

CCE points out that the second sentence of provision (B)(6) does not impose a limit on the regulatory assets or dollars that may be recovered as CG&E and FirstEnergy claim. Rather, as we understand CCE's view, provision (B)(6) recognizes that the unbundled rate <u>element</u> for regulatory assets must equal the rate reflected in the utility's schedule of rates and charges.

We feel that our rule is appropriate as a minimum filing requirement. For that reason, we do not believe that any modification to provision (B)(6) is needed.

(25) CCE argues in its second assignment of error that the Commission's finding and order may raise a conflict about the application of the five percent reduction described in Rule 4901:1-20-03, Appendix A, provision (C)(1)(c). CCE believes that the Commission should affirm that the production-related portion of rates composes the generation component of rates and that the production-related component (in its entirety) is subject to reductions for residential customers. AEP and FirstEnergy state in their memoranda contra that the Commission did not intend to resolve what should or should not be included in the generation component and that the rules were structured to allow the utilities to file and support their preferred mechanism. For that reason, they argue that there is no conflict between the rule and the Commission's discussion of the rule.

AEP and FirstEnergy have correctly noted that our rule was structured to allow the utilities to file and support what should and should not be included in the generation component. We are unwilling to modify the filing requirement provision as CCE has suggested. CCE (as well as other parties) can question the make-up of the generation component in the context of the individual transition plan proceedings. We will take such argument into consideration at that time.

(26) CCE also argues that the list in Rule 4901:1-20-03, Appendix A, provision (C)(1), of elements functionally related to the generation component is incomplete. In particular, CCE states that some of the ancillary services listed under the transmission component can be production-related or generation-related and their costs should not be allocated to the transmission component. FirstEnergy contends that CCE's argument directly contradicts Section 4928.34(A)(1), Revised Code, since the transmission component equals the Federal Energy Regulatory Commission (FERC) tariff rates and, as such, would not be included in the generation component.

Similarly, CCE alleges that the list in Rule 4901:1-20-03, Appendix A, provision (C)(2), of ancillary services is incomplete because it does not include certain services listed in Section 4928.01(A)(1), Revised Code. FirstEnergy does not think CCE's modification is needed because FirstEnergy could not unbundle these other items since it does not have them, even though they are listed in the legislation.

We find the lists in provisions (C)(1) and (C)(2) to be adequate for purposes of the plan content requirements. CCE is able to pursue in the transition proceedings an argument that additional elements/services should be unbundled and/or that they should be related to the generation versus transmission versus distribution components.

(27) CCE next alleges that the Commission failed in Rule 4901:1-20-03, Appendix A, provision (C)(2), to adequately reflect that refunds determined or approved by FERC must be flowed through to retail electric customers, pursuant to Section 4928.34(A)(1), Revised Code. AEP responded by stating that the rules do not need to repeat the statutory provisions. Additionally, in AEP's view, CCE's assignment of error must be denied because non-switching customers will see an increase in the distribution rate component when there is a decrease in basic transmission rates and, for the

switching customers, refunds are a matter between them and the supplier.

We are not convinced that provision (C)(2) must be modified, despite CCE's allegation. We recognize that the transmission component's charges must include a sliding scale to ensure that FERC refunds are flowed through to retail electric customers, pursuant to Section 4928.34(A)(1), Revised Code. As FirstEnergy noted, we will take steps to ensure that those future refunds, if any, are appropriately handled. For purposes of our filing content requirements, we believe the adopted rule is correct. This allegation of error is denied.

(28) CCE further argues that the Commission erroneously excluded metering service and billing and collection service from the other unbundled components in Rule 4901:1-20-03, Appendix A, provision (C)(4). CCE states that these services may become competitive and should be broken out from general rates so that the market for those services can develop. CCE states that these two services should be designated as unbundled portions of the distribution function. FirstEnergy responds by stating that, pursuant to Section 4928.04, Revised Code, the Commission is not obligated to proceed with these issues until March 31, 2003.

CCE raised this issue in its initial comments. We fully considered this request and decided that the information should be identified. Thus, the electric utilities and other parties are free to raise in the transition proceedings an argument that these two services should be or should not be unbundled portions of the distribution function. Moreover, as we noted before, parties may address the costs of individual meter change outs in order to facilitate aggregation.

(29) CG&E contends in its second assignment of error that Rule 4901:1-20-03, Appendix A, provision (C)(4)(a), must be revised to allow utilities to recover the gross receipts tax (GRT) through April 30, 2002, in order to recover their GRT expenses incurred. CG&E believes that, although the adopted rule relates to filing requirements only, it could conflict with Section 4928.34(A)(6), Revised Code. CCE points out that Section 5747.98, Revised Code, states that the electric utilities are not subject to the excise tax after

payment of the assessment. Therefore, CCE believes the Commission's rule is consistent with the statute.

We are not convinced that provision (C)(4)(a) conflicts with Section 4928.34(A)(6), Revised Code, or that the rule must be modified. We disagree with CG&E's request.

(30) Next, CG&E alleges that the inclusion of an emission fee rider (Rule 4901:1-20-03, Appendix A, provision (C)(4)(d)), is inappropriate because emission fees are included in frozen rates.

We do not agree that there is an error in provision (C)(4)(d). Our rule lists emission fee riders as unbundled components, if applicable. The intent of having emission fee riders unbundled is to comply with Section 4905.31, Revised Code, which specifically requires the termination of the riders once the applicable cost of emission fees has been recovered. Therefore, it is necessary to unbundle this rider from other costs so that the rider can be terminated pursuant to Section 4905.31, Revised Code. *See*, *In the Matter of the Commission Procedures for the Recovery of Emission Fees*, Case No. 93-1000-EL-EFC, Entry (August 19, 1999).

(31) CCE urges the Commission to modify Rule 4901:1-20-03, Appendix A, provision (C)(5), to recognize that tax changes undertaken by Ohio are not intended to increase rates and that restructuring efforts should be applied to eliminate any increase in the price of electricity. Section 4928.34(A)(6), Revised Code. CG&E, however, seeks to modify Rule 4901:1-20-03, Appendix A, provisions (C)(5) and (D), to allow an adjustment in the capped rate of the total of all unbundled components for additional reasons other than those adopted by the Commission. In particular, CG&E notes that the exceptions should include charges to certified suppliers, material changes authorized by federal law, material changes in tax laws, and changes due to resolution of property tax litigation. CCE agrees with CG&E that material changes in tax laws and changes due to property tax litigation are legitimate ways in which rates may be adjusted and, thus, the Commission's rules should reflect them.

AEP responded to CCE's request to modify provision (C)(5). AEP notes that Chapter 4928, Revised Code, requires the Commission to address the difference between current and new taxes and to avoid placing the burden of that difference upon the electric utility or its shareholders. Given that requirement, AEP states that it is not possible to require the rates to be capped to prevent the pass through of tax changes. Similarly, FirstEnergy argues that CCE's request directly contradicts Section 4928.34(A)(6), Revised Code.

We do not agree that Section 4928.34(A)(6), Revised Code, requires all tax changes to not increase the price of electricity, as CCE has stated. In fact, that provision of the legislation specifically states that tax-related adjustments shall, in certain circumstances, be addressed by the Commission through accounting procedures, refunds, or an annual surcharge or credit to customers. Additionally, taxation rate adjustments shall have a corresponding adjustment to the rate cap for each rate schedule. Chapter 4928, Revised Code, acknowledges that electric rates may increase as a result of tax changes and restructuring, even though the goal may be to eliminate price increases to the extent possible. As for CG&E's suggestion, we do not agree that the minimum unbundling filing requirements for current rates <u>must</u> allow for adjustment of the capped rate for the reasons cited by CG&E. However, we do recognize that Section 4829.34, Revised Code, does allow for certain further adjustment to the capped rate. CG&E can pursue its position in the context of its transition plan proceeding or after a triggering event, but we will not modify the filing requirements on that point.

(32) In CCE's ninth assignment of error, it further argues that the Commission's rules erroneously do not require an unbundling plan to unbundle all of the components listed in Section 4928.01(A)(27), Revised Code. FirstEnergy contends that retail electric service does not necessarily include all of the items listed in Section 4928.01(A)(27), Revised Code; rather, it is the utilities' rates that must be unbundled.

Similar to our conclusion in finding 26 above, we believe that the unbundling rules are adequate for purposes of the minimum plan content requirements. As we have stated previously, CCE (and other parties) can raise specific arguments in the transition plan proceedings for unbundling other components and we will take such arguments under consideration then.

(33) CCE next seeks to have the Commission modify Rule 4901:1-20-03, Appendix A, provision (E), to assure that master-metered customers will receive the benefits of unbundling and competition because the state's electric policy seeks to ensure the competitive supply of retail electric service to all consumers. AEP disagrees with CCE's suggestion because it would require the Commission to extend its jurisdiction beyond what it is authorized.

We are not convinced that the nonexhaustive list of tariff items in provision (E) must be modified to include master-metered service. We have considered CCE's argument, but cannot agree to modify the provision. CCE may pursue this topic in the context of the individual transition proceedings.

(34) In CG&E's fifth assignment of error, it contends that the requirement to meet the FERC's seven-factor test (Rule 4901:1-20-03, Appendix A, provision (F)(2)(g)) is unlawful. CG&E believes that, because Section 4928.34(A)(1), Revised Code, requires the use of the FERC rates, the Commission's adopted rule is an attempt to impermissibly change those rates. CG&E states that the only purpose for the seven-factor test is to reclassify facilities, for which the Commission has no authority. CG&E further contends that it has already accomplished the separation of transmission facilities from distribution facilities when its open access transmission tariff was calculated. Finally, CG&E states that it will have to perform the seven-factor test between 2001 and 2003 and to do so now is an unnecessary and extraordinary expense.

We do not agree with CG&E's position that Rule 4901:1-20-03, Appendix A, provision (F)(2)(g), is unlawful. Nor do we agree that it should be modified. We do note, however, that some of the electric utilities have sought waivers of this requirement in their transition plan applications. We are currently reviewing those requests to waive the filing requirement until a later day.

(35) CCE's tenth assignment of error also concerns the seven-factor test in Rule 4901:1-20-03, Appendix A, provision (F)(2)(g). Like CG&E in the finding above, CCE questions the requirement to apply FERC's seven-factor test. CCE contends that not all FERC rates must satisfy the seven-factor test and, thus, this information will be insufficient. Moreover, CCE alleges that Chapter 4928, Revised Code, requires

a clear demarcation of transmission and distribution facilities, services, and functions to eliminate the negative effects of gaps, seams, and pricing pancakes.

We find here, as we have for several other allegations of error, that our adopted rule is adequate as a minimum filing requirement. CCE's tenth assignment of error is denied.

(36) CCE's last assignment of error related to the unbundling rules concerns the schedule contents in Rule 4901:1-20-03, Appendix A, provisions (F)(2)(k) through (m). CCE does not believe that the contents will provide enough detailed information to verify whether tax changes that are proposed in the unbundling plan will be neutral, as required by Section 4928.34(A)(6), Revised Code.

Our rule is an appropriate minimum filing requirement. We do not accept CCE's contention that further modification is needed.

Corporate Separation Rules

(37) AEP, FirstEnergy, and CG&E argue that the definition of "affiliates" in Rule 4901:1-20-16(B)(1) should be narrowed to apply only to an affiliate engaged in the business of supplying competitive retail electric service or providing a non-electric product or service. Similarly, FirstEnergy alleges that, with the existing definition of "affiliates", the code of conduct will prohibit routine utility interactions, including coordination and centralized support functions. If not more narrowly defined, AEP believes the effect of the definition violates Section 4928.17(A), Revised Code. CG&E agrees that the Commission may audit all affiliates and, therefore, in the alternative, suggests that, while the rule applies to all affiliates, it applies only to information which would convey a competitive advantage to the receiving affiliate. Also, AEP seeks a clarification of the second sentence in the definition of "affiliates" because the Commission's order indicated that it was making no modification to the staff's proposal, but the adopted rule contains the additional sentence.

PG&E argues that the definition is appropriate because the legislation requires all of the utility's affiliates to be structurally separate, whether they provide competitive retail electric service or whether they provide products or services other than retail electric service. Section 4928.17(A), Revised Code. PG&E is less concerned, however, with information sharing between wholly regulated entities, especially for economic efficiency and operational stability. OCC states that the definition of "affiliates" is correct, but the specific rules should be clear so as not to apply corporate separation restrictions to relationships between non-regulated affiliates (except with the cost allocation manual (CAM) requirements). CCE emphasizes that the Commission must have authority to audit all affiliates and have access to the books and records of all affiliates. Otherwise, CCE believes there would be a large loophole for ensuring against anticompetitive behavior.

We had not intended, with our adopted definition of "affiliates", to prohibit all interactions between affiliated entities and electric utilities. Sharing of information and employees between affiliated entities and electric utilities for safety purposes, economic efficiency, and operational stability can be acceptable, if not at the expense of the competitive market or if it does not impede the competitive market. Moreover, we clarify that certain centralized support functions can be permissible sharing among affiliated entities and electric utilities. Specifically, we wish to clarify that the corporate separation rules are intended to require independent work/functions when the failure to maintain independent operations may have the effect of harming customers or unfairly disadvantaging unaffiliated suppliers of competitive retail electric service or nonelectric products or services (such as with sharing that violates the code of conduct provisions). Additionally, we clarify that provision (D)'s use of the term "employees" shall mean employees as defined in Rule 4901:1-20-16(B)(4), excluding officers and directors. Provision (E) allows for certain flexibility upon annual certification to the Commission that there is no sharing of employees. We clarify that such certification as it relates to a lack of shared employees is intended to be a demonstration that there is no prohibited sharing of employees. Finally, we clarify that our adopted definition of "affiliates" was intended to include the second sentence, even though our order may have given a different impression.

(38) AEP's final assignment of error states that the Commission should clarify Rule 4901:1-20-16(B)(4), the definition of "employees". AEP believes that the other provisions in the corporate separation rule will require the utility to maintain job descriptions of consultants and independent contractors, something that is not ordinarily done. Additionally, AEP seeks clarification that the Commission's rule is not intending to impair the ability of outside counsel and consultants to perform their duties. AEP does not object to a provision that would prohibit consultants and independent contractors from being conduits for transferring confidential information.

On January 20, 2000, we modified certain aspects of the corporate separation rules on our own motion. Included in those modifications were changes to some provisions specific to employees who are shared consultants and shared independent contractors. Thus, we believe that nearly all of AEP's concerns in its final assignment of error, have been addressed by the modification. We do emphasize that the corporate separation rules' use of "employees" is not intended to impair outside counsel and consultants from performing their duties. Rather, it is intended to ensure appropriate, pro-competitive behavior in the performance of their duties. Also, while AEP indicated no objection to a provision in the corporate separation rules that prohibits consultants and independent contractors from being information conduits, our adopted rules already contain such prohibitions in the code of conduct section.

(39) CCE seeks clarification as to what exemptions the Commission intends to grant to utilities, as set forth in Rule 4901:1-20-16(E). CCE suggests that any exemptions be addressed on a case-by-case basis and only with a showing of just cause. FirstEnergy states that, if the Commission allows intervention in exemption requests, the endless litigation will destroy any incentive intended by the rule. FirstEnergy urges the Commission to solely determine what exemptions are appropriate. We will consider exemptions at the time that such requests are raised. They will be considered on a case-by-case basis and granted when we find them to be justified and reasonable.

(40) A number of assignments of error relate to the code of conduct provisions in Rule 4901:1-20-16(G)(4). DP&L,

FirstEnergy, and AEP argue that, for several reasons, the Commission erred in making the code of conduct provisions in Rule 4901:1-20-16(G)(4) effective immediately. They argue that the immediate effective date conflicts with Section 4928.17, Revised Code, which requires a corporate separation plan to begin on the starting date of competitive retail electric service (January 1, 2001). DP&L and First-Energy also state that making that portion of the corporate separation rules effective immediately conflicts with the statutory scheme of evaluating the utility's transition plan, including a corporate separation plan, prior to the plan being effective. Furthermore, FirstEnergy contends that the code of conduct provisions cannot be imposed outside of the corporate separation plan approval process. Moreover, DP&L argues that it cannot meet the immediately effective provisions because it has no affiliate engaged in competitive generation services at this time. AEP notes that, if the legislature had intended the code of conduct to become effective earlier than the start of competition, it would have indicated such. AEP alleges also that the existing undue preference or advantage prohibition in Section 4928.17(A)(3), Revised Code, should alleviate Commission concerns over affiliate relationships while the corporate separation plans are under review.

PG&E and OCC argue that the immediate effective date is consistent with Section 4928.17(A)(3), Revised Code, which imposes several obligations upon the electric utilities by January 1, 2000. Also, PG&E points out that the Commission is given wide discretion as to the effective dates of the corporate separation plans. Section 4928.17(C), Revised Code. Similarly, CCE argues that the Commission's authority in this area includes measures necessary to prohibit anticompetitive behavior. A code of conduct effective immediately is needed, in CCE's view, to preclude anticompetitive advantages from occuring to the affiliate prior to January 1, 2001.

We concluded that part of the corporate separation rules needed to be effective immediately in order to prohibit, prior to the start of competitive retail electric service, certain activities from occurring that would be prohibited after the start of competitive retail electric service. Quite simply, we did not want to establish a framework under which the electric utilities could, for example, allow retail electric affiliates access to the electric utility's distribution system prior to the start of competition because such would be prohibited activity soon thereafter. Such gaming is unacceptable and can only diminish the ability of a competitive market to develop, in our view. We found that that type of gaming could be avoided by eliminating its opportunity to exist, namely, making the code of conduct provisions effective immediately. This conclusion carries out the purposes of the Chapter 4928, Revised Code, which we have specifically been instructed to do. *See*, Sections 4928.06(A) and 4928.17(A)(1), Revised Code. We do not believe that the immediately effective provisions preclude an electric utility from proposing a corporate separation plan. Nor do those effective provisions preclude our ability to evaluate a proposed corporate separation plan, which will become effective on the starting date of competitive retail electric service. In fact, we believe that our immediately effective provisions comport with Section 4928.17(A)(3), Revised Code, inasmuch as our provisions specifically restrict the means by which some undue preferences or advantages could occur. In that respect, our administrative rule amplifies Section 4928.17(A)(3), Revised Code, which was effective on January 1, 2000.[3]

(41) CCE argues that the Commission should have adopted a "GENCO Code of Conduct" and that the Commission should have also included three other provisions in its code of conduct that the Commission previously rejected. AEP opposes CCE's general suggestion, as well as its specific recommendations, as being anticompetitive. FirstEnergy questions CCE's premise that competition is harmed by inclusion of the generation affiliated competitor.

We previously considered CCE's concerns in this area. We did not agree with CCE and chose a different code of conduct approach. As for CCE's three other suggested provisions, we stated previously that the adopted rules sufficiently cover the request. We are still not convinced that modifications are necessary.

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3 We also wish to footnote that while we stated, on November 30, 1999, that the code of conduct provisions shall be effective immediately, that date can only be when permitted by law. In this situation, the earliest that the code of conduct provisions could become effective is following review by the Joint Committee on Agency Rule Review. That time period has yet to expire. Thus, we wish to make clear that our code of conduct provisions were not intended to become effective prior to the January 1, 2000 date set forth in Section 4928.17(A)(3), Revised Code.

(42) Moreover, CCE alleges that the Commission improperly refused to extend the code of conduct to non-tariffed products and services. CCE believes that the Commission has broad authority to prevent unfair competitive advantages for utility-affiliate transactions involving competitive products and services, not just tariffed products and services.

CCE's argument was raised and evaluated when several utilities argued that comparable access should be limited to only tariffed products and services. We concluded that the code of conduct should be limited in its application to products and services related to tariffed products and services. Nothing in CCE's application for rehearing convinces us that our earlier conclusion was in error.

(43) FirstEnergy alleges that the Commission's restriction on the use of the electric utility's name and logo in Rule 4901:1-20-16(G)(4)(h) is an unlawful restriction on commercial speech and should be deleted. FirstEnergy contends that the rule does not directly advance a governmental interest. In the alternative, FirstEnergy states that the Commission should clarify that the rule does not prevent FirstEnergy's Ohio operating companies from indicating that they are affiliates, without disclaimers.

PG&E believes that the Commission's rule is narrowly drawn for the purposes of seeking to avoid customer confusion and preventing competitive affiliates from benefiting from a trade brand without a sufficient disclaimer. PG&E points out that California has a similar requirement. OCC also believes that the adopted rule appropriately serves a substantial government interest of avoiding customer confusion, which the General Assembly clearly recognized (given the directives for funding consumer education). OCC raises the concern that use of the same name and logo by the regulated electric utility and unregulated competitive electric service supplier may even thwart consumer education efforts. CCE likewise believes the rule involved is a reasonable balance of permitting joint marketing when consistent with the state policy objectives (i.e., ensuring access to monopoly-provided utility services and mitigating market power). CCE urges the Commission to deny this assignment of error and put FirstEnergy on notice that it may impose additional structural and behavioral remedies when necessary.

On January 20, 2000, we modified provision (G)(4)(h) on our own motion. As a result of this modification, the electric utilities shall address in their transition filings how they plan to ensure against unreasonable sales practices, market deficiencies, and market power. To that end, the electric utilities must detail how they will meet the obligation, particularly as to how it relates to joint marketing activities, joint advertising activities, and the use of the name and logo of the electric utility. Thus, during our consideration of the transition plans, we will evaluate such plans. For this reason, we believe that FirstEnergy's allegation of error has been rendered moot.[4]

(44) FirstEnergy takes issue with Rules 4901:1-20-16(I) and (J)(4)(c). FirstEnergy argues that these two provisions are overly broad because they do not place limitations on affiliate practices solely for the purpose of maintaining separation of the affiliate's business from the business of the utility to prevent unfair competitive advantage. FirstEnergy does not believe that the separation requirements of Chapter 4928, Revised Code, are intended to give a blanket authorization to pry into affiliate transactions that are not related to utility operations.

We do not share FirstEnergy's opinion about Rules 4901:1-20-16(I) and (J)(4)(c). We believe it is appropriate for the Commission and staff to ensure that the corporate separation requirements are being met. One such means is through access to books and records of the electric utility and its affiliates. Moreover, we believe that requiring a CAM, which contains the allocation of costs between the utility and its affiliates, is likewise a vital source of information from which this Commission can ensure that the corporate separation requirements are being met. Nothing in FirstEnergy's application for rehearing convinces us otherwise. We reiterate, however, our prior conclusion that the CAM requirements will be reevaluated as actual experience is obtained.

4 On January 25, 2000, AEP filed an application for rehearing regarding our *sua sponte* modification of provision (G)(4)(h). We will address that pleading in a separate ruling.

(45) FirstEnergy believes that Rule 4901:1-20-16(J) should require that the costs for shared services (to be maintained in the CAMs) be capped at the stand-alone costs for those services. PG&E states that the method for charging costs and transferring assets should be at the higher of market value or fully allocated costs. OCC states in response that the Commission should not modify this rule if FirstEnergy is attempting to be allowed to absorb the costs of shared services (up to the amount it would have paid had it purchased the services on its own).

We do not think that we must modify provision (J) to cap the costs of shared services to be accounted for in the CAMs. We have required that all costs be based upon fully allocated costs, which are the sum of direct costs, plus an appropriate share of indirect costs. We find that acceptable accounting for shared costs. This requirement does not, however, control the ratemaking conclusion for shared services.

(46) OCC and CCE contend that the Commission erred in not permitting interested parties access to the CAMs. They both argue that the Commission's grant of discovery rights during the electric transition plan proceedings will not be helpful thereafter. Also, OCC states that staff monitoring is insufficient because the staff will not pursue subtle signs of anticompetitive behavior. Moreover, OCC believes that the sensitive nature of the information in the CAMs is not reason for precluding consumers not in competition with the affiliate suppliers (and particularly their residential representative, OCC) to have access to the CAMs. FirstEnergy counters by stating that non-access to the CAMs will not preclude complaints. Moreover, FirstEnergy contends that the General Assembly has not intended OCC or other motivated parties to participate in these compliance reviews.

OCC and CCE raised this same argument in their initial comments. We concluded then that the Commission and our staff would maintain exclusive authority for CAM compliance audits and updates. We believe that we and our staff can monitor compliance. Additionally, we do not believe that just allowing access for consumer groups and/or OCC out of the numerous parties interested in the CAMs is appropriate either. However, as FirstEnergy states, non-access to the CAMs will not preclude complaints. Moreover, complaints will not preclude discovery related to

CAM information either. Therefore, the Commission will consider specific discovery requests in the context of particular complaint proceedings. To that extent, we clarify our rule regarding access to the CAMs.

(47) OCC's final assignment of error relates to the biennial audits established in Rule 4901:1-20-16(K). OCC believes that the adopted rule should have required the publication of the staff's results and required the Commission to thoroughly examine the audit information through an open docket. FirstEnergy points out that the General Assembly did not specify that hearings be part of the Commission's review under Section 4928.17, Revised Code.

We considered this question at the time we adopted our corporate separation rules. We will take this into consideration and determine whether to publish audit results at a later time. We again note that we shall reevaluate the CAM requirements as actual experience is obtained.

(48) CG&E takes issue with the prohibitions against certain financial arrangements between utilities and their affiliates in its tenth assignment of error. CG&E states that it could be advantageous or necessary for CG&E to maintain existing indebtedness related to its generation facilities, even if those generation assets were "spun off" to a separate generation affiliate. CG&E contends that a "per se" disallowance should not be adopted. OCC states that the Commission should prohibit any kind of financing by electric utilities for acquisition, ownership, or operation of an affiliate. For those existing financial arrangements, OCC states they should be retired at the earliest practicable time. CCE, however, agrees with the Commission's adopted rule to eliminate financial support, except under limited circumstances.

In raising this assignment of error, CG&E appears to have overlooked the fact that Rule 4901:1-20-16(G)(3), regarding financial arrangements between an electric utility and an affiliate, is not a blanket prohibition. The rule specifically notes that the listed categories of financial arrangements are restricted, <u>except as the Commission may otherwise approve</u>. Thus, not all financial arrangements between electric utilities and their affiliates are per se prohibited as OCC would like. CG&E (and other electric utilities) may attempt to demonstrate that certain arrangements are advantageous or otherwise appropriate and should be permitted. For these reasons, we believe that our rule is appropriate and requires no modification.

Operational Support Rules

(49) CG&E states in its sixth assignment of error that the requirement in Rule 4901:1-20-03, Appendix B, provision (C)(2)(c)(i), to provide day-ahead load forecasts is unreasonable. CG&E worries that suppliers can increase the wholesale price of power for high demand areas, while CG&E's service rates are frozen. CG&E contends that suppliers should perform their own load forecasts. CCE states in response that providing suppliers with day-ahead forecasts does not enable them to increase the wholesale price of power to high demand areas. CCE supports the existing rule.

AEP and FirstEnergy raised concerns with this aspect of the staff's proposal in their initial comments. We concluded that the staff's proposal was appropriate, noting that load forecasts in the aggregate (and if available, by customer class) are an integral element to the reliability and dependability of service. It is for that reason that we found that the operational support plan should address the provision of day-ahead load forecasts. We also noted that we were not requiring the electric utilities to create and provide forecasts for individual certified supplier's load. Although CG&E raises this argument now for the first time, we do not feel that it justifies a modification to the requirements of what the utilities' operational support plan must address. CG&E's sixth assignment of error is denied.

(50) In CG&E's next assignment of error, it alleges that the operational support plan requires utilities to presently establish a bidding process for competitive electric retail service. CG&E contends that Section 4928.14(B), Revised Code, does not require bidding until the end of the market development period and, thus, the rule requirement is premature. CG&E noted that the Commission may have intended this to be a placeholder but, in that case, should expressly note such.

CG&E has misunderstood the nature of the items listed in the "Other Requirements" section of the operational support rules. As we explained in the finding and order (page

29), this provision (including the bidding process) is intended to be a topical listing for project management purposes only. To be certain that this is understood, we reiterate that we do not expect the electric utilities to file, in their transition plan applications, a “game plan” for all of the activities (including the bidding process) in Rule 4901:1-20-03, Appendix B, provision (C)(2)(f). This is because those items may not need attention in the reasonable future. We, however, believe that operational support will have to eventually address a bidding process (as well as the other items in that provision) and it is for that reason that we included the list. We see no error on our part.

(51) CCE seeks clarification as to how the Commission will develop uniform business practices. CCE specifically suggests that the Commission require the taskforce to establish uniform business rules by April 1, 2000, with the Commission reserving the right to decide the issues on its own, if they are not done by that date. FirstEnergy opposes CCE’s deadline, stating that there is no need to “cut corners to meet an arbitrary deadline, and then encounter significant problems in January 2001.”

At this time, the taskforce has already begun assembling and meeting. Thus, CCE’s first concern has been taken care of. As to establishing a specific deadline, we do not feel that it is necessary at this point. We previously noted that, if the taskforce does not timely accomplish its work, we may step in. We affirm that statement, but we are unwilling to adopt an April 1, 2000 deadline. We will monitor the activities of the taskforce and take appropriate steps, when necessary. We consider operational support to be a vital aspect of the development of a competitive market in Ohio and fully intend to ensure that operational support systems will be ready to ensure a successful implementation of the customers’ ability to choose generation suppliers.

Transition Charges Rules

(52) Only one party raised any allegations of error with regard to the adopted rules for transition charges. FirstEnergy states the requirement in Rule 4901:1-20-03, Appendix D, provision (B)(1)(b)(iv), to report a deferred fuel balance as part of its transition application is unreasonable because the Commission permitted it to not maintain deferred fuel balances

on its books, as result of the approved rate plans. FirstEnergy contends that it must therefore, create "fictitious information merely to meet a filing requirement that is meaningless relative to the [operating] companies." We see no need to modify our rules in light of FirstEnergy's statements here. FirstEnergy can explain in its transition plan filing why the deferred fuel balance information is not included and seek to justify a waiver with regard to that filing requirement.

(53) FirstEnergy also states that the filing requirements in Rules 4901:1-20-03, Appendix D, provisions (F)(2) through (7), should be modified. FirstEnergy contends that the rules should reflect that, while the information must be filed with the application, the applicant is not sponsoring the materials and may object to the admission and use of the materials during the course of the proceeding. We see no need to modify the rules as FirstEnergy requests. The rules require certain information to be included in the electric utilities' transition plans. Regardless of whether the utility relies upon that information in its proposal, the information shall be filed in accordance with our rules. As with any information for which a party seeks admission, objections may be raised.

Independent Transmission Rules

(54) AEP, CG&E, and FirstEnergy contend that Rule 4901:1-20-17 is unlawful, in particular provision (B)(3). They argue that the rule conflicts with federal law particularly because transmission of electric energy is subject to the exclusive jurisdiction of the FERC and cannot be regulated by administrative rule. They also argue that the rule is contrary to Section 4928.12(E), Revised Code, because the adopted rule goes beyond interim measures necessary and proper to achieve independent, nondiscriminatory operation of, and separate ownership and control of transmission facilities on or after the start of competitive retail electric service. That is to say, Section 4928.12(E) does not grant the Commission interim powers over retail pricing or pancaking. Similarly, AEP and FirstEnergy contend that, contrary to Sections 4928.12(A) and (B), Revised Code, the adopted rule "seeks to force all utilities under the Commission's jurisdiction to be in a single common transmission entity." AEP states that the Commission went too far in prohibiting pancaked rates

when Chapter 4928, Revised Code, sets as its goal the minimization of pancaked transmission rates. Moreover, AEP and FirstEnergy allege that the adopted rule's requirement that interim arrangements be approved by the FERC is prohibited state control of the timing and content of FERC jurisdictional rate filings. CG&E and FirstEnergy both take issue with the rule because it raises several questions and because the term "pooling" is not defined.

OCC and CCE allege that much of the allegations of error are moot, given the Commission's recent modification to the independent transmission rules. OCC also states that FirstEnergy's preemption concern over the obligations for the transmission entity ignores the fact that the Commission has to exercise the power and jurisdiction conveyed by the General Assembly.

The major objection regarding the independent transmission rules is with regard to provision (B)(3). On January 4, 2000, we modified that provision on our own motion. Thus, we believe that nearly all of the concerns specific to that provision have been addressed by virtue of the modification.[5]

As for the other remaining arguments against the revised independent transmission rules, we have considered them and find that they should be rejected.

Shopping Incentive Rules

(55) CCE contends that the Commission improperly rejected its prior argument that the shopping incentive rules should not apply to any affiliates of an incumbent electric utility. CCE still argues that any customers switching from an incumbent to its affiliate should not be included in determination of the percentage of customers switching. In CCE's view, customers who switch from one entry to another within a single corporation will do little to advance the objectives of a robust market. AEP and FirstEnergy argue in their memoranda contra that the 20 percent is not the standard for determining whether there is effective competition, particularly given the tests found in Section

5 On January 21, 2000, AEP filed an application for rehearing of our *sua sponte* modification of Rule 4901:1-20-17(B)(3). We will address that pleading in a separate ruling.

4928.40(B)(2), Revised Code, for terminating the market development period. FirstEnergy adds that, since the corporate separation rules ensure that customers who switch are making a choice that is treated as any other, so too should the switch to an affiliate for purposes of the shopping incentive.

The Commission previously considered CCE's argument and chose not to accept it. We do not believe that CCE has raised anything new which warrants a change in our prior conclusion. CCE's twelfth assignment of error is denied.

(56) FirstEnergy takes issue with the requirement to propose adjustments to the shopping incentive in the first two years of the market development period (Rule 4901:1-20-03, Appendix E, provision (C)). In FirstEnergy's view, the rules improperly focus upon the shopping incentive as an assessment of the competitive market, rather than the effectiveness of marketers and municipal aggregation. FirstEnergy also states that Chapter 4928, Revised Code, does not require the electric utilities to achieve any interim switching levels. PG&E and OCC contend that, since the Commission is required by statute to assure that, at the end of the market development period, there is a 20 percent load switch in each customer class, it stands to reason that the Commission has the discretion to require the electric utilities to include a plan for achieving that mandate.

We do not agree with FirstEnergy. FirstEnergy raised this issue in its initial comments. As we stated before and as CCE noted, the legislation does not preclude midcourse reviews and, in fact, specifically, acknowledges that such reviews may be done by the Commission. Given such flexibility, we chose to adopt a rule that would require the utilities to suggest approaches for such midcourse reviews as part of the shopping incentive portion of the transition plan. This rule "sets the stage" for considering how midcourse reviews should be done. The rule, itself, does not require interim switching levels. Regardless of FirstEnergy's belief that Rule 4901:1-20-03, Appendix E, provision (C), is ill-advised, we find it reasonable and appropriate.

(57) FirstEnergy's last assignment of error states that the Commission improperly invented a new customer class (mercantile commercial and industrial customers) in its

shopping incentive rules. FirstEnergy states that the effect of the shopping incentives must be judged on the utility's classes of customers and, since a mercantile commercial and industrial customer class does not exist in the tariffs of FirstEnergy's operating companies, the use has no valid purpose.

We clarify that the shopping incentive rules do not preclude reporting by the customer classes (e.g., residential, commercial, and industrial) contained within the tariff of each electric utility.

It is, therefore,

ORDERED, That the applications for rehearing of Western Alliance, CEA, CCE, Ohio Council of Retail Merchants, Industrial Energy Users-Ohio, Ohio Partners, DP&L, and OCC are denied. It is, further,

ORDERED, That the applications for rehearing of CG&E, AEP, and FirstEnergy are denied, except to the limited extent explained in Finding 37. It is, further,

ORDERED, That our Finding and Order of November 30, 1999, is clarified to the extent set forth in Findings 8, 13, 22, 37, 46, 50, 54, and 57 of this Second Entry on Rehearing. It is, further,

ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Alan R. Schriber, Chairman

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Ronda Hartman Fergus Craig A. Glazer

__________________________ __________________________
Judith A. Jones Donald L. Mason

GLP;geb

Entered In The Journal
January 27, 2000

Gary E. Vigorito
Secretary

Signed by Commissioners
Schriber
Fergus
Glazer
Jones
Mason