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

FINDING AND ORDER

The Commission finds:

BACKGROUND:

On July 6, 1999, the governor of the state of Ohio signed Amended Substitute Senate Bill Number 3 (SB3). That legislation requires Ohio's electric industry to change from a monopoly environment to a competitive electric environment for generation services. The legislation established a starting date for competitive retail electric service in the state of Ohio and required this Commission to establish rules and make a number of key decisions before the start of competitive retail electric service. During the period of time leading up to the start of competitive retail electric service, the existing electric utility companies are required to file with the Commission their proposed plans to transition to a competitive retail electric service market. The Commission is required by Section 4928.31, Revised Code, to establish rules for the form under which transition plans should be filed and considered by the Commission. The Commission is also required by Section 4928.42, Revised Code, to establish a general plan for existing electric utility companies to educate consumers about electric restructuring.

On September 23, 1999, the Commission formally initiated this proceeding in order to establish rules for the transition plans and to establish a consumer education plan. On September 30, 1999, we issued for public comment our staff's proposal, which suggested proposed rules by which the Commission should establish the form and process under which transition plans should be filed and considered by the Commission, as well as a proposed consumer education plan. Thereafter, on October 5, 1999, we held a public conference in which interested persons were given an opportunity to ask the staff questions regarding the proposal. The conference was held in order to assist interested persons in understanding the staff's proposal so that they could develop their comments more thoroughly. The Commission received numerous initial and reply comments to the staff's proposal from various stakeholders on October 13 and 29, 1999. The following entities have submitted initial and/or reply comments in this proceeding:

American Association of Retired Persons	The Neighborhood Environmental Coalition
Appalachian Peoples' Action Coalition	New Energy Midwest L.L.C.
Buckeye Power, Inc.	Ohio Association of Community Action Agencies
The Cincinnati Gas & Electric Company	Ohio Chemical Council
Citizens Protecting Ohio	Ohio Citizens Action
Clean Air Conservancy	Ohio Consumers' Counsel
Columbus Southern Power Company	Ohio Council of Retail Merchants
Consolidated Natural Gas Company	Ohio Electric Consumers Network
CNG Retail Services Corporation	Ohio Electric Utility Institute
The Dayton Power and Light Company	Ohio Environmental Council
DPL, Inc.	Ohio Farm Bureau
DTE Edison America, Inc.	Ohio Grocers Association
Duke Energy North America, LLC	Ohio Manufacturers' Association
Earth Day Coalition	Ohio Meat Industries Association
Enron Corporation	Ohio Mechanical Contracting Industry
FirstEnergy Corp.	Ohio Municipal Electric Association
GreenMountain.com Company	Ohio Partners for Affordable Energy
Greater Cleveland Growth Association	Ohio Petroleum Council
The Kroger Company	Ohio Power Company
Horizon Energy Company, d.b.a. Exelon Energy	Ohio Public Interest Research Group
IBEW, AFL-CIO	Ohio Representative Dale Miller
Industrial Energy Users-Ohio	Ohio Rural Electric Cooperatives, Inc.
Local 175, UWUA, AFL-CIO, Deregulation Committee	Ohio State Legislative Committee
Local 270 UWUA, AFL-CIO	Ohio Valley Electric Corporation
Local Union 245, IBEW, AFL-CIO	Parkview Areawide Seniors, Inc.
Local Union 350, IBEW, AFL-CIO	PG&E Corporation
Local Union 1347, IBEW, AFL-CIO	PP&L EnergyPlus Co., LLC
Local Union 1413, IBEW, AFL-CIO	Safe Energy Communication Council
Local Union 1466, IBEW, AFL-CIO	Sierra Club – Ohio Chapter
Local Union 2359, IBEW, AFL-CIO	Shell Energy Services Co., L.L.C.
Mayor of Lakewood Madeline A. Cain	Strategic Energy, L.L.C.
Monongahela Power Company	U.S. Representative Dennis J. Kucinich
The National Electrical Contractors Association (Ohio Conference)	U.S. Representative Stephanie Tubbs Jones
National Federation of Independent Business-Ohio	UWUA, AFL-CIO
	Western Reserve Alliance

After reviewing the staff's proposal, the initial comments, and reply comments submitted in this matter, the Commission is adopting appropriate rules for filing and processing the transition plan applications. Additionally, a number of the policy principles outlined herein establish the appropriate plan under which electric utility companies must educate consumers about electric restructuring.

Because of the scope and number of comments we have received, we will only directly address the more salient comments. In some respects, we agree with certain comments and have incorporated them into our rules without specifically addressing such changes in this Finding and Order. To the extent that a comment was raised and it is not addressed in this Finding and Order or incorporated into our adopted rules, it has been rejected. The Commission's focus in this docket was to establish certain processing rules, as well as substantive rules in those areas such as code of conduct and transmission, where specific guidance to the industry was needed at the outset.

DISCUSSION:

I. Preliminary Matters

Before discussing the transition plan rules and consumer education plan, we must address a few preliminary matters.

A. Time Constraints

A number of commenters strenuously took issue with the Commission's short time frames associated with providing comments to the staff's proposal (PP&L Energy Plus Co. LLC [Energy Plus] Initial Comments at 2-3, Ohio Electric Consumers Network [OECN] Initial Comments at 1-3, Western Reserve[1] Initial Comments at 1-2). Also, some argued that inadequate notice was provided about the staff's informational conference. We would have preferred to have granted longer time frames for the filing of comments and provided greater advance notice of the informational conference. However, the time frame within which we have to establish rules for the transition plans is extremely limited. We agree that proper notice for all meetings in the electric transition plan (ETP) cases should be provided so that out-of-town parties can make arrangements to travel and so that there is enough time to prepare. We plan to provide as much notice and time in those proceedings as can be offered. However, Section 4928.33, Revised Code, establishes a time frame within which we must complete our work and it will impact much of what we establish in our process rules, despite some parties' desires for more time. We simply must work within the statutory deadline. Therefore, while we may sympathize with (and we will do our best to alleviate) the difficulties that the parties to these proceedings will face, those difficulties are simply something that must be tackled. For that reason, we decline to adopt a number of the suggested rule revisions designed to give interested parties additional time or to accommodate certain parties (i.e., the evidentiary hearings should not take place simultaneously, local public hearings should be held, and the transition plans should be filed under a staggered schedule). Parties should consult the Commission's web site to follow the activities in these cases. We believe that this repository of information will allow parties to quickly obtain needed information and become informed of the scheduled activities in the transition plan proceedings.

B. Joint Committee on Agency Rule Review

---

1 The Neighborhood Environmental Coalition, Western Reserve Alliance, and The Parkview Areawide Seniors, Inc., jointly filed comments in this proceeding. Hereinafter, those joint comments will be referenced as "Western Reserve" comments.

A number of the commenters have stated that the Commission must submit the majority of the rules to the Joint Committee on Agency Rule Review (JCARR) (AEP[2] Initial Comments at 1-7, AEP Reply Comments at footnote 2, The Cincinnati Gas & Electric Company [CG&E] Initial Comments at 2-12, The Dayton Power and Light Company [DP&L] Initial Comments at 1-2, DP&L Reply Comments at 1-2, DPL Inc.[3] Initial Comments at 2-5, FirstEnergy Corp. [FirstEnergy] Initial Comments at 2, footnote 2).

It is the Commission's belief that not all of the rules we are adopting need be reviewed by JCARR. Section 4928.31(B), Revised Code, provides that the rules the Commission adopts regarding notice of the transition plan filing, the form of the transition plan, and discovery procedures are not subject to division (D) of Section 111.15, Revised Code. Pursuant to Section 4928.31(B), Revised Code, the Commission has decided to file with JCARR Rules 4901:1-20-01 through 4901:1-20-03, O.A.C., including the appendices to Rule 4901:1-20-03, O.A.C., Rules 4901-1-20-06 through 4901-1-20-10, O.A.C, and Rules 4901-1-20-12 through 4901-1-20-17, O.A.C. We believe that each of these rules includes a variety of requirements, some of which are form in nature while others are substantive. Consequently, we are filing these rules with JCARR. The rules the Commission does not intend to be reviewed by JCARR are Rules 4901:1-20-04, 05, and 11, O.A.C. These rules concern notice of the transition plan and discovery procedures specifically exempted from JCARR review. The Commission's determination on an education plan, set forth as Attachment II to this decision, is being promulgated by order as provided for in Section 4928.42, Revised Code.

C. Ohio Valley Electric Corporation (OVEC) Comments

OVEC submitted comments in this docket on October 29, 1999. OVEC's comments did not address the staff's proposed rules for the transition plans or the staff's proposed education plan. Rather, OVEC filed reply comments seeking clarification from the Commission as to whether it would be required to file a transition plan pursuant to Section 4928.31, Revised Code. OVEC is a public utility that supplies electricity only to the United States government's uranium enrichment plant in Pike County, Ohio, under a long-term agreement signed in 1952. The Commission has approved that agreement and subsequent amendments over the years. OVEC's shares are owned by a number of midwestern utilities (Sponsoring Companies) that provide supplemental energy to OVEC when needed and receive OVEC's surplus energy when available. Its operations are such that OVEC believes that it is unnecessary for it to "transition" to a competitive environment.

OVEC stated the following reasons why it is unnecessary for it to be required to file a transition plan:

---

2 Ohio Power Company and Columbus Southern Power Company are both subsidiaries of American Electric Power Inc. (AEP). They filed joint comments in this proceeding and they will be referenced as "AEP."

3 DPL Inc. filed comments in this proceeding on behalf of its unregulated business units.

(1) OVEC has no certified territory and serves only one jurisdictional customer, the United States government's uranium enrichment facility;

(2) OVEC has no uncommitted generating capacity with which it could compete in the retail (or wholesale) marketplace. All of OVEC's surplus energy (energy not supplied to the government) is committed to the Sponsoring Companies at FERC-approved, cost-based rates;

(3) OVEC could not use its transmission system to gain competitive advantage because OVEC has no uncommitted generating capacity to sell;

(4) Assuming that OVEC is not forced to go through the transition process, none of its employees will be adversely affected by staffing changes;

(5) Because OVEC has no generation to market, the concept of separating its competitive retail electric business from its noncompetitive businesses is not applicable to OVEC. The creation of a new department is unnecessary and would be wasteful. Under the agreement with the United States Government, any additional costs would be billed to the Government. The ultimate result would be an additional burden on OVEC's retail customer with no compensating enhancement of competition; and

(6) OVEC has no intention of requesting transition cost recovery.

The Commission has long recognized the unique circumstances of this arrangement and believes that there would be little purpose served by having OVEC file a transition plan. The Commission does not believe it is necessary to impose the burden of filing a transition plan upon OVEC inasmuch as OVEC has only one customer under a long-term agreement that extends to 2005. Considering the purpose of SB3 and for the reasons stated by OVEC, we shall not require OVEC to file a transition plan.

Now, we turn to many of the specific comments raised. We have organized this discussion to follow the order of the various sections in the staff's proposal.

II. Form and Processing Rules

The staff's proposed form and processing rules contained provisions that detailed how the transition plan applications must be structured and how the Commission would process and review the transition plans. In the first provision, the staff recommended that an original plus 26 copies of the application be filed with the Commission. The Coalition for Choice in Electricity (CCE)[4] maintains that 26 copies are too numerous for intervenor

[4] The members of CCE involved in submitting comments in this case are: Consolidated Natural Gas Company, Enron Energy Services, Greater Cleveland Growth Association, Industrial Energy Users-

pleadings (CCE Initial Comments at 7). CCE suggests ten copies be required for filings in the transition plan cases (*Id.*). We agree in part with CCE's comments. We believe that an original, plus 26 copies, should be required for a number of the key filings that are expected in these "ETP" cases. This will allow for more efficient use of the Commission staff's time because the staff will not have to spend time copying key pleadings for internal circulation, but rather be able to review them upon filing. For the less important, procedural-style pleadings, a smaller number of copies shall be filed. We have modified the provision to require 26 copies of the transition plan application, amendments thereto, preliminary objections, utility supplemental direct expert testimony, intervenor direct expert testimony, and rebuttal testimony. For all other filings, an original plus ten copies shall be filed.

AEP suggests that the processing rules require that the unbundling plan address reasonable tariff terms and conditions for changing suppliers, length of commitment by a customer for service, and other such matters as are necessary to accommodate electric restructuring (AEP Initial Comments at 8). We do not find that the processing rules must include such language. Moreover, as explained more in the unbundling section of this decision, we are allowing the companies some flexibility for addressing, in their transition plan applications, tariff terms and conditions associated with certain activities that will begin to take place with electric restructuring (including such things as AEP has identified in this comment). We are not requiring the transition plans to include proposed tariff language for such activities as changing suppliers. We are allowing the companies to address such, if they choose. Nevertheless, the Commission is certainly aware of the numerous requests for uniformity in interactions between marketers and the incumbent utilities. The Commission intends to address these issues both in subsequent rules on consumer issues and in the operational support plan rules adopted today.

Local 175, Local 1413, Local 2359, Local 270, UWUA (AFL-CIO), Local 1466, Local 245, Local 1347, Local 350, and IBEW (AFL-CIO) (unions) have suggested that two sentences be added to the processing rules (Local 175 Initial Comments at 1).[5] First, they suggest that the processing rules acknowledge that an employee assistance advisory board will be making recommendations to the Commission as stated in Section 4928.431(B), Revised Code. We do not agree that the suggested language is needed in the processing rules. However, we acknowledge that the board will make recommendations to us for our consideration in reviewing the utilities' employee assistance plans. While we disagree that including the suggested language in our rules is necessary, that conclusion should not be construed as an indication that the board will not have a role in the transition plan proceedings.

In the unions' second recommendation, they seek to include the following sentence in the processing rules: "Utilities shall not be able to avoid or escape responsibility for funding employee assistance by not entering a transition plan or by exiting before the

---

Ohio, Ohio Association of Community Action Agencies, Ohio Chemical Council, Ohio Council of Retail Merchants, Ohio Grocers Association, Ohio Manufacturers' Association, Ohio Partners for Affordable Energy (Ohio Partners), and Ohio Petroleum Council.

5 All of the comments from the unions were identical. Therefore, for ease of reference, we will cite to Local 175 and the particular page involved, but it should be understood that we recognize that all of the unions have made the particular comment.

December 31, 2005 sunset date." We are not convinced that the processing rules need this additional language. Therefore, we have not added that language.

CCE suggests that, if a utility decides not to file its plan to participate in a regional transmission entity (RTE), the transition plan should then include mitigation measures or alternative strategies to meet the policy goals in Section 4928.02, Revised Code, and demonstrate outcomes that are equal to or superior to the specific performance criteria delineated in Section 4928.12, Revised Code (CCE Initial Comments at 7-8). FirstEnergy argues in response that CCE's suggested language is an attempt to alter Section 4928.35(G), Revised Code (FirstEnergy Reply Comments at 5-6). In FirstEnergy's view, if an electric utility elects not to file a transmission plan, as permitted under SB3, the legislation requires no information to be filed with its transition plan regarding the independent operation of the electric utility's transmission system (*Id.*). We believe that CCE's concerns have been addressed inasmuch as we have adopted rules that set forth specific requirements regarding transmission planning and operation that the utilities must implement with the start of electric competition. Consequently, CCE's suggestion for the inclusion of further mitigation measures and alternative strategies is not needed.

Next, several commenters indicate that the requirement to file a plan for shopping incentives should not be optional (DP&L Initial Comments at 2, Ohio Public Interest Research Group [PIRG] Initial Comments at 1 and 3, Shell Energy Service Co. L.L.C. [Shell] Initial Comments at 8, CCE Reply Comments at 11). We agree and have modified that provision accordingly. Section 4928.37, Revised Code, requires that the transition charge be structured so as to provide shopping incentives. Section 4928.40(A), Revised Code, further obligates the Commission to consider the shopping incentives as part of the evaluation involved with prescribing the expiration of a particular utility's market development period. Therefore, we believe that the wording in the staff's proposed provision E should be modified.

Monongahela Power Company (Monongahela) argues that a requirement that all work papers be filed with the proposed transition plan is voluminous (Monongahela Initial Comments at 1). We cannot agree with Monongahela's suggestion for the reasons noted by Ohio Consumers' Counsel (OCC) and CCE (OCC Reply Comments at 11, CCE Reply Comments at 6-7). The limited period of time in which interested persons and the Commission have to review each transition plan application and the fact that eight such reviews will be occurring in a very short period of time necessitate the receipt of important information up front. Quite simply, this requirement is necessary for efficient review and consideration of the proposed transition plans under the statutory time frame. For these same reasons, we also reject Monongahela's suggestion that the utility's prefiled direct, expert testimony not be filed until two weeks after the transition plan application is filed.

OCC has recommended that the rules require that data provided in the utility's work papers be footnoted to identify where the data is used and the source of the data (OCC Initial Comments at 8). AEP argues in response that such a requirement would be burdensome, especially since the Commission's rules will be finalized very shortly before the utilities will be filing their transition plans (AEP Reply Comments at 7). The staff's proposal would have required that the work papers be footnoted so as to identify any source document used. It did not, however, require footnoting the work papers to identify where the data is used in the filing. We believe that OCC's suggestion would cause excess work that leads to little benefit. To the extent it may be unclear from a particular transition plan filing how the work paper data is carried forward and used, interested persons can inquire at the technical conference about the source and flow-though of data in the transition plan application.

A large number of commenters addressed the staff's proposal for providing copies of the transition plan filing and posting the entire filing on the web. Some commenters liked aspects of the staff's attempts to allow for quick and easy access to the transition plan filings, while others suggested alternative approaches (i.e., CCE Reply Comments at 7, Ohio Partners Reply Comments at 3, PG&E Corporation [PG&E] Reply Comments at 4). OCC and Energy Plus support the staff's proposed requirement that all schedules, testimonies, and work papers be provided in electronic form and that the filings be posted on the utility's web sites (OCC Initial Comments at 8, OCC Reply Comments at 2-3, Energy Plus Initial Comments at 2). OCC also advocates active spreadsheets using certain software packages, or that the utilities should provide their software to intervenors (OCC Initial Comments at 8). Several utilities contend that the entire transition plan should not be electronically filed and electronic copies should be provided in a more workable format than envisioned by the staff's proposed rules (AEP Initial Comments at 8, CG&E Initial Comments at 12, FirstEnergy Initial Comments at 4-6, Monongahela Initial Comments at 2). Additionally, FirstEnergy opposes the staff's proposal to have the expert testimony on the utility's web site, while OCC and PG&E support that requirement (FirstEnergy Initial Comments at 6, FirstEnergy Reply Comments at 12, OCC Initial Comments at 9, PG&E Reply Comments at 4). FirstEnergy suggests, instead, that the web site have information on how to obtain a copy of the filing (FirstEnergy Initial Comments at 6). CCE recommends that the Commission reserve a docket number for all of the utility transition plans, interested parties be allowed to identify themselves before the filing of the transition plan, and the utilities be required to serve these parties copies of the plans when the plans are filed (CCE Initial Comments at 9-10). PG&E suggests that all commenters in this docket be included on the service lists for all of the transition plan applications and automatically be served with a paper copy of the filing (PG&E Reply Comments at 4).

Upon consideration of all of the comments in this area, we agree with some parts and disagree with other parts. We fully support the creation of rules which allow for quick and easy access to the transition plan filings because of the complex scope of the transition plan filings, the short time frame for Commission review, and the volume of interest by a wide variety of entities. We do have some reservations, however, with the specifics of the staff's proposal, as well as some of the suggestions made by the commenters. Given the size of one application that we received, we are not convinced that the entire application must be posted on the utility's web site. We do believe that paper and electronic copies of the entire filing should be quickly made available by the utility to persons having a real and substantial interest in the transition plan. The easiest way for the entire transition plan filing (including schedules, testimonies, and work papers) to be provided is on a disc (in a readable .pdf format) within three business of a request. However, paper copies should be provided when requested (again, within three business days). The utility's web site should include a site that explains how to request an electronic or paper copy of the filing, rather than have a copy of the filing to read and/or download on the web. Active spreadsheets used by the utility to support its transition plan application should be provided (in non.pdf format) within three business days to the staff and any intervening party who requests them.

Our rules will not require electronic filing of the entire transition plan document. At this time, we do not accept electronic filing of documents in any cases. Additionally, we do not think it is necessary to reserve docket numbers for the companies' transition plans, to have interested persons file with the Commission letters of interest in advance, or to have all commenters in this docket served paper copies of all transition plan applications. However, we think that interested persons can notify the utility representatives identified in this docket of their interest in upcoming transition plans. With such knowledge of interest, the utilities shall serve a readable .pdf formatted copy of the filing (or a paper copy of the filing) upon such entity at the time that the utility files the plan with the Commission. This approach takes the Commission "out of the loop" on such preliminary service matters and eliminates filings, while still expediting interested persons' ability to review the transition plan filing.

Several commenters also addressed the staff's proposed requirements for notifying the public about the transition plans. AEP and FirstEnergy contend that the staff's proposal to publish a summary of the transition plan lacks merit (AEP Initial Comments at 9-10, FirstEnergy Initial Comments at 6, FirstEnergy Reply Comments at 7). We believe that the public notices should include summaries of the transition plans so that the public can understand what is being proposed. We realize that this requirement will increase the size of the publication (and the cost). However, we agree with OCC and CCE (OCC Reply Comments at 3-4, CCE Reply Comments at 8-9) that, without such information, the value of any public notice is needlessly diminished. AEP has also raised a concern that such a summary requirement creates the opportunity for others to challenge the adequacy of its summary of the plan (AEP Initial Comments at 9). We feel that the utilities are capable of crafting fair summaries of their transition plans without Commission review and approval. For these reasons, we do not accept AEP's or FirstEnergy's concerns.

AEP also argues that the staff's proposal to publish multiple notices is costly, potentially confusing, and without merit (AEP Initial Comments at 10). We agree in part and disagree in part with AEP. We believe that the press may, on its own, extensively cover these proceedings as Ohio moves closer to a competitive electric environment and, for that reason, are agreeable to eliminating the requirement for a second publication. We also think that affiliated entities can fulfill the publication requirement with one combined public notice, so long as any significant distinctions between the affiliated companies' transition plan filings are separately identified in the notice and the notice is published throughout the utilities' operating territories. Thus, it would be permissible under our adopted rule for the FirstEnergy companies to publish one notice so long as, for example, each operating company's request for transition revenues is spelled out (and not just the total amount for all three operating companies included in the notice).

CCE maintains that the 21 days given for publishing the notice is too long and should be shortened to ten days (CCE Initial Comments at 8). We are willing to modify that time frame so that notice is made more quickly and interested persons have the opportunity to learn about the filing more quickly (particularly, to prepare their 45-day preliminary objections). The suggested ten-day period is too short, however. The utilities may have to publish notices in weekly newspapers and are likely to miss a ten-day publication deadline if we were to shorten the time frame as CCE has suggested. We adopt a 14-day time frame instead.

CCE contends that the publication rules should require that a summary of the shopping incentive proposal be included in the transition plan (CCE Initial Comments at 8-9). We agree that the minimum list of items to be summarized in the public notice should include the shopping incentive proposal. Our intent with this requirement, as with the other requirement to summarize the transition plan proposal, is for the publication notice to include, at a minimum, a fair and accurate description of the company's proposal for a shopping incentive (as well as the other delineated parts of the transition plan application).

Next, CCE and Western Reserve argue that holding the technical conference within ten days after the application's filing is too quick (CCE Initial Comments at 9, Western Reserve Reply Comments at 3-4). Instead, CCE recommends 21 days and Western Reserve recommends 30 days for the first technical conference (*Id.*). We do not want to delay this conference as suggested. It is entirely possible that the conference may be started and continued to another date. Also, if the conferences were not to be held until day 21 or day 30, those who want to file preliminary objections would have less time to write them, after having received a detailed explanation of the filing.

It has also been suggested that we extend the requirement to file preliminary objections from 45 days to 90 days (PIRG Initial Comments at 2-3, Mayor of Lakewood Comment, United States Representatives Kucinich and Tubbs Comment, Ohio Representative Miller comments). We, unfortunately, are unable to accommodate this request. Section 4928.32, Revised Code, mandates that "not later than 45-days after the date on which an electric utility files a transition plan under Section 4928.31, Revised Code, any person having a real and substantial interest in the transition plan may file with the Commission preliminary objections...." The Commission cannot alter this filing time frame as enacted in SB3 of the 123rd General Assembly. Nevertheless, information submitted after the 45-day statutory comment period will still be docketed and become a part of the transition case record. Additionally, interested parties may raise objections or issues during the presentation of their testimony, notwithstanding their not having specifically objected in the preliminary objections or not having filed preliminary objections. Moreover, parties may bring issues to the Commission's attention through cross-examination of the applicant's witnesses during the evidentiary hearings. Thus, while we cannot modify the preliminary objection deadline, interested persons will still have opportunities to present objections or issues.

A number of the comments addressed the 60-day settlement conference. AEP has advocated that the 60-day settlement conference be expanded to include a mediation phase, which could include hiring an independent, noncommission mediator (AEP Initial Comments at 11). We agree with the response from OCC and CCE (OCC Reply Comments at 8, CCE Reply Comments at 9). We do not think that AEP's suggested language is necessary. Under the rules that we adopt today, settlement will be explored and mediation can be employed. CCE states that the 60-day settlement conference should not be held until 75 days after the plan has been filed and Western Reserve argues that it should not be held until 90 days after the plan has been filed (CCE Initial Comments at 11, Western Reserve Reply Comments at 4). OCC and Shell argue that the 60-day settlement conference should not be held until after the staff issues its report (OCC Initial Comments at 4-5, OCC Reply Comments at 8, Shell Initial Comments at 12-13). We think it is advisable to still schedule the settlement conference prior to the issuance of the staff report. This meeting can be used to organize how and when settlement discussions can begin and establish a procedure for settlement discussions. As AEP has noted, scheduling the settlement conference for a later time frame will delay the available time for resolving these cases (AEP Reply Comments at 6). We fully envision that the staff will be prepared to participate in settlement upon issuance of its report, but the prior meeting can be held and be productive. We think that the 60-day mark is appropriate. Accordingly, we decline to adopt these suggestions.

OCC and CCE raised concerns that the staff's proposal was intended to delay the start of discovery (OCC Initial Comments at 5-6, CCE Initial Comments at 11). In OCC's and CCE's view, discovery should begin immediately upon the filing of a transition plan (*Id.*). FirstEnergy stated in reply that discovery should begin upon the filing of the transition plan, but be suspended if the Commission suspends a transition plan (FirstEnergy Reply Comments at 9). We agree that discovery should start immediately, although we do not think that the staff's proposal delayed the start of discovery. However, we wish to make clear that nothing in the rules that we adopt today will delay the start of discovery. Our rules allow parties to the "ETP" proceedings to begin discovery efforts immediately after a proceeding is commenced. We do not think that the rules need to address suspension of discovery as FirstEnergy has advocated. To the extent that discovery efforts should be suspended, such decisions will be made on a case-by-case basis.

AEP recommends that intervention be required much earlier in the process for meaningful settlement discussions to take place (AEP Initial Comments at 12). CEE advocates that the intervention deadline be five days prior to the start of the evidentiary hearing (CCE Reply Comments at 9). We cannot agree with either suggestion. We encourage early intervention, but do not feel that the process rules must require such. Later intervenors will simply assume the risks and forego the benefits that could be gained by earlier participation. Moreover, we feel that the intervention deadline should be earlier than the deadline for the filing of intervenor direct, expert testimony so that all intervenors have the opportunity to meet that deadline. For that reason, we disagree with CCE's suggestion. Our rules will require that intervention requests be filed no later than 21 days prior to the start of an evidentiary hearing, unless good cause is shown.

Many commenters argue that SB3 requires the Commission to establish expedited discovery rules for the "ETP" cases (CG&E Initial Comments at 13, OCC Initial Comments at 6, CCE Initial Comments at 12, AEP Reply Comments at 5 and 7, OCC Reply Comments at 6-8, FirstEnergy Reply Comments at 11, DP&L Reply Comments at 7, CCE Reply Comments at 9, PG&E Reply Comments at 5). A number of the comments advocate certain discovery rules (e.g., a case management order, discovery responses within ten days of service). Shell states that the Commission should not adopt an expedited discovery schedule because it will hamper the parties' ability to obtain and provide information for the Commission's consideration (Shell Reply Comments at 3). We agree that our transition plan rules should address expedited discovery since the language of Section 4928.32, Revised Code, is mandatory. We believe that CG&E's suggested case management order is beyond the scope of "expedited discovery" and not particularly even handed. Based upon prior Commission litigation, we believe that the rules we adopt today will accelerate the discovery process in a fair and appropriate manner for these complex proceedings. We believe that these parameters will allow all parties the opportunity to conduct adequate discovery and not hasten the process so as to eliminate effective investigation as Shell has worried. Additionally, we wish to emphasize that parties should prioritize their discovery requests, use electronic means for service of discovery requests, motions, and responses, and coordinate depositions. Such efforts will go a long way toward facilitating the discovery process and getting to the issues at hand. If difficulties in these areas arise, the parties can seek resolutions from the attorney examiner.

A few commenters stated that the Commission should allow more than seven days between the filing of intervenors' testimonies and the hearing because more time is necessary for discovery and for the utilities to properly prepare for hearing (AEP Initial Comments at 12 [recommending 21 days], CG&E Reply Comments at 4 [recommending 45 days], FirstEnergy Initial Comments at 7 [recommending ten days], Monongahela Initial Comments at 2 [recommending 21 days]). OCC and CCE contend that the rule should remain as proposed by the staff (OCC Reply Comments at 5-6, CCE Reply Comments at 8). Given the expected number of intervenors, a slightly longer period of time between the intervenor testimony deadline and the start of the hearing is reasonable. However, we are concerned with extending the time frame a great deal. Thus, we are agreeable with establishing the intervenor prefiled testimony deadline at 14 days prior to the start of the hearing. As a result of this modification of the staff's proposal, we must also change the utilities' supplemental direct, expert testimony deadline to 21 days prior to the hearing and change the intervention deadline to 21 days prior to the hearing.

AEP and FirstEnergy have commented that the utilities should be promptly advised (via a deficiency letter) regarding any substantive deficiency in their transition plans (AEP Initial Comments at 12, FirstEnergy Initial Comments at 7). OCC and CCE have suggested that the utility's transition plan should be formally certified as substantially complete <u>before</u> the time periods for the transition plans commence (OCC Initial Comments at 3-4 [certification within seven business days], CCE Initial Comments at 12-13). FirstEnergy, PG&E, and AEP oppose this "tolling" suggestion (FirstEnergy Reply Comments at 10-11, PG&E Reply Comments at 3, AEP Reply Comments at 6). We agree that the Commission should inform the utility and public of any substantive deficiencies that need to be corrected and/or require refiling early in the 275-day process. The review should occur within the first 30 days and, if any deficiency is found and/or refiling is necessary, a Commission ruling will be issued. Otherwise, the application should be automatically deemed minimally adequate.

CCE suggests that the processing rules require a Commission finding that the transition plan has been demonstrated to be consistent with the state's policy in Section 4928.02, Revised Code, and all items listed in Section 4928.34, Revised Code (CCE Initial Comments at 13-19). AEP and FirstEnergy argue that the processing rules do not need to reiterate the provisions of Section 4928.34, Revised Code, and SB3 does not require an approval finding that the transition plan is consistent with the state's electric policy (AEP Reply Comments at 10, FirstEnergy Reply Comments at 9). We are not convinced that the processing rules need to include CCE's suggested language. SB3 already specifies exactly what findings this Commission must make. There is no need for the Commission's processing rules to address this topic.

AEP and CCE have recommended that the Commission's process rules specifically address treatment of confidential information (AEP Initial Comments at 13-14, CCE Initial Comments at 10-11). AEP urges the adoption of a special rule for extending the automatic time period associated with protective orders, while OCC argues that the current Commission rules are adequate (AEP Initial Comments at 13-14, OCC Reply Comments at 9-10). CCE recommends the establishment of a protective agreement for the parties and points to a Federal Energy Regulatory Commission (FERC) model (CCE Initial Comments at 10-11, CCE Reply Comments at 10-11). AEP argues that there are a few flaws with the model that CCE supports (AEP Reply Comments at 9-10). FirstEnergy contends that the parties should develop protective agreements themselves (FirstEnergy Reply Comments at 7). PG&E believes that procedures for handling confidential information can be done by the attorney examiner prior to the filing of the transition plans (PG&E Reply Comments at 5). We agree that the protective order 18-month time period (contained in Rule 4901-1-24, O.A.C.) may be too short for the information that is likely to get confidential treatment in these ETP cases. We are willing to extend the 18-month period to the time frame in which the ETP case is pending before the Commission, plus the time frame in which any appeals are pending, plus 60 days, unless otherwise determined in the individual cases. We wish to make clear that specific requests for confidential treatment should be made and justified, as well as any renewal requests. We are not willing to adopt a model protective agreement for use in these particular proceedings, as CCE has suggested. A number of parties have been involved in Commission proceedings and have developed, without incident, protective agreements that are mutually acceptable. We do, however, encourage the utilities and interested parties to work through this issue quickly. We believe that protective agreements can be executed without dispute or Commission involvement.

Monongahela recommends that a simplified set of requirements be required for utilities with less than 30,000 customers or it recommends that the utilities be provided an opportunity to file waivers (Monongahela Initial Comments at 2-3). FirstEnergy and AEP likewise suggested that there be a rule allowing for waivers of filing requirements (FirstEnergy Initial Comments at 2, AEP Reply Comments at 5). OCC opposes a separate set of filing requirements applicable only to Monongahela (OCC Reply Comments at 10-11). We see no need to establish a set of transition plan filing requirements uniquely designed for Monongahela only (as it is the only utility that would qualify for the simplified set of requirements that it recommends). We also see no need for these rules to include specific authorizations for waiver requests. Waiver requests are permissible. As always, the requesting party has the burden of demonstrating that the request is justified. Additionally, our review of waiver requests submitted with the transition plan will be done quickly, concurrent with the adequacy review, with the goal of having the waiver ruling issued within the first 30 days.

CCE also suggests that the processing rules state that the burden of proof allocated by Chapter 4928 includes the burden of going forward with evidence sufficient to demonstrate that the individual components of the proposal and its combined effect should satisfy Section 4928.02, Revised Code (CCE Initial Comments at 4). CG&E, AEP, FirstEnergy, and DPL Inc. all disagree with CCE's suggestion (CG&E Reply Comments at 4, AEP Reply Comments at 3-4 and 8, FirstEnergy Reply Comments at 4, DPL Inc. Reply Comments at 5-6). Such an additional processing rule is not necessary. However, nothing in our conclusion to not include language in the processing rules should be construed to mean that the utilities do not have the burden of proving that their transition plans demonstrate all that is required under the law.

CCE further recommends that the transition plan rules require the utility companies to address matters that must be addressed by rate plans or other orders (CCE Initial Comments at 5). To not overlook matters that were deferred to the transition plan cases, we find it advisable to include a rule that obligates the utility's transition filing to address all outstanding issues that the Commission deferred to the transition plan cases.

CCE encourages the Commission to consider adding practical strategies to address electric fuel component (EFC) requirements (CCE Initial Comments at 5-6). The process to work through EFC issues could take longer than the process for the transition plans. The parties are not precluded from presenting something for the Commission's consideration in the transition plan cases, but we decline at this time to develop specific transition plan rules that address EFC requirements.

Lastly, CCE urges the Commission to adopt a rule to require a schedule that identifies all services being provided by the utility and its affiliates for which they have received market-based pricing authority or have been relieved from traditional regulation (CCE Initial Comments at 19). AEP and FirstEnergy took issue with this recommendation (AEP Reply Comments at 10, FirstEnergy Reply Comments at 10). We have required in our corporate separation rules that a schedule be presented that lists the utility's electric services and the utility's transmission and distribution affiliates' electric services. Therefore, we accept in part CCE's suggestion on this point.

III. Unbundling Rules

DP&L and FirstEnergy have raised concerns with the staff's proposed definition in provision (B)(6)[6] of "regulatory assets" (DP&L Initial Comments at 2, FirstEnergy Initial Comments at 19). Upon consideration, the regulatory assets to be included in the unbundling process must only be those already included in current rates. We believe the staff's proposed definition is correct.

Several parties have argued that the staff's proposed definition (provision [B][7]) of "standard service offer" is confusing and unnecessary (Shell Initial Comments 8, OCA[7] Initial Comments at 3, CCE Initial Comments at 20, DP&L Initial Comments at 3, OCC Initial Comments at 9). We agree. The definition serves no purpose for unbundling. However, we have included the standard service offer in our list of tariff items, which will require the utilities to indicate how they will address standard service offers in the tariff or the transition plan.

Ohio Partners has indicated that the staff's proposed unbundling rules fail to specify that demand-side management or energy efficiency funding should be a component of

6 In several areas in this decision, we will specifically refer to provisions in the staff's proposed rules. Due to a number of changes (both stylistic and substantive) that we have made, our adopted rules may not correspond to the provision reference in the staff's proposal.

7 Ohio Citizen Action and Safe Energy Communication Council jointly filed comments in this proceeding. Those comments will be referred to as "OCA" comments.

unbundled rates and should be allocated as required by previous Commission orders (Ohio Partners Initial Comments at 2). We find merit in Ohio Partners' suggestion. We have added language to require the utilities to identify and provide details on how they are accounting for the demand-side management and energy efficiency funding that is already in rates. Moreover, we are requiring the utilities to indicate whether they have collected funds but have not expended them and what their intentions are with this funding

Also, OCA contends that further unbundling should be recognized in the rules to account for demand-side management and energy efficiency funding expenses already in rates, as well as their marketing and administrative costs (OCA Initial Comments at 3). The Commission directs the companies to identify the functionalization of marketing costs in the application. OCA can address this issue in the individual company cases.

FirstEnergy has proposed to modify the staff's generation transition cost component to equal the transition cost minus the regulatory assets piece (FirstEnergy Initial Comments at 8-10, 12). In FirstEnergy's view, generation is the residual after all else is unbundled under the legislation. The staff's proposed rules and our approval of them (as modified) allow the utilities to provide their interpretation of the legislation as part of the transition filing. However, at a minimum, the utilities must provide the minimum requirements as contained in the adopted rules. Therefore, we have not accepted FirstEnergy's interpretation in our rules, but we have not precluded the company from including such information in its transition plan filing, so long as the company also includes the information required by our rules.

The Kroger Company (Kroger) and CCE argue that the unbundling rules should not have a separate regulatory asset rate (Kroger Initial Comments at 5, CCE Initial Comments at 21). We do not agree, but we have added clarifying language on this point. There needs to be a separate regulatory asset component in order to identify the portion of regulatory assets that have been recovered so, later, it can be determined whether regulatory asset recovery should be continued. Thus, the regulatory asset should be a separate rate and it is appropriately a part of the total transition charge.

AEP contends that the five percent reduction required by Section 4928.40(C), Revised Code, should apply to generation after ancillary services, regulatory assets, and the EFC are removed (AEP Initial Comments at 15). Similarly, DP&L argues that the residential generation discount should not be separately identified in the unbundling rules (DP&L Initial Comments at 3). Our rules (and the legislation) do not specify to what portion of generation the five-percent applies. Nor do we intend to indicate in our transition plan rules whether the five-percent discount should be separately identified. We believe it is best to leave the rules open on this point and the utilities can file and support whatever mechanism they prefer.

Kroger has argued that the proposed transmission rates should be demand rates for those rate classes with demand meters (Kroger Initial Comments at 3). Likewise, Kroger is critical of the staff's proposed unbundling rules because they are silent about distribution rate design (*Id.* at 2). FirstEnergy states that the rules need language in the transmission section indicating that schedules that do not have demand charges can be charged on a kilowatt basis (FirstEnergy Initial Comments at 10). We agree, but we believe the staff's proposed rules in this area provide the flexibility for utilities to design all of the rates in the most appropriate manner pursuant to the legislation, without mandating any particular rate design. The legislation requires unbundled rates to equal bundled rates; therefore, rates that currently have demand charges could continue to have demand charges but, if the utilities want to provide an alternative, we will consider such alternative. Other parties can submit alternatives for our consideration as well. Therefore, we have not included any additional provisions on this point in the rules we adopt today.

OCC and AEP state that ancillary charges should not be included in distribution rates; they need to be separate (OCC Initial Comments at 12, AEP Initial Comments at 16). AEP adds that, in determining the distribution rates, the FERC basic transmission rate should be used as it does not include ancillary service (AEP Initial Comments at 16). We have added language to clarify that ancillary services must be separated out and, therefore, they will not be part of the distribution rates.

CCE maintains that the unbundling rules should require each utility to submit a complete set of marked-up revisions to its open access transmission tariff (OATT) that it plans to file with the FERC and a timeline that it will follow to secure approval for such revisions (CCE Initial Comments at 24). AEP states that the rules should specify that the utilities only have to file a plan for altering its OATT if they intend to do so (AEP Initial Comments at 15). We agree with both comments. We have added language to require the applicant to indicate whether it plans to alter its OATT and, if so, to include a copy of those revisions, as well as the approval schedule.

FirstEnergy contends that the effective date contained in the staff's proposed distribution component rule (provision [C][3]) needs to be changed to be the date prior to the effective date of the statute (FirstEnergy Initial Comments at 11). We do not agree with FirstEnergy. Section 4928.34(A)(2), Revised Code, states that the distribution component is based upon the rates on the effective date of the legislation, which is October 5, 1999. Therefore, we do not accept FirstEnergy's suggestion.

FirstEnergy advocates that universal service fund and energy efficiency funding rate changes (from amounts in rates as of the effective date of the legislation) be used to adjust the frozen rates on a dollar-for-dollar basis (FirstEnergy Initial Comments at 12). We believe that the staff's approach (to have any such adjustments included in Schedule UNB-6.1) is appropriate.

CCE suggests that the "other unbundled services" include metering service and billing and collection service (CCE Initial Comments at 24). Neither item is required by the legislation for unbundling. The Commission will be considering these items in the context of other rulemaking dockets in the near future. In the meantime, we do not believe that the transition plan rules must include metering service and billing and collection service as other unbundled services. However, in the ETP proceedings, parties can address the costs of individual meter change outs in order to facilitate aggregation.

FirstEnergy suggests adding language to staff's proposed provision (C)(5) to allow any planned rate reductions as a result of rate settlements to be incorporated as riders (FirstEnergy Initial Comments at 12). We agree with FirstEnergy's suggestion of including the rate settlements as a rider. However, the rule language does not preclude such riders. Rather, our rule provides the utilities and other parties with the flexibility to propose what they feel is appropriate.

Next, FirstEnergy desires to use the most recent 12 months of billing determinants for purposes of unbundling its rates (FirstEnergy Initial Comments at 13). We cannot agree with this request because Section 4928.34(A)(2), Revised Code, requires that billing determinants from the utility's last rate case be applied for verifying that the unbundled rates equal bundled rates. It is for that reason that we decline to use the most recent 12 months of billing determinants for purposes of unbundling. We emphasize that this conclusion is solely for purposes of unbundling and not for purposes of calculating transition revenues.

Several entities have raised a concern as to whether contract customers should be exempt from increases resulting from a universal service fund, energy efficiency funding, and tax changes (PIRG Initial Comments at 3, CG&E Initial Comments at 14, Monongahela Initial Comments at 3, DP&L Initial Comments at 4, FirstEnergy Initial Comments at 13-14). We agree that the staff's contract customers unbundling rule (provision D) requires clarity on this issue. We believe that contract customers should be subject to such changes. We are adding additional language to our adopted rules to state such.

For the staff's proposed list of items for which the utilities should propose tariff changes (provision E), several entities made particular proposals. Energy Plus would like to see a statewide standard be adopted outright by the Commission (e.g., those developed by the Coalition for Uniform Business Rules) (Energy Plus Initial Comments at 3). Shell suggests a working group approach to deal with these items -- the utilities provide a full discussion of the issues identified, including identification of priorities and which items are conducive to settlement, after which group discussions can begin (Shell Initial Comments at 10). DP&L seeks clarification about the list, but still suggests that it be eliminated (DP&L Initial Comments at 4-6). Kroger wants to ensure that the transition plan requires the utilities to address the listed items, as well as conjunctive billing and aggregation (Kroger Initial Comments at 5). Monongahela suggests that the Commission seek supplier documentation, rather than supplier certification tariff provisions by the utilities (Monongahela Initial Comments at 4). AEP questions some of the staff's items and suggests their deletion (AEP Initial Comments at 16). These unbundling rules shall not require adoption of certain standards for the listed items as Energy Plus has recommended. However, the Commission has decided that statewide standards are appropriate as they relate to operational support plans (for more details, see *infra*). Regardless, we believe that the unbundling rules should recognize that tariff changes will be needed and the transition plans may be appropriate for such consideration. This list is included in the unbundling rules to determine how the utilities plan to address such items in the tariffs and their transition plans, or find out why the utilities do not believe they need to address them. Quite simply, not all items may need to be addressed in the unbundling process, even the additional ones we have added to the list. Some of the items will be more completely evaluated by the Commission in other contexts.

Several utilities questioned the appropriateness of the staff's proposed schedules. Monongahela stated that the schedules are burdensome (Monongahela Initial Comments at 4). CG&E, DP&L, and AEP question the need to provide scored current and proposed tariffs in schedules UNB-1 and UNB-2 (CG&E Initial Comments at 14, DP&L Initial

Comments at 6, AEP Initial Comments 17). FirstEnergy likewise does not want to provide a scored version of UNB-4 (FirstEnergy Initial Comments at 19). FirstEnergy states that reporting fuel revenue separately is unnecessary and UNB-6.1 is an inappropriate way to determine tax changes and unbundled rates (*Id.* at 17). FirstEnergy proposes a completely different set of schedules (*Id.* at 15). FirstEnergy also has concerns with providing individual contract information in the schedules as it believes it is unnecessary and proprietary (*Id.* at 17). We disagree with most of the concerns raised about the schedules. We find the proposed schedules to be necessary for establishing unbundled rates. We believe scoring is necessary to expedite the review process. However, instead of requiring the utilities to reference the sections of the Revised Code in the right hand columns of UNB-1 and UNB-2, we are requiring that the utilities provide us with a narrative rationale for any changes. The utilities must, at a minimum, file the schedules as outlined in our rules. However, they may, in addition, file their own proposals with supporting schedules. Other parties can submit unbundling alternatives for our consideration as well. The information requested is necessary to assure unbundled rates equal bundled rates. For FirstEnergy's concerns over providing numerous individual service contracts, we note that it may seek a waiver of this rule (providing appropriate justification), at which time the Commission will fully consider FirstEnergy's circumstance. We have added language to address the proprietary concern raised.

CCE advocates that the utilities also break out in the schedules the amount of taxes that are present in both tariff and contract rates, as well as the amount of taxes that will be eliminated as the result of replacement taxes (CCE Initial Comments at 27). We believe that information will be provided through schedules UNB-6.0, UNB-6.1, and UNB-6.2 and, therefore, there is no need for further changes.

DP&L, AEP, and FirstEnergy urge the Commission to not apply, in the COSS, the FERC's "seven-factor test" on the ground that it is contrary to the enabling legislation, which requires transmission rates be equal to the rates on file with FERC, regardless of whether those rates were designed using the seven-factor test (DP&L Initial Comments at 7, AEP Initial Comments at 17, FirstEnergy Initial Comments at 18). We understand that the unbundled transmission rates are those that are on file with FERC and such cannot be adjusted by performing the seven-factor test at this time. However, we are requiring this information because it is important to know what facilities are expected to be in which tariff (and FERC Order 888 orders the utilities to differentiate between transmission and distribution based on the seven-factor test), as well as understanding any operational distinctions between the RTE and the distribution company. Also, related to the COSS, several commenters stated that the utilities should be allowed to revise the COSS to reflect Commission orders (OCC Initial Comments at 15, CG&E Initial Comments at 14, AEP Initial Comments at 17). The companies should provide the COSSs that were provided in their last rate case, adjusted for any Commission orders. We have added clarifying language to indicate this in our rules.

OCC suggests that the unbundling rules specify that, with limited exception, the unbundled rates should equal the costs attributable to the particular service as reflected in the utilities' schedules of rates in effect on the effective date of the bill (OCC Initial Comments at 15). We agree and have added OCC's proposed language to clarify that changes to functionalization may be proposed, but not changes to the distribution of revenues to the various classes.

CCE and OCC recommend that the rules identify costs that are avoided for customers who shop (CCE Initial Comments at 27, OCC Initial Comments at 17). We will require this information, but we do not expect rates to be adjusted to remove these costs because the legislation intends that the unbundled rates equal the bundled rates (except for the required adjustments). That statement should not be construed to mean that customers who choose to shop will be required to pay avoided costs. Even so, there may be use for this information in the future for analyzing competitive and noncompetitive services.

Finally, CCE suggests that the unbundling rules require that the amount of labor and employee assistance costs that are present in existing rates be broken out (CCE Initial Comments at 27). We do not agree that the unbundling rules must address labor and employee assistance costs. Labor and employee assistance are addressed in Appendices C and D, wherein we are requiring certain details about employee assistance expenditures and their proposed recovery. Thus, we will require the utilities to address in their transition plans labor and employee assistance costs, but we decline to adopt the rules in the unbundling section.

IV. Corporate Separation Rules

There were a very large number of comments regarding the staff's proposed corporate separation rules. First, we will address three general comments that were raised. A number of entities alleged that these rules are overly broad, go further than SB3 mandates, and may result in affiliates of the electric utilities being placed at a competitive disadvantage (Monongahela Initial Comments at 4, AEP Initial Comments at 19, DP&L Initial Comment at 8-9). Others claimed that the corporate separation rules did not go far enough and could result in affiliates of the electric utilities having a competitive advantage (The National Electrical Contractors Association (Ohio Conference) [NECA] and Ohio Mechanical Contracting Industry [OMCI] Joint Initial Comments at 1, CCE Initial Comments at 28-29, Duke Energy North America, LLC [Duke] Initial Comments at 7). In general, we believe that the staff's proposed corporate separation rule strike the right balance, but agree that some modifications and clarifications are appropriate.

CCE is concerned that staff's proposed corporate separation rules would apply only during the transition period (CCE Initial Comments at 29). CCE and Duke believe that the Commission should approve corporate separation rules and a code of conduct, effective immediately and on a permanent basis, citing Section 4928.17, Revised Code (*Id.*, Duke Initial Comments at 1). It is our intent that, after review by JCARR, the utilities shall be subject to all provisions in the corporate separation rules, although some provisions will be triggered earlier than others. There is nothing in our rules or SB3 that establishes a sunset provision and, thus, the corporate separation rules will be in effect until a future ruling determines otherwise.

PG&E points out that the utility must provide competitive retail electric service through a fully separated affiliate, except in extremely limited circumstances where the Commission may approve functional separation (PG&E Initial Comments at 2). PG&E is correct. Functional separation is allowed under SB3, but on an interim basis. We have established additional requirements under which an electric utility can propose, for "good cause", an interim functional separation plan. The interim plan shall provide a detailed timeline on progression to full structural separation and shall be subject to periodic staff review.

Several commenters had concerns with the staff's proposed definition of "affiliates" in provision (A)(1). FirstEnergy stated that the rules should limit applicability to affiliates certified to provide competitive retail electric service in Ohio (FirstEnergy Initial Comments at 28). DP&L contends that the proposed rule is unclear as to whether it mandates that affiliates be separate corporate entities or whether they could be separate business units (DP&L Initial Comments at 11). PG&E stated that the definition of "affiliates" should be expanded to clarify that a utility and its competitive retail service provider are considered affiliates even through indirect control or ownership or a minority ownership position (PG&E Initial Comments at 6). DPL Inc. argues that the staff's proposal should include "functional separation" since Section 4928.17(C), Revised Code, allows such in limited situations (DPL Inc. Initial Comments at 9). Upon consideration, we do not believe a change to the definition of affiliates is required. However, we have included language under which functional separation may be proposed and considered by the Commission.

Next, commenters were dissatisfied with the staff's definition of "fully allocated costs" in provision (A)(3). CG&E states that "fully allocated costs" should be defined as the sum of direct costs plus an appropriate return component and that compliance with the applicable federally approved transaction rules shall be prima facie evidence of compliance with the "fully allocated cost" standard of the corporate separation rules (CG&E Initial Comments at 16). DP&L suggests that "fully allocated costs" also mean fully loaded embedded costs as used under Section 4928.17(A)(3), Revised Code (DP&L Initial Comments at 11). CCE believes the reference to "appropriate share" of indirect costs may result in exclusion of some costs that should be included and there should be definitions of both direct and indirect costs (CCE Initial Comments at 30). CCE suggests several additional definitions for "employees", "competitive suppliers", and "customer" (*Id.* at 31). We are not convinced that "fully allocated costs" should be modified, except to incorporate DP&L's recommendation. Additionally, we have included CG&E's concept of evidence of federal compliance in a language addition in another section of the corporate separation rules we adopt today. We have incorporated CCE's suggested definitions as well.

Also, concerns were raised with regard to the structural separation proposed rules. CCE argues that the Commission should require that utility generation affiliates be: (1) structurally separate from their retail marketing affiliates, (2) restricted to selling all output into the wholesale market, and (3) any sale to another affiliate must be offered to nonaffiliates under the same terms and conditions and at the same time (CCE Initial Comments at 31). The corporate separation rules that we adopt today will require structural separation (although for an interim period, functional separation may be permitted in certain circumstances). Our rules favor structural separation. We, however, are not inclined to add CCE's proposed restrictions upon the utility generation affiliates if they are operating in a competitive market.

Three utilities argue that the jointly employed officers and directors restriction is not workable and unreasonable either under current company structure or because it conflicts with Section 4928.17(A)(3), Revised Code, which allows affiliate use of utility resources, personnel and training as long as costs and compensation are charged to the affiliate (Monongahela Initial Comments at 6, AEP Initial Comments at 21, DP&L Initial Comments at 12). We agree with the concerns over the staff's proposed restriction against jointly employed officers and directors. Such a restriction would be operationally inefficient. We have amended the rules and will only require minutes of the board of directors meetings to be placed in the cost allocation manual (CAM).

Criticisms were also raised about the staff's proposed restriction against sharing and transferring employees in provision (C)(1)(c). Among those comments were OCC's contention that the Commission should prohibit the sharing and transfer of employees, but, if permitted, the competitive affiliate should pay the regulated utility a fee of 15 to 25 percent of the transferred employees' salaries for at least 2 years (OCC Initial Comments at 20). PG&E recommends that the restriction be more explicit that employee sharing is prohibited between fully separated affiliates (PG&E Initial Comments at 8). CCE noted that the staff's proposal is consistent with the authority granted to the Commission under SB3 (CCE Initial Comments at 39). DP&L, however, urges the Commission to narrow the restriction so that it applies only to employees transferring from the electric utility to an affiliate providing competitive retail electric service (DP&L Initial Comments at 13). We note that the staff's proposal for this issue is specifically authorized by SB3. We believe that the staff's proposed restriction against sharing and transferring employees is wise.

Regarding the issue of sharing facilities and services, OCC believes that the Commission should require the affiliated competitors to maintain an office that is physically separate from the regulated utility (OCC Initial Comments at 21). OCA suggests that the limitation on sharing facilities and services not be applicable if the sharing violates the code of conduct (OCA Initial Comments at 3). We disagree with these recommendations. We believe that the staff's proposal has struck a proper balance on this issue under the constraints of SB3.

As for the financial arrangement provisions in proposed (C)(3), OCC wants the rules to specifically prohibit large cash pools (OCC Initial Comments at 22), while AEP wants the rules to not prohibit the use of money pools (AEP Initial Comments at 22). Additionally, OCC argues that, if a regulated utility has already guaranteed the debt of affiliate competitive operations, the securities guaranteeing that debt should be retired at the earliest practicable time with no new issues or rollovers (OCC Initial Comments at 23). Monongahela states that these provisions will place affiliates of Ohio utilities at a competitive disadvantage with respect to suppliers whose financing flexibility is not similarly constrained (Monongahela Initial Comments at 6). FirstEnergy and CG&E seek to ensure that these provisions are applicable only to future activities and that the existing financial arrangements of the electric utilities are permitted to remain in place until such time as the utility can restructure and/or terminate the overlapping obligations in an economically efficient manner (FirstEnergy Initial Comments at 29, CG&E Initial Comments at 19). DP&L's argument is that the proposed rules unlawfully resurrect Ohio's former baby holding company act (Section 4905.46, Revised Code), which was amended by SB3 to remove certain financial prohibitions and to remove the Commission's oversight authority (DP&L Initial Comments at 13). We agree with aspects of the concerns raised in this area. The Commission does not want to force uneconomic transactions. However, we feel that the corporate separation rules need to strongly encourage separate financial arrangements for the affiliated companies of the electric utility. Moreover, despite DP&L's statement to the contrary, SB3 allows the Commission to take the steps needed to protect the regulated operations from possible adverse effects of diversification. We have added the qualifier of "except as the Commission may approve" to the beginning of the rule, so as to at least incorporate some flexibility when the situation warrants it. Thus, exceptions to limitations on financial arrangements would not be granted without a showing of good cause (as CCE has encouraged).

DP&L and DPL Inc. urge the Commission to modify the code of conduct provisions to apply only to electric utilities and those affiliates that are certified suppliers under Section 4928.08, Revised Code (DP&L Initial Comments at 14, DPL Inc. Initial Comments at 14). CCE requests three additional standards of conduct, under which the utilities must: (1) process requests for similar services provided by the utilities in the same manner and within the same time for affiliates and nonaffiliates and their respective customers, (2) not be able to assign customers to any of their affiliates, and (3) not market its standard offer service or characterize this service as a "competitive" service, because such marketing might discourage customers from choosing an alternative supplier (CCE Initial Comments at 36). PG&E requests that the rules explicitly state that customer information will be made available to affiliates and nonaffiliates on the same terms and conditions, as well as require the contemporaneous availability of noncustomer-specific, nonpublic data to affiliates and nonaffiliates (PG&E Initial Comments at 10). It is our opinion that these issues are already sufficiently covered by the code of conduct provisions being promulgated today.

Monongahela, AEP, and FirstEnergy all argue that comparable access to nontariffed products and services should be eliminated from the code of conduct rules (Monongahela Initial Comments at 8, AEP Initial Comments at 23, FirstEnergy Initial Comments at 35). In their opinion, comparable access should be limited to only tariffed products and services because the Commission does not have the authority to order a utility to make nontariffed products or services available to the public (*Id.*). We agree with the recommended revision and have deleted the nontariffed wording.

Next, commenters were concerned with the breadth of the staff's proposed provision (E), regarding access to books and records. Monongahela, AEP, CG&E, and FirstEnergy state that access should be specifically limited to the business for which corporate separation is required, and the information learned should be treated as confidential (Monongahela Initial Comments at 9, AEP Initial Comments at 24, CG&E Initial Comments at 21, FirstEnergy Initial Comments at 36). PG&E believes that the rules should provide for the public filing of the staff's investigative reports with the Commission, or otherwise make them available for public inspection (PG&E Initial Comments at 15). We cannot agree with these comments. The Commission staff needs access to the books and records of all affiliates regardless of whether they have transactions with the electric utility or not. Such access is permitted under Section 4928.18, Revised Code, and is necessary in order to determine, for example, whether revenues from captive ratepayers are being used to subsidize unregulated businesses. Also, given our acknowledgement of a period of time in which functional separations may be permitted, we have a concern that such will create a greater opportunity for improper behavior during the interim period. Moreover, as Ohio moves closer and closer to a competitive electric service market, we will have greater concerns over market power abuses and cross-subsidization. We believe that access to books and records will play an important part in our role of ensuring a level playing field throughout the market development period and thereafter. For these reasons, we decline to adopt the suggestions on this point.

For the staff's proposed rule that would require maintenance of a CAM, the utilities have objected on the ground that the provision is overly broad and burdensome (Monongahela Initial Comments at 9, CG&E Initial Comments at 21, DP&L Initial Comments at 18-20, AEP Initial Comments at 24). Several other entities have argued either that the utilities should not maintain the CAM or it should be a public document filed with the Commission containing more information (GreenMountain.com Company [GreenMountain] Initial Comments at 2-3, PG&E Initial Comments at 15). Additionally, there were conflicting views as to whether the CAM should be accessible to intervenors (Shell Initial Comments at 17, OCC Initial Comments at 54, CCE Initial Comments at 42, AEP Initial Comments at 26). The CAM as proposed represents the minimum information necessary for us (and our staff) to monitor and evaluate the electric utilities' affiliate relationships and transactions. The effectiveness of the CAM rules and requirements will be reevaluated as actual experience is obtained with the companies' separation plans. We have slightly modified the CAM requirements but, for the most part, we agree with the staff's approach. We have not precluded intervenors from conducting discovery of the information to be maintained in the CAMs or any other pertinent documentation in these ETP proceedings. It is contemplated that the Commission (and our staff) will, however, maintain exclusive authority for CAM compliance audits and updates to them.

Very different views were expressed regarding the scope and frequency of staff audits. On the one hand, CG&E stated that the staff should have probable cause of a violation of corporation separation rules before conducting audits (CG&E Initial Comments at 21). On the other hand, CCE advocates that mandatory compliance audits be conducted on an ongoing basis by an independent auditor (hired by the staff) to audit the utility's CAM and other books, accounts, and records (CCE Initial Comments at 37). Similarly, PG&E states that detailed scrutiny is necessary for utilities functionally separated from their affiliates, in which case staff resources would be constrained to perform an in-depth review of a utility's compliance with its structural separation plan (PG&E Initial Comments at 18). PG&E suggests an independent auditor be appointed by the Commission to perform such an audit (and paid for by the utility) on an annual basis (*Id.*). We disagree that "probable cause" must exist before an audit can be conducted. We agree with PG&E's proposal for more detailed audits of utilities that choose functional separation and the hiring of an independent auditor to be paid for by the utility. It is our opinion that regularly scheduled compliance audits serve as incentives for good behavior. Once every two years is an adequate time frame. As we have stated previously, functional separation allows greater opportunity for cross-subsidization and other forms of anti-competitive behavior as compared with structural separation. Therefore, more stringent oversight is justified. Paying the additional audit expenses should serve as an incentive for the utility to move quickly toward our preferred structural separation mode.

CCE has recommended that the utilities be required to file annual updates to the transition/compliance plans (CCE Initial Comments at 38). Also, upon creation of a new affiliate, CCE suggests that the utility be required to immediately file a compliance plan for such affiliate (*Id.*). The Commission believes that changes in the CAM, which would include the addition of an affiliate, are adequate for monitoring compliance with the corporate separation rules. The adopted rules require all electric utility affiliates to be in compliance, regardless of the timing of their creation. Therefore, the Commission feels that CCE's requests for annual filings and additional compliance plans for new affiliates are redundant.

Lastly, comments were received about the obligation for signed statements from the employees having access to nonpublic information (to indicate that the employees know of the restrictions on the use of such nonpublic information and that failure to observe those limitations will result in appropriate disciplinary action). AEP states that the Commission cannot dictate disciplinary action (AEP Initial Comments at 26). FirstEnergy suggests that the requirement only apply to information concerning customer information, transmission and distribution information, and market information received from a rival supplier (FirstEnergy Initial Comments at 39). Without more details, the unions object to utility employees being subject to discipline regarding limitations of information (Local 175 Initial Comments at 3). It is difficult to specify at this time exactly which information may result in the creation of an unfair competitive advantage for a utility affiliate. The staff's proposed rule does not specify the nature of the disciplinary action, only that such action will be taken as appropriate. We find that approach to be warranted and will adopt that provision.

V. Operational Support Rules

OCC urges the Commission to ensure that the electronic project management program is in active form, not just range valued (OCC Initial Comments at 30). We agree. An active program will allow participants to see and measure the affect of any changes in operational support activities. We have modified the staff's proposal to make the rule very clear on that point.

Several commenters suggest that the Commission adopt uniform business rules/practices (including electronic data interchange protocols) such as those developed by the Coalition for Uniform Business Rules (Electric Generation Suppliers'[8] Initial Comments at 1-4, Energy Plus Initial Comments at 4, AEP Initial Comments at 27, CCE Initial Comments at 51, PG&E Initial Comments at 24-28). We agree that our operational support rule should endorse universal practices. It is potentially inefficient for each utility to develop interchange protocols that would not be congruent. For effective competition to develop in Ohio, there should be consistent protocols for use across all of the electric territories in Ohio. There should be development of uniform business practices for the exchange of electronic data and information and customer switching, for example. There should be industry participation in a taskforce or collaborative that develops uniform business practices, the results of which would be imported for use in daily commerce. To be very clear, we are directing the utilities and interested stakeholders to participate in such a taskforce effort. Our staff will organize a first meeting of such taskforce in the near future. We emphasize that the development of standard business practices for operational support is a cornerstone for the development of a competitive electric industry in Ohio. Although we are approaching uniform business practices through a taskforce, we

8 "Electric Generation Suppliers" is a shorthand reference to DTE Edison America Inc., Horizon Energy Company d.b.a. Exelon Energy, GreenMountain, NewEnergy Midwest L.L.C., and Strategic Energy Limited L.L.C., who jointly submitted comments in this docket.

specifically reserve the right to decide these issues if the taskforce is not able to accomplish its work in a timely manner. For the transition plan filings, the utilities shall describe their participation in the taskforce along with the particular content requirements contained in the rules that we adopt today.

Two utilities stated that they should not be required to inform competitors about competitive offers / prices of alternate suppliers (Monongahela Initial Comments at 10, AEP Initial Comments at 28). We have modified this provision to require the utilities to provide a list of certified suppliers and not details of the competitive services. “Advertising” competitive services is the responsibility of the providers.

Monongahela also questions why its operations support plan must include maintaining lists of certified providers (Monongahela Initial Comments at 10). We agree with the staff’s proposal. The utilities must have a list of certified providers upon inquiry from consumers. Consumers should be able to obtain the information from utilities, where consumers will ask about the many services that are available.

AEP argues that the operations support plan should not require the utility to provide meter reading dates (AEP Initial Comments at 28). We do not agree. Only the companies could provide that information to the customer’s benefit. Therefore, we do not accept AEP’s suggestion.

CG&E seeks clarification that authenticity confirmation in the staff’s proposed provision (B)(2)(a)(5) is intended to require the utilities to inform the Commission each time a supplier successfully completes the electric utility’s enrollment procedures (CG&E Initial Comments at 24). CG&E is correct on that point.

AEP argues that a utility should not have to disclose contracts and, in the alternative, that the staff’s proposed language is unclear and unacceptably vague (AEP Initial Comments at 28). CG&E seeks confirmation that the information regarding contractual transactions are for those transactions between the utility and each certified supplier, not the certified supplier and that supplier’s customers (CG&E Initial Comments at 24-25). Section 4928.10(A), Revised Code, requires that an electric utility, electric service company, electric cooperative, or government aggregator disclose its own contract terms, conditions, prices, and rescission rights. Each entity is responsible for disclosing <u>its</u> own proposed contracts. It is in that respect that the operational support plan must address contract disclosure. We do not intend our operational support plan rules to require the incumbent electric utility to disclose certified suppliers’ contract terms and conditions.

AEP and FirstEnergy contend that their operations support plan should not have to provide day-ahead load forecasting because it is the responsibility of the certified supplier (AEP Initial Comments at 29-29, FirstEnergy Initial Comments at 40). The staff’s recommendation is that the utility continues to provide a forecast of its load, as is done now. If an electric utility currently produces a forecast by customer class, it should continue to do so. There is no new service being recommended and no load forecasting tailored for individual certified suppliers being recommended. We agree with the staff’s recommendation and believe load forecasts in the aggregate and, if available, by customer class, should be created and made available to certified suppliers. Nothing in that statement, however, requires the electric utilities to create and provide forecasts for individual certified supplier's load. The utilities currently possess the skills and currently apply those skills to provide a load forecast. This is an integral element to the reliability and dependability of service. The utilities should continue to provide this service to establish benchmarks for the certified suppliers to follow. With time, the suppliers will be better able to "mirror" this service. For these reasons, we adopt the staff's provision.

Next, AEP contends that the operations support plan should not make the utilities be responsible for arranging transmission services for certified suppliers (AEP Initial Comments at 29). Here again, AEP has misunderstood the extent of the obligation. The intent of this section is to require that the utility meet the transmission requirements for the provision of its service. It is not the intent that the utility arranges transmission services on behalf of the certified suppliers.

AEP and FirstEnergy further argue that they should not be responsible for assuring that governmental aggregators have complied with the aggregation requirements (AEP Initial Comments at 29, FirstEnergy Initial Comments at 41). The rule we adopt today does not require the utilities to insure compliance by aggregators. Rather, we believe it is wise to require the utilities to have a plan in place that considers how to evaluate and respond to aggregation service requests.

AEP and DP&L believe that the "Other Requirements" section calls for "plans" for issues that will be addressed too far in the future to require attention at this time (AEP Initial Comments at 29-30, DP&L Initial Comments at 21). We agree. The intent with this section is for placeholder purposes only. That is to say, it is to elicit a comprehensive topical listing for project management purposes; we do not expect a "game plan" for every activity that may not need attention in the reasonable future. With that clarification, we find no need to alter the staff's proposed "Other Requirements" section.

Kroger has indicted that the requirement in the "Other Requirements" section to establish a bidding process for competitive electric service should be made clear as to whether the bidding is for the standard offer service or for the provider of last resort (Kroger Initial Comments at 6). As stated in the previous paragraph, the intent of this section is for placeholder purposes only.

Kroger makes several arguments that the operational support rules should require the plan to set forth certain types of rates. For example, Kroger alleges that staff's proposed provision (B)(2)(c)(2) should be revised to provide that all noncompetitive services be regulated at cost based rates and provision (2)(c)(1) should provide that load forecasting and balancing should be recoverable through a fee to the suppliers for the service (Kroger Initial Comments at 6). These suggestions are matters that are more appropriate for consideration as part of the unbundling/rate-making conclusions. As discussed in greater detail above, we have adopted unbundling rules to be followed for the utilities' transition plan applications. We believe these are appropriate for the transition plan applications. Thereafter, we will determine the specific rates and cost recovery that should occur.

CCE has proposed that a number of other matters be addressed in the operational support plans. In particular, CCE suggests that the preordering provisions of the operational support rules should require the utilities' plans to contain the specific information currently required to be provided by the utility (CCE Initial Comments at 44). Also, CCE proposes to include: (1) availability of customer lists, (2) use of an independent router to supply account specific information and usage history, (3) the amount of time for the provisioning of the information, (4) competitive metering and meter reading service offerings, (5) available billing options, and (6) dispute resolution standards (*Id.* at 45-50). We do not disagree with CCE that these items are important matter in a competitive environment. In fact, CCE acknowledges the daunting task associated with implementation of uniform operational support rules (*Id.* at 51). However, we are not convinced that the operational support rules must mandate attention to the above items at this point. Moreover, we note that these issues are related to some of the other minimum standard rules that we will be considering in the near future. For those reasons, we do not accept CCE's suggestion.

VI. Employee Assistance Plan (EA plan) Rules

For the definition section, there were several suggestions. The unions, FirstEnergy, and AEP, on the one hand, have recommended that the definition of "employee affected by restructuring" be modified to encompass all employees, not just those employed in generation or transmission activities (Local 175 Initial Comments at 3-7, FirstEnergy Initial Comments at 42, AEP Initial Comments at 30). CCE, on the other hand, recommends that the definition include only generation employees (CCE Initial Comments at 53).[9] A modification is warranted. We believe that there is a compelling argument that the history of SB3, as it made its way through the legislature, would indicate it was the intent of the legislature to include all employees and not just those employed in generation and/or transmission activities. Additionally, FirstEnergy asked that the focus be on the actual adversity suffered, i.e., job loss (FirstEnergy Initial Comments at 43). The EA plans should be broad enough to address the assistance to be provided to employees adversely and directly affected by electric restructuring during the market development period. We are unwilling to define "employee affected by restructuring" within the context of particular events that trigger when an employee is eligible because to do so would only lead to debates as to whether a particular event, not listed, should qualify.

FirstEnergy suggests that the references to "geographic hardship" in the staff's Appendix D, (A)(8) and (B)(3)(d) be deleted because it could allow an employee to receive relocation assistance even if, after the relocation, the employee has a shorter commute (FirstEnergy Initial Comments at 43-44). AEP and CCE suggest that the geographic hardship definition be modified to reflect a new commute greater than 50 miles (AEP Initial Comments at 30, CCE Initial Comments at 53). DP&L suggests that the new commute be more than the employee's commute was on October 5, 1999 (DP&L Initial Comments at 22-23). Related to this argument is FirstEnergy's and AEP's contention that the entire relocation assistance section be removed on the ground that there is no statutory justification for this service and that this type of assistance is not typically in

9 CCE also argues that the definition of "employee affected by restructuring" is too vague to provide a dividing line necessary to prevent overcompensation or overrecovery by utilities. CCE points to Section 4928.39, Revised Code, which states that transition costs shall include the costs of employee assistance under the employee assistance plan included in the utility's approved transition plan, which costs exceed those costs contemplated in labor contracts in effect on the effective date of the statute. We find including the phrase "during the market development period" to this definition will add adequate specificity for our rules.

employee assistance programs (FirstEnergy Initial Comments at 43-44, AEP Initial Comments at 31). FirstEnergy also argues, in the alternative, that the rule should cover terminated employees and the utilities should be permitted to establish their own thresholds as to when relocation assistance should be provided as part of a new job (*Id.*). We agree in part with FirstEnergy's statements. The staff's proposal for geographic hardship could lead to unintended results and should be removed. Also, FirstEnergy and AEP have correctly pointed out that relocation assistance is not specifically mentioned in SB3. However, it could be a benefit that falls under the phrase "other assistance" as contained in Section 4928.34(A)(10), Revised Code. For this reason, we believe that relocation assistance is an appropriate provision.

FirstEnergy, DP&L, and CG&E generally contend that the proposed EA plan content requirements are too restrictive (FirstEnergy Initial Comments at 42, DP&L Initial Comments at 22, CG&E Initial Comments at 29-31). They recommend that the EA plan rules be written as a set of broad parameters that need to be addressed in an EA plan, but that the companies have flexibility to design their own particular EA plans. CG&E comments that there should be no minimum requirements for any of the type of assistance. The unions, however, have suggested that the rules specifically require utilities to provide the staff's proposed identified benefits to the utility employees whose employment is affected by electric utility restructuring (Local 175 Initial Comments at 7). SB3 does not mandate minimum levels for employee assistance but, since SB3 speaks to several forms of assistance, there is an implication that <u>some</u> level of assistance needs to be addressed in the transition plan. We have correspondingly modified the transition plan content requirements to eliminate obligatory minimum levels. Thus, we cannot agree with the union's suggestion to add mandatory benefit language in this area. However, we have maintained the staff's categories and cited some examples of information that would satisfy these filing categories. The companies have flexibility to design an EA plan (including, by class of employee). The EA plans must, however, speak to the items listed. The utilities will have to justify any cost recovery sought and others can challenge such in the ETP proceedings. Other parties can submit alternatives for our consideration as well. While we have agreed with the general criticism raised by several of the utilities, we do not agree with some of the particular statements made. For instance, CG&E contends that it cannot be expected to state EA plan costs for union employees, alleging that costs cannot be predicted until something has an effect on an employee (CG&E Initial Comments at 30-31). The new law requires CG&E and the other electric utility companies to detail their EA plans and EA plan costs and allows cost recovery in transition charges. The EA plans should be written to be broad enough to respond to any type of electric restructuring circumstance affecting the employees. Thus, we believe it is appropriate for our rules to require certain specificity for EA plans and their costs and have included such.

CCE urges the Commission to require the EA plans to include a demonstration that the utilities have coordinated with all agencies providing federal, state, or local employee assistance programs (CCE Initial Comments at 53). At this stage, we are establishing rules by which the utilities must submit a "plan". The utilities are required by law to coordinate with the Ohio Bureau of Employment Services and the Ohio Department of Development (ODOD). Their EA plans should indicate how such coordination has and will take place with assisting agencies. The plans could call for coordinating with various assisting agencies but, unless the utilities are presently displacing workers, they may not yet have had any need to contact those agencies. For this reason, we do not incorporate CCE's suggestion.

AEP argues that the staff's proposed provisions (B)(3) and (4) for outplacement assistance and employee assistance program services are not authorized by SB3 (AEP Initial Comments at 31). We disagree. SB3 requires the companies to submit EA plans that include "other assistance". We interpret this to mean the legislature did not want to limit EA plan filings to only the items listed in the bill. Outplacement assistance is a typical benefit offered by progressive employers to assist displaced employees. The items listed under employee assistance program services are often offered as part of current employee assistance programs. We find it reasonable to list these categories and require the utilities to describe any outplacement assistance and employee assistance program services that they plan to have during the transition period.

The unions maintain that the utilities should provide health care coverage and educational assistance to those employees affected by restructuring (Local 175 Initial Comments at 7-8). We agree that the utilities' employee assistance plans could include such programs and have incorporated a new provision in which information about other programs should be described. We are not establishing a rule that would require the utilities' employee assistance plans to include health care coverage and educational assistance, however. While not specifically identified in SB3, we agree that medical coverage and educational assistance are "other assistance" programs that utilities may plan to include, as envisioned by Section 4928.34(A)(12), Revised Code.

FirstEnergy seeks removal or clarification of the disparate/adverse impact statement (FirstEnergy Initial Comments at 46). The disparate/adverse impact statement requires the utility companies to address how they will deliver service after the proposed staffing changes are made. It is related to the development of a transition charge proposal. Thus, we believe that this provision is worthwhile. For this same provision, CCE believes that the utilities' EA plans should also explain staffing mitigation measures and associated costs because CCE contends that service delivery should not be compromised by staffing cuts and such costs should not be eligible for transition cost recovery (CCE Initial Comments at 54). We agree that staffing changes should not have a disparate/adverse impact on service delivery. Our objective in this rule is to require the utilities to detail in their statements what staffing changes are anticipated and how they will be handled in the context of how such will impact service delivery.

CG&E argues that the Commission's rules should clarify how long EA plan benefits must be offered (CG&E Initial Comments at 31-32). CG&E points out that employees affected after the Commission declares a market open may not be eligible for assistance or, if the utility offers assistance, the utility may not be able to recover the costs as transition costs (*Id.*). CCE argues that EAPs should be offered throughout the market development period (CCE Initial Comments at 54). We believe that SB3 has already addressed this question. Pursuant to the language of Section 4928.39 Revised Code, EAP costs are part of transition costs. Under Section 4928.37, Revised Code, transition costs associated with employee assistance can be recovered only during the utility's market development period. What benefits to be offered and how long they are to be offered are matters to be proposed as part of the utilities' EA plans.

VII. Consumer Education Plan

Section 4928.42, Revised Code, requires the Commission to "prescribe and adopt by order a general plan" for consumer education. Specifically, the law states:

> Prior to the starting date of competitive retail electric service, the public utilities commission, in consultation with the consumers' counsel and with other state agencies as considered necessary, shall prescribe and adopt by order a general plan by which each electric utility shall provide during its market development period consumer education on electric restructuring under this chapter.

In addition, Section 4928.31, Revised Code, directs each of the current electric utility companies to file transition plans with the Commission, which include a plan for consumer education. Specifically, the statute directs that such education plans should be consistent with Section 4928.42, Revised Code. The Commission has reviewed the staff's proposed plan and the numerous comments submitted on this matter and developed a plan that is included in this order as Attachment II. This plan accomplishes two goals: (1) to set forth the Commission's general plan for consumer education, and (2) to provide electric utilities direction in developing a consumer education plan to include in their transition plans.

The general plan for consumer education is intended to employ a multi-faceted approach, integrated marketing techniques and outreach to existing community organizations and opinion leaders to raise consumer awareness of electric customer choice. The overall objectives of the general plan for consumer education are to:

(1) Raise consumer awareness of customer choice;
(2) Generate consumer interest in customer choice;
(3) Build consumer knowledge of how customer choice works and how to participate;
(4) Provide accurate, objective information;
(5) Minimize consumer confusion; and
(6) Reach special-interest populations.

A portion of the consumer education program should be statewide in scope, complemented by an aggressive local community-based effort. The success of customer choice in electricity services will depend upon a well-planned, coordinated, and properly implemented comprehensive consumer education program. The Commission believes that the best way to do this is to develop a plan that includes a statewide media campaign implemented in conjunction with local community-based efforts. As part of the consumer education plans, the electric utilities will implement a two-pronged customer education effort: one as part of a statewide campaign and the other as a service territory-specific campaign.

The Commission finds that the plan proposed by our staff, as modified based on some of the comments submitted in this matter, provides an appropriate framework for the establishment of consumer education. Below we will discuss the primary issues raised by commenters and the modifications we have made to the staff's proposal.

Certain of the electric utilities have commented that they should be able to use their logos on printed materials used in the service territory-specific education campaign. The use of utility company logos on any aspect of the consumer education campaign presents the staff with a number of concerns regarding perceived biases of the campaign and possible allegations of cross-subsidized marketing that may result. The utilities argue that they not only have a right to use their own name and logo on the information, but that their names may carry a level of credibility and comfort for the customer and, thus, aid the delivery of the message. We note that other states' experiences indicate that consumers fear that switching suppliers may jeopardize reliability of service. We believe that use of a company's name and logo on materials will help to alleviate that fear. However, we also have concerns about any undue advantage that using these names and logos would have for a utility's affiliate which might also be using a similar name and logo. Therefore, we agree that the utility company may use its name and logo on materials funded by consumer education dollars and distributed within its service territory, provided that the name and logo are accompanied by a disclaimer which makes it clear to the consumer that the name and logo represents the utility company and not its competitive affiliate and that selection of an energy supplier will in no way jeopardize the consumer's reliability of service. This requirement is in addition to the general code of conduct provisions related to affiliate companies. Also, we note that the Commission will also be monitoring all electric utility advertising to ensure that messages are supportive of competition and not contrary to the theme of competition.

Ohio Electric Utility Institute (OEUI) and the utility companies assert that overall management of the campaign should be the responsibility of OEUI. In fact, certain electric utilities questioned the Commission's statutory authority to manage the statewide campaign. We disagree inasmuch as Section 4928.42, Revised Code, authorizes the Commission to prescribe and adopt by order a plan for consumer education. This directive from the legislature authorizes the Commission to take the steps necessary within the context of an education plan to ensure a credible and unbiased education campaign. While the Commission is asserting a central supervisory role in the campaign, it is not, nor has it ever been, contemplated that the Commission would run the campaign alone. The plan incorporates the input of an advisory group, consultation from OCC, and the expertise of consulting firms for advertising and public relations. The statute recognizes that it is imperative for consumers to receive accurate, timely, credible, and unbiased information to make informed utility choices.

OEUI cites the successful Pennsylvania electric restructuring education plan as a model for Ohio and asserts that, in Pennsylvania, it was the electric trade association that provided the management role. We agree that the Pennsylvania commission's education plan seems to have been implemented successfully and achieved high levels of awareness and education. We have learned through extensive discussions with staff and commissioners of the Pennsylvania commission that it has maintained a central role and has developed a close working relationship with the Pennsylvania electric trade association to accomplish the day-to-day tasks associated with implementing a balanced, coordinated education campaign. We envision a similar working relationship in Ohio between our staff and OEUI. In addition, the plan we are adopting includes an integral role for the advisory group. All of these elements – the Commission, Commission staff, OCC, OEUI, and the advisory group – should work in concert to ensure an objective, coordinated, efficient, and effective education campaign. Given this finding, we are adopting staff's proposal with certain corresponding changes to ensure the vision of a "partnership" is implemented.

Several commenters have suggested criteria for determining the membership on the advisory group or specifically requested a position on the advisory group. Nearly every commenter to the general plan expressed approval for the idea of the advisory group on a statewide level. The Commission will convene an advisory group of communications professionals representing various target audience constituencies. Based on comments and research of education programs in other states, we believe that the advisory group should consist of the six constituency representatives as outlined in provision C to the general plan (Attachment II to this decision).

Some utilities commented that an advisory group in the service territory-specific campaigns is not necessary. The advisory group on a statewide level is being established to provide balanced and thoughtful input to the education campaign and to provide the knowledge and skills of a group of communications professionals. This same balance will be necessary on a service territory-specific level, as well as the valuable resources of community-based organizations (CBOs) in a service territory area. The service territory-specific campaigns should include an advisory group to assist the utility. The utilities are strongly encouraged to provide membership on the advisory group to CBOs in the service territory. In addition, the service territory-specific groups shall include a member of our staff and the OCC in order to facilitate coordination with the statewide campaign, ensure message accuracy, and provide resources to the group.

The Commission will issue a request for proposals (RFP) for the selection of consultants as necessary to effectively execute an education campaign. The RFP shall seek the assistance of a full-service advertising and public relations firm, or in the alternative, an advertising firm and a public relations firm. PIRG maintains that the advertising or public relations firm should not be currently or recently contracted with any Ohio electric utility (PIRG Initial Comments at 8-9). While the Commission believes that maintaining the credibility of the education program is imperative to its success, we do not wish to limit the selection of an advertising or public relations firm at this time. We are dedicated to selecting the best firm for the project. With regard to the funding of education plans, some commenters indicate that the staff's proposal implied that the Commission would consider spending greater than the $16 million directed in the statute for the first year. It is not the Commission's intention to require spending more than the statutory requirement. However, we would not prohibit a utility from choosing to allocate additional dollars to the education of Ohioans, if those funds are not requested as part of any recovery mechanisms. CG&E specifically requested that any funds spent prior to January 1, 2001, would count toward the "first year" spending of $16 million. The Commission clarifies that funds spent prior to January 1, 2001, for electric restructuring consumer education that have been approved by the Commission would be considered "first year" spending.

Some of the utility companies took exception to the staff's proposal that seemed to indicate that the Commission would determine the allocation of funds for which the utilities are responsible. Section 4928.42, Revised Code, is clear in that the amount paid by each utility shall be determined based on the number of customers the utility had as of December 31, 1997. The Commission has modified the staff's proposal to clarify that the intent was to set up the mechanism for fulfilling contract payments to consulting firms. OEUI has agreed to provide the financial coordination and will serve as the holder of the utilities' funds and disperse the funds, upon approval, to the consulting firms as necessary. The Commission will certify the total amount owed by each utility and direct that the funds be given to OEUI to disperse. The Commission does not intend to request an amount from each utility different than what is provided by statute, but has a responsibility to certify that the amount each utility proposes is accurate.

Certain commenters noted that the staff's proposal excluded the need for a baseline research study, assuming that it would be reasonable to assume that the awareness and education levels prior to implementation were low. Commenters indicated that the baseline study was imperative to determine the methods and direction of the campaign. The Commission agrees that a baseline research study should be done and has modified staff's proposal accordingly. The study should look at awareness and education levels. The study should also provide sufficient information to direct the rollout of the education campaign, including determining specific target audiences, discerning specific issues, discerning concerns on consumers' minds, identifying how consumers will make choice decisions, and identifying how consumers want to receive information.

Another issue raised by certain comments was that the statewide education campaign should begin much earlier than the fourth quarter of 2000 as proposed by staff. The Commission's review of other states' programs who have gone before Ohio in educating consumers about electric choice indicates that the most efficient use of funding is a "just in time" campaign. Consumers faced with information too far in advance of acting on it seemed to lose interest. However, staff's proposal that advertising hit the airwaves and pages "at the beginning of the last quarter of 2000" may not provide enough time for the mass media of the scope proposed. The education plan should be executed such that advertising is actually implemented at the beginning of the third quarter of 2000. We have modified staff's plan accordingly.

Several commenters contend that the education plan should include a greater use of CBOs and trade organizations, as well as a funding allocation for them. The staff's proposal specifically prohibits the use of education funding to be used for funding the activities of CBOs and trade organizations. We agree with the staff and believe that the disbursal of the legislatively mandated funds to trade organizations or CBOs would be beyond the legislative intent of the funding provision of Section 4928.42, Revised Code. In addition, we are concerned with the limited education funding in the face of developing materials and activities, such as, purchasing advertising time and space. This limitation also leads us to agree with the staff. However, CBOs often provide the most efficient means of communicating complex issues to consumers. We believe that a strong role for CBOs in the consumer education plan is appropriate and we believe that the proper place for this role is in the service territory-specific aspect of the consumer education plan. Further, we strongly encourage the appointment of CBO representatives to the service territory-specific advisory groups.

Lastly, several commenters stated that the education plan should include more specifics of goals and messages and that the education campaign should include a component for educating specifically about energy efficiency and net metering. The Commission notes that provision (C)(2) of the general plan taps the advisory group to develop the messages of the campaign. The general plan as proposed does not enumerate specific messages or goals, but lists some overall concepts. This list was not intended to be all-inclusive or verbatim. It is the duty of the advisory group, in conjunction with the Commission and the advertising and / or public relations agency, to determine the specific messages of the campaign. That group may determine that energy efficiency and net metering are two messages to be included in the campaign. The Commission intends to coordinate the education campaign with the ODOD to ensure the most efficient use of funding for both education campaigns. The Commission will support ODOD messages (as it hopes the ODOD will support the overall education campaign messages), but does not wish to duplicate ODOD's educational efforts, including energy efficiency.

VIII. Transition Charges Rules

Some of the broader comments received with regard to the transition charges rules included the following. Several entities are opposed to the recovery of stranded costs on principle (PIRG Initial Comments at 12, Western Reserve Initial Comments at 4-5). SB3 clearly requires that the Commission establish charges whereby transition costs can be recovered by the utilities. We cannot alter the statutory language. Next, CG&E criticizes the staff's proposed filing requirements as a formulistic approach to "netting" that is not found in SB3 and, thus, recommends that virtually all of the transition charge rules not be adopted (CG&E Initial Comments at 9-10, 43). Also, CG&E states that the nature of the data required may be inconsistent with the definition and approach used by a utility in its application for transition revenues (*Id.*). We cannot agree. The data requirements of the rules that we adopt today are designed specifically to allow for the possibility that a company may choose any of a number of different approaches. Whether a company prefers a particular approach is, however, no reason to refuse or avoid providing information which is needed by the staff and other parties in order to analyze other approaches. This argument is really one that should be raised at the end of the evidentiary hearings.

OCA suggests that the filing rules be expanded to ensure that changes (e.g., asset swap) are accurately reflected in transition charges (OCA Initial Comments at 3). To the extent the comment seeks to have these changes fully reported, we believe that the staff's proposed rules include such reporting and no change is needed. To the extent that the comment seeks specific treatment of such changes, it is not germane to the current rulemaking. Therefore, we decline to adopt the recommended change.

CCE recommends the exclusion of goodwill from the valuation of regulatory assets (CCE Initial Comments at 79-80). Since the rules as adopted require detailed support for each regulatory asset and goodwill would have no such specific support, goodwill should be readily identifiable if it were included. Therefore, we are not convinced that goodwill must be specifically excluded by our rules.

CG&E states that the staff's proposal in provision (A)(1)(a)(3) for the filing of December 31, 1999 balance and related offsets for regulatory assets is irrelevant (CG&E Initial Comments at 44). We find that the December 31, 1999 balance will be useful in tracking the December 31, 2000 balance back to known historical figures. Therefore, we do not accept this suggestion.

FirstEnergy proposes that the most recent FERC Form 1 balances be the starting point for safety and radiation control equipment plant balances (FirstEnergy Initial Comments at 50). An audit trail must exist from the balances used in this proceeding back to the proceeding in which rates were most recently set. Using the most recent FERC Form 1 as a starting point does not provide the needed audit trail.

FirstEnergy next requests clarification on providing the accumulated balance in the depreciation reserve associated with nuclear decommissioning, as staff proposed in provision (A)(1)(b)(2)(b) (FirstEnergy Initial Comments at 50). OCC states that the nuclear decommissioning depreciation reserve balances should be provided through December 31, 1997 (OCC Initial Comments at 34). Prior to December 31, 1987, accruals for nuclear decommissioning were recorded in the depreciation reserve. After December 31, 1987, the accruals had to be invested in external trust funds. However, there was no requirement for the prior collections, represented by the accumulated balances for decommissioning included in the depreciation reserve, to be so invested. This proposed requirement by the staff is to report that standing balance. We see no need to require the balance as of a later date, as OCC suggests, because no further funds for nuclear decommissioning were included in the depreciation reserve after December 31, 1987. Accordingly, we adopt the staff's proposal on this point.

CCE maintains that the transition charge rules should require the projected accruals for nuclear decommissioning costs between 2000 to 2010 (CCE Initial Comments at 81). We are not convinced that this information would be useful for the transition plan filings. The nuclear decommissioning accruals are known and future filings with regard to these funds will be the subject of another set of rules to be developed by the Commission in the very near future.

FirstEnergy comments that deferred fuel cost information is unnecessary because it is the product of rate-making (FirstEnergy Initial Comments at 51). Further, FirstEnergy states that it has no deferred fuel costs, so the rule should require the information only if applicable (*Id.*). SB3 explicitly addresses deferred fuel costs as a component to be considered in the determination of regulatory assets. Specifically, Section 4928.01(A)(26), Revised Code, states that regulatory assets include, but are not limited to, "fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the commission." To the extent that any company is operating under a settlement agreement that addresses fuel cost recovery and fuel revenues under the settlement agreement have not matched fuel expenses, the company should report the under- or overrecovery as part of its transition plan filing. The Commission will fully analyze this information. Furthermore, the normal operation of the EFC rate commonly results in all companies maintaining a positive or negative deferred fuel balance. This deferred fuel balance should be reported as part of each company's transition plan filing. Therefore, we do not accept this recommended change.

Next, FirstEnergy comments that, to the extent banked emission allowances are necessary at all, only the December 31, 2000 balance is needed (FirstEnergy Initial Comments at 51). CG&E states that the requirement for provision of banked emission allowances at the end of 1998, 1999, and 2000 is irrelevant and can only be used to violate the frozen rate requirement of Section 4928.34, Revised Code. We believe that emission allowance balances are appropriate information to be included in the transition plan filing.

In order to provide an audit trail from the actual balances on hand to the projected balances, the intermediate dates are necessary. Emission allowances are assets, having economic value, which arise from the operation of generating units owned by the utility. The costs of generating the banked emission allowances have been included in rates. The information required has valid uses.

CCE suggested a new section to address percentage of income payment plan arrearages (CCE Initial Comments at 81-82). There is no reason to believe the transition plan filings will not already include the information CCE seeks in its proposed section.

Next, CCE has suggested that the transition plan rules require information relating to asset accounting adjustments, i.e., mergers, exchanges, transfers and acquisitions (CCE Initial Comments at 86). We agree that this additional information may be useful and have included such a requirement under the regulatory asset section.

DP&L, AEP, and FirstEnergy propose that the generation net plant-in-service balances be provided by generating station, rather than by generating unit (DP&L Initial Comments at 28, AEP Initial Comments at 37, FirstEnergy Initial Comments at 51). FirstEnergy additionally proposes that the basis for reporting be the most recent FERC Form 1. We agree in part. If the utility does not maintain this data by generating unit, it can be provided in its transition plan by station. However, generating unit data is still appropriate as different units may have different technologies, fuels, etc. Those units would have different market values and, if sold in the future, could be sold individually. Thus, the market value of the transition cost calculation is needed on a generating unit basis. The book values should also be on a generating unit basis and the utilities should propose and utilize reasonable allocation methods to allocate station book values to generating units. As for FirstEnergy's suggestion, we note that SB3 requires that the investments be prudent. The plant balances in the utility's most recent rate case are the last balances representing plant determined by the Commission to be prudent. Working from the balances approved in the applicant's most recent rate case is preferred in terms of efficiency in determining that the plant balances meet the prudency requirement in SB3.

Also, FirstEnergy proposes that the requirement for balances (relating to depreciation reserve balances, accruals, etc.) only be provided from December 31, 1998, since the intermediate data is available from FERC Form 1 (FirstEnergy Initial Comments at 52). The data on FERC Form 1 is not Ohio jurisdictional data. Section 4928.39(B), Revised Code, requires that transition costs be "directly assignable or allocable to Ohio." Determining the Ohio jurisdictional depreciation reserve balances from FERC Form 1 is an unnecessary and complicated step. Therefore, we do not agree with FirstEnergy's suggestion.

OCC urges the Commission to establish minimum filing requirements for utilities to demonstrate that employee assistance costs are a result of electric restructuring (OCC Initial Comments at 37). We agree, but no change to staff's proposed rule is required. This is a valid point with regard to the demonstration of costs being a result of restructuring. The rules will require that this necessary information be included in the employee assistance and transition charges sections of the transition plan applications. Similarly, OCC recommends that utilities be required to file a detailed listing of other post-employment benefits (FAS 112) and any early retirement programs provided to the employees, which should be accompanied by a narrative identifying any changes in these benefits triggered by restructuring (OCC Initial Comments at 37-38). We disagree. Post employment benefits affected by FAS 112 do not qualify as employee assistance costs under SB3. With regard to early retirement programs, our employee assistance plan rules will require that such information be included in the transition plan application, from which an assessment can be made.

PIRG states that the Commission should insure that an independent assessment is made of the current market value and book value of the assets (PIRG Initial Comments at 12). We agree that such an independent assessment is important. In fact, our staff will be performing an independent assessment of transition costs and transition charges as part of its involvement in these proceedings. We believe that requiring the companies to provide an additional independent assessment in their filings is redundant. Accordingly, we do not adopt this recommendation.

For costs recoverable in a competitive market, FirstEnergy contends that similarities in size, type, and operation of generating units at some plant locations makes it appropriate to provide estimates on multi-unit basis and this flexibility should be inserted into the rules (FirstEnergy Initial Comments at 52). We agree that there can be situations where values are estimated on a multi-unit basis, but this should not prevent reporting the results on a single-unit basis. We have modified the staff's proposed rule to acknowledge this.

Several parties have asked that the rules require additional information for the underpinnings of the utilities' economic valuations (CCE Initial Comments at 83-85, FirstEnergy Initial Comments at 52-53, OCC Initial Comments at 39). We agree for the most part. We are concerned with not creating a presumption that the utilities must perform their valuations with a particular methodology. Therefore, if certain assumptions are used in making the valuations, those assumptions should be identified in the transition plan filings. Similarly, we have modified two other sections to require additional generation unit and system information. For the requirement that bids or offers to sell or buy generation assets be provided, we have indicated that this information still must be filed, but protective treatment may be sought.

FirstEnergy and CG&E state that the requirement to provide cost savings and productivity data should be deleted because the cost saving data has limited usefulness, would be extremely difficult to provide in the form requested, and is proprietary (FirstEnergy Initial Comments at 53, CG&E Initial Comments at 45). AEP advocates that such information should be required for generation only (AEP Initial Comments at 38). We agree that this information need not be part of the standard filing requirements, but our conclusion should not be construed to preclude discovery on this point.

FirstEnergy contends that the staff's proposed requirement in provision (B)(1)(b) to provide other jurisdictions' information on market priced retail sales is unnecessary and will not provide meaningful data (FirstEnergy Initial Comments at 54). We agree in part. We believe that other jurisdictions' market-priced retail sales will be useful in this context. However, we also recognize that it may be sensitive information. Therefore, we will require that it be included in the transition plan applications and allow the utilities to seek (with justification) protective treatment of that portion of the application.

FirstEnergy argues that the transition charge should not require separately calculated transition charges for shoppers and nonshoppers (FirstEnergy Initial Comments at 55). We agree for the most part. The staff's proposed reporting requirement in provision (B)(3) does presume how the interaction between the shopping incentive and other rates and charges will be decided. Therefore, we have removed it. However, the language proposed by FirstEnergy makes a different presumption and, therefore, will not be used as a replacement. FirstEnergy and any other party are free to calculate a proposed transition charges however it chooses.

CCE proposed language on refunctionalization of assets (CCE Initial Comments at 86-88). We agree with this additional filing requirement and wish to emphasize that our acceptance of the reference of "refunctionalization" is to redefining what was previously generation plant as transmission plant (as in the case of ancillary services, where a transmission function is supported or provided by generation equipment), or vice-versa. We feel that this information will be important to us. However, CCE's proposed additional supplemental information regarding refunctionalization studies is unnecessary. We believe it is duplicative of the requirements we have adopted elsewhere.

FirstEnergy argues that, since it does not prepare an annual statistical report, the staff's proposed requirement to provide a "current annual statistical report" in provisions (C)(3) should be applicable only if available (FirstEnergy Initial Comments at 56). We do not agree completely. The information contained in the Uniform Statistical Report will be useful in a number of areas and should still be maintained by the company, though it may be in other forms. Therefore, the information will be required in our adopted rules, although the requirement will be modified to more precisely identify the report as the Uniform Statistical Report and allowance will be made for the information in that report to be provided in other formats.

FirstEnergy requests clarification regarding the staff's proposed requirements in provisions (C)(5)(6) and (8) to file annual and quarterly report data, since it is filed on a consolidated basis, contains no jurisdictional information, and is in any case available through other publicly available filings (FirstEnergy Initial Comments at 56). We believe that FirstEnergy has raised a valid point. While the consolidated information can be obtained readily from the EDGAR database, not all parties may be able to access it. Therefore, an applicant should stand ready to make those reports available upon request to other parties. In addition, we will still require that the annual and quarterly reports from the operating company to its parent corporation be provided.

Furthermore, FirstEnergy takes issue with the staff's proposed requirement to include the independent auditor's report and letter of recommendation with the transition plan filing (FirstEnergy Initial Comments at 56). FirstEnergy argues that, since the independent auditor's report is included in the Securities and Exchange Commission filings and letters of recommendation from independent auditors are confidential, these requirements should be removed. We are agreeable to eliminating this proposed rule. We agree that it is wise to avoid redundancy in terms of the auditor's report. The independent auditor's letter of recommendations can be subject to discovery by the parties.

OCC recommends that the transition plans include the long-term forecast reports (OCC Initial Comments at 39). We disagree. The long-term forecast report filings are already available and part of the public record in those proceedings. It is needlessly duplicative to require their reproduction here. Therefore, we do not adopt this recommendation.

Lastly, the unions and CCE suggest that the transition charge rules should require the utilities to provide employment data and current employee assistance costs allocated among generation, distribution and transmission (Local 175 Initial Comments at 8, CCE Initial Comments at 52 [seeking 5 years of data]). The commenters allege a need for baseline labor and existing employee assistance costs so that costs already embedded in rates are not passed on to customers through transition cost calculations. However, SB3 does not require that the employee assistance costs to be recovered be above and beyond what has been included in base rates. Rather, SB3 requires that the employee assistance costs be those beyond what is "contemplated in labor contracts in effect on the effective date of this legislation." Section 4928.39, Revised Code. The staff's proposed rules for transition charges adequately cover this area.

IX. Independent Transmission Rules

Section 4928.12, Revised Code, requires each entity owning transmission facilities to be a member of, and transfer control of the transmission facilities it owns or controls within Ohio to, a "qualifying transmission entity." To be a qualifying independent transmission entity (referenced herein as RTE), the entity must satisfy nine specifications listed in Section 4928.12(B), Revised Code.

In provision A of Appendix G to the Commission's September 30, 1999 entry, staff proposed policy statements that the Commission could use to evaluate a proposed independent transmission entity for compliance with the specifications set forth in Section 4928.12(B), Revised Code. To evaluate the proposed independent transmission entity according to the nine specifications and publicly developed policy statements, the staff also proposed that the Commission establish a list of disclosure requirements to facilitate its evaluation of the RTE. The staff's proposed provision B of Appendix G identified the information that the staff believes will be needed to make the evaluation and establish the rules that will be used to carry out the requirements of Section 4928.12, Revised Code.

The Commission has reviewed the comments as they related to both provisions A and B of staff's proposal for RTEs. The rules that the Commission is adopting on this matter reflect those recommendations of commenters that the Commission finds appropriate and will aid in the development of RTEs. The rules we are adopting are the means by which an electric utility will demonstrate its compliance with independent transmission entity specifications. Our starting point for developing these rules was staff's proposed provision A of Appendix G to the Commission's September 30, 1999 entry. We do not believe it is necessary to adopt provision B of staff's proposal inasmuch as an electric utility can meet the specifications of Section 4928.12, Revised Code, by complying with the rules adopted by the Commission in this Finding and Order.

Some commenters assert that the staff's proposal in addressing Section 4928.12, Revised Code, goes beyond what the FERC has used to approve an RTE. AEP argues that the staff's proposed rules and the legislation giving the Commission authority to regulate RTEs is federally preempted, citing the FERC's authority to regulate RTEs – Sections 201, 202(a), 203(a), and 205, 16 U.S.C. §824 (AEP Initial Comments at 38-46). Certain commenters believe that the Commission should establish no rules or requirements that are more stringent than that developed by the FERC. They believe that the Commission should utilize the FERC public RTE approval forum, rather than attempt to assert subsequent authority for a state approval forum. Other commenters suggest that the Commission would have better success if it suggests modifications to RTEs via FERC intervention since the RTEs have members outside of Ohio that would need to approve changes in addition to FERC approving the changes.

The Commission believes that the legislature included Section 4928.12, Revised Code, to assure that RTEs appropriate for Ohio are established. The nine qualifying specifications were established and the Commission is required to assure that the RTEs meet those specifications and the needs of the state of Ohio. We also note that the specifications found in Section 4928.12, Revised Code, are, as some commenters suggested, not much different than the RTE requirements the FERC has established. However, we believe that the statute was enacted to protect the public interest statewide and, so, the application of the requirements may differ from FERC's requirements. Further, the rules focus on qualifying an RTE that is appropriate for operating in Ohio and appropriate for the intent of SB3. FERC's approval may not consider the requirements of Section 4928.12, Revised Code, inasmuch as the FERC will examine this on a federal level, while this Commission has a statutory obligation to ensure these standards / criteria are applied on a state level. Consequently, we believe that the rules we have adopted regarding RTEs fulfill the legislative intent of SB3.

In an attempt to recognize the varying time frames relating to the establishment of RTEs set forth in Sections 4928.12 and 4928.35(G), Revised Code, and the real possibility that RTEs may not be fully operational by the start of competitive retail electric service on January 1, 2001, the rule regarding RTEs provides that, effective with the start of competition, utilities under Commission jurisdiction should either be in one RTE that minimizes pancaked rates to retail customers within Ohio exercising choice by use of a single transmission rate no higher than the current unbundled transmission rate as determined by the Commission in the unbundling process for the utility service territory where the customer is located (e.g., "license-plate pricing"), or provide appropriate reciprocity requirements between Ohio jurisdictional companies that minimize pancaking of rates within the state. Instead of a pancaking of rates within Ohio, the jurisdictional utilities shall arrange to charge an incremental cost of transmitting power between or among Ohio jurisdictional utilities to retail customers exercising choice within Ohio. Such arrangements shall be timely submitted to the Commission and FERC in order to facilitate effective competition by January 1, 2001. Pancaking can be minimized by allowing embedded costs, as determined to be reasonable by the FERC, to be recovered through "pooling" of revenues with only the incremental costs of delivery to retail Ohio customers exercising choice recovered through an additional charge. Such an interim mechanism shall remain in place until the development of either a single RTE within Ohio or multiple RTEs with appropriate reciprocity tariffs that minimize pancaking of rates within Ohio to the satisfaction of the Commission and the FERC. We are promulgating this rule as an interim measure given that, as stated in public filings, neither the midwest ISO or proposed Alliance RTO are scheduled to be fully commercially operational by January 1, 2001. Section 4928.12(E), Revised Code, expressly contemplates our acting by rule to establish interim requirements for this time period between the start of competition and fully commercial operation of an approved RTE.

The rules also establish certain requirements to apply when the RTEs become commercially operational. Such requirements relate to service reliability, an open and competitive electric generation marketplace, and promoting a positive performance design to satisfy the electricity requirements of customers. The rules also provide for maintaining real-time reliability of the electric transmission system, ensuring comparable and nondiscriminatory transmission access and necessary service, minimizing system congestion, and further addressing real or potential transmission constraints once commercial operation occurs.

X. Shopping Incentive Rules

A few commenters stated that the Commission's shopping incentive rules must lay out adequate guidelines, set measurable standards, and include the manner of implementation (PIRG Initial Comments at 13-14, Shell Initial Comments at 7-8, CCE Initial Comments at 102-103). Our rules for the shopping incentive provide the requirements under which the utility companies must propose an adequate shopping incentive as part of their transition plan. The rules establish the minimum information upon which the utilities should justify the level of shopping incentive to be provided. For instance, the proposed shopping incentive, projections of customer load switching and midcourse adjustments in the shopping incentive must be supported by a report that: (1) is based upon reasonable assumptions, (2) is based upon accurate data, and (3) fully describes and employs an adequate methodology. Even so, the shopping incentive is not a stand-alone issue and must be considered in the context of the complete transition plan filing. Each company's transition plan and associated shopping incentive proposal will be evaluated in its own ETP case. Implementation of the transition plans will follow our review and approval process. For these reasons, we reject this recommendation.

Some commenters stated that the factors identified in the staff's proposed provisions (B)(1) through (6) are inappropriate and/or not relevant to the determination of a suitable shopping incentive and, thus, the companies should not be required to address such factors in their shopping incentive proposals (CG&E Initial Comments at 11-12, FirstEnergy Initial Comments at 75-76, Kroger Initial Comments at 7). In light of these comments, we have modified the information to be submitted in the report. We are requiring the utilities to include, as a minimum, marketing studies, price analyses in buy-through programs, and analyses of prices and other incentives which motivated customers to switch to alternative suppliers. We consider these to be appropriate minimum bases for demonstrating the adequacy of a proposed shopping incentive plan. The electric utilities and other parties can submit alternatives for our consideration as well.

FirstEnergy and AEP state that the staff's proposal inappropriately assumes that achieving a 20 percent load switching level is entirely dependent on the level of the shopping incentive and completely within the control of the utility (FirstEnergy Initial Comments at 75, AEP Initial Comments at 51-52). We do not agree. Neither the staff's proposed nor our adopted rules for the shopping incentive proposals make any such assumptions. Rather, the rules provide the filing requirements to enable the Commission to follow the legislative mandate of Sections 4928.37(A)(1)(b) and 4928.40(A), Revised Code. Without this detail in the transition plan filing, the Commission will not be able to fully evaluate how to structure transition charges to provide shopping incentives or determine the expiration of the market development period and the transition charges.

CCE advocates that the Commission require the customer to switch generation suppliers to someone other than the incumbent utility and its affiliate because the affiliate of the incumbent is the same entity as the incumbent and switching to the affiliate does not promote a competitive market environment (CCE Initial Comments at 101-102). This suggestion relates to the requirement that the shopping incentive must be sufficient to cause customers representing at least 20 percent of the load in each customer class to switch generation suppliers to someone other than the incumbent utility. CCE is seeking a Commission ruling that to switch generation suppliers means that the customer cannot switch to an incumbent's affiliate generation supplier. We do not agree. We are taking significant actions to separate the unregulated businesses of incumbent electric utilities from the incumbent electric utilities' operations and we expect to continue to be vigilant of advantages that could accrue to unregulated affiliates by virtue of their affiliation. SB3 does not direct the Commission to exclude any competitive electric service provider from customer choice, including an affiliate of an incumbent electric utility.

FirstEnergy also contends that to require the utilities to project annual levels of switching over the first three years (and, as a result, be forced to adjust the shopping incentive if the switching rates are different than projections) should be eliminated (FirstEnergy Initial Comments at 76-77). We disagree. The legislature does not preclude midcourse reviews. Section 4928.40(B)(1), Revised Code, states that the Commission "may conduct a periodic review no more often than annually and, as it deems necessary, adjust the transition charges of the electric utility as initially established…." An interim review of the effectiveness of the shopping incentive is in the public interest and in the best interests of attaining the intent of the legislation. We deem it wise for the utilities to include in the initial shopping incentive proposal their suggested approach for such periodic reviews.

Kroger suggests that an additional factor of "the efforts the utility is making to ensure the release of firm transmission capacity for the benefit of shopping customers" be included in the list of factors to be considered in proposing a shopping incentive (Kroger Initial Comments at 7). While this is an important issue, it is not germane to the shopping incentive per se. Therefore, we do not adopt this suggestion.

CCE states that measuring residential class customer load switching (that is metered and billed on the basis of energy consumption only) should be based on energy, while other customer classes should be measured on both energy and demand (CCE Initial Comments at 102). The concern raised by CCE is beyond the scope of the Commission's rule because it addresses implementation, not the shopping incentive proposal.

Kroger recommends that the Commission's rules include penalties for not attaining the 20 percent load switch in the appropriate time frame (Kroger Initial Comments at 7). This suggestion is beyond the scope of the transition plan rules. Penalties are a matter within the Commission's discretion if and when nonattainment is observed. Therefore, we will not address the issue at this time.

CONCLUSION:

In light of the enactment of SB3, dramatic changes are occurring in the electric industry that have required a reevaluation of this Commission's traditional regulatory practices concerning the provision of electric services. The regulatory principles outlined above and in Attachment I represent, in this Commission's view, the appropriate rules by which to require the filing and processing of the transition plan applications. Similarly, the policy principles outlined above and in Attachment II represent, in this Commission's view, the appropriate plan under which electric utility companies must educate consumers about electric restructuring. The conclusions addressed herein will not only initiate the beginning of the state of Ohio's restructuring of the electric industry, but also mark the first of many steps that this Commission will take to foster a competitive electric environment. As many are aware, we will develop a number of other rules in separate dockets in the near future. We begin this journey with excitement and look forward to the challenges that lie ahead.

ORDER:

ORDERED, That OVEC is not required to file a transition plan. It is, further,

ORDERED, That, in accordance with the above findings, it is in the public interest to adopt, and as a result we hereby adopt, filing and processing rules for the electric transition plan applications, as set forth in Attachment I of this Finding and Order. It is, further,

ORDERED, That, in accordance with the above findings, it is in the public interest to adopt, and as a result we hereby adopt, a plan under which electric utility companies must educate customers about electric restructuring, as set forth in Attachment II of this Finding and Order. It is, further,

ORDERED, That our approval of the transition rules and consumer education plan does not constitute state action for purposes of the antitrust laws. It is not our intent to insulate the electric utilities from any provisions of any state or federal laws which prohibit the restraint of trade. It is, further,

ORDERED, That copies of rules 4901:1-20-01 through 4901:1-20-03, 4901:1-20-06 through 4901:1-20-10, and 4901:1-20-12 through 4901:1-20-17 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 all of the adopted rules be effective as of the earliest date permitted by law. Unless otherwise ordered by the Commission, the review date for rules 4901:1-20-01 through 4901:1-20-03, 4901:1-20-06 through 4901:1-20-10, and 4901:1-20-12 through 4901:1-20-17 shall be five years after their effective dates. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Craig A. Glazer

Judith A. Jones

Donald L. Mason

GLP / RRG;geb

Emtered In The Journal
November 30, 1999

Gary E. Vigorito
Secretary

Signed by Commissioners
Schriber
Fergus
Glazer
Jones
Mason