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APPENDIX TABLE OF CONTENTS

Stipulation and Recommendation, *In the Matter of the Complaint of Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation v. South Central Power Company and Ohio Power Company*, Case No. 05-1057-EL-CSS (October 20, 2006) 1

Entry on Rehearing, *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4918.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD (February 11, 2009) 18

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)
 Ormet Primary Aluminum Corporation)
 and Ormet Aluminum Mill Products)
 Corporation)
)
 Complainants)
)
)
 v.)
)
 South Central Power Company and)
 Ohio Power Company)
)
 Respondents)

Case No. 05-1057-EL-CSS

STIPULATION AND RECOMMENDATION

Rule 4901-1-30, Ohio Administrative Code ("OAC") provides that any two or more parties to a proceeding may enter into a written or oral stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding of the parties who have signed below (the "Signatory Parties") and to recommend that the Public Utilities Commission of Ohio (the "Commission") approve and adopt, as part of its Opinion and Order in this proceeding, this Stipulation and Recommendation (the "Stipulation") resolving the issues in the above-captioned proceeding. This Stipulation is fully supported by data and information contained in the evidence in the record in this proceeding; represents a just and reasonable resolution of such issues in this proceeding; violates no regulatory principle or precedent; benefits, as a package, ratepayers and the public interest; and is the product of

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lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the Signatory Parties to settle this case. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission, where, as here, it is sponsored by parties representing a wide range of interests, including the Commission's Staff. For the purpose of resolving all issues raised by this proceeding, the Signatory Parties stipulate, agree and recommend as set forth below.

This Stipulation is entered into by and among Columbus Southern Power Company (CSP) and Ohio Power Company (OPCO) (collectively, "AEP Ohio"), both of which are electric utility operating companies of the American Electric Power ("AEP") system, Ormet Primary Aluminum Corporation and Ormet Aluminum Mill Products Corporation (collectively, "Ormet"), South Central Power Company ("SCP"), United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW"), Ohio Energy Group ("OEG") and the Commission's Staff. Intervenor Industrial Energy Users-Ohio ("IEU"), while not a Signatory Party, has agreed not to oppose the Commission's approval of this Stipulation. All Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms hereof.

WHEREAS, in Case No. 96-999-EL-AEC, OPCO applied to the Commission for approval of a special contract arrangement with Ormet (the "Interim Agreement") which would become effective upon the November 30, 1997 termination of the then-current service agreement between OPCO and Ormet, and would terminate at midnight on December 31, 1999;

WHEREAS, in Case No. 96-1000-EL-PEB, OPCO and SCP jointly petitioned the Commission for reallocation of their certified service territories so that Ormet, then a customer of OPCO, would become a customer of SCP upon termination of the Interim Agreement;

WHEREAS, by Finding and Order in Case Nos. 96-999-EL-AEC and 96-1000-EL-PEB, dated November 14, 1996, the Commission approved the Interim Agreement and the request of OPCO and SCP to reallocate their certified territorial boundaries so that Ormet would become a customer of SCP upon termination of the Interim Agreement;

WHEREAS, pursuant to the terms of a Curtailment and Indemnity Agreement, which was an exhibit to the joint petition in Case No. 96-1000-EL-PEB, after Ormet became a customer of SCP and Ormet's load was removed from the AEP system's control area, OPCO and the AEP system no longer had either the right or obligation to resume control area responsibility for Ormet's load;

WHEREAS, Ormet and SCP entered into a service agreement which provided for the sale by SCP of a maximum 20 MW of electric power and energy to Ormet (5 MW firm, 15 MW interruptible) and for Ormet to obtain from third parties in the market the remaining electricity to service the load for its facilities in Hannibal, Ohio;

WHEREAS, the initial SCP/Ormet service agreement was modified to terminate any obligation of Ormet to buy, and of SCP to sell to Ormet, electric power and energy;

WHEREAS, subsequent to the modification of the initial SCP/Ormet service agreement, Ormet filed for Chapter 11 bankruptcy protection and emerged from bankruptcy in April 2005;

WHEREAS, Ormet curtailed operations at its Hannibal, Ohio facilities in January 2005 and those operations have not been restarted;

WHEREAS, on August 25, 2005, Ormet filed in this docket a petition to transfer rights to furnish electric service and/or to reallocate certified service territories, along with a complaint against OPCO alleging that OPCO was proposing to impose unjust, unreasonable and discriminatory rates if Ormet were to return to OPCO's certified service territory;

WHEREAS, on June 14, 2006, the Commission issued an Opinion and Order in this docket which, among other things:

1. found that the bankruptcy court authorized the rejection of the service agreement between SCP and Ormet and which deferred to that determination
2. found that SCP is legally obligated to serve Ormet's 520 MW load
3. found that, in the context of service to Ormet, SCP does not provide, or propose to provide, physically adequate service
4. directed that a second hearing should be held regarding: whether SCP's failure to propose to provide physically adequate service has been corrected or can be corrected under reasonable operating conditions; whether the Commission should authorize another supplier to serve Ormet; or whether the Commission should order such other remedy authorized by law
5. directed that the issue of an appropriate rate to be charged by OPCO for service to Ormet should be addressed after the Commission completes its proceedings under § 4933.83(B), Ohio Rev. Code, and determines whether another electric supplier should be authorized to serve Ormet.

WHEREAS, on July 14, 2006, SCP and OPCO each filed rehearing applications regarding the June 14, 2006 Opinion and Order;

WHEREAS, on August 9, 2006, the Commission issued an Entry on Rehearing in this docket which denied the rehearing applications filed by SCP and by OPCO;

WHEREAS, on August 25, 2006, SCP filed a second rehearing application which the Commission denied in its September 13, 2006 Second Entry on Rehearing;

WHEREAS, on October 6, 2006, SCP filed a Notice of Appeal to the Supreme Court of Ohio (Case No. 06-1866) regarding the Commission's June 14, 2006 Opinion and Order, August 9, 2006 Entry on Rehearing and September 13, 2006 Second Entry on Rehearing;

WHEREAS, according to Ormet Ex. 4:

1. When Ormet's Hannibal facilities are fully operating it employs approximately 1,000 people with total annual wages of about \$40,000,000

2. Ormet covers approximately 3,300 of its employees and family members' health care at a cost exceeding \$10,000,000 per year
3. Ormet pays about \$1,000,000 annually in taxes to Monroe County, Ohio and its school district
4. Ormet purchases about \$15,000,000 to \$18,000,000 of goods and services every year in the Monroe County area
5. Ormet has been one of Southeastern Ohio's largest employers, particularly of skilled workers such as those who comprise the USW
6. If Ormet is unable to resume operation of its Hannibal facilities there will be no jobs to which the USW laborers can return
7. If the Hannibal, Ohio region loses the significant tax revenues and capital spending Ormet historically has brought to that region, the economy in that region will become further depressed

WHEREAS, as reflected in Ormet Ex. 2, Ormet has characterized its load at full operation as 520 MW at a 99% load factor;

NOW, THEREFORE, the Signatory Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings in accordance with the following:

- 1) CSP shall be permitted to intervene in this docket.
- 2) Based upon the anticipated acceptance by the Commission of this Stipulation, without modification, the Commission should consider the Stipulation as presenting a joint petition submitted by CSP, OPCO and SCP under § 4933.83

(E), Ohio Rev. Code, which statute, in pertinent part, provides that:

any two or more electric suppliers may jointly petition the commission for the reallocation of their own territories and electric load centers among them and designating which portions of such territories and electric load centers are to be served by each of the electric suppliers.

Further, the Commission should find that approval of such joint petition is not contrary to the public interest and, therefore, meets the standard of § 4933.85, Ohio Rev. Code, for approval of the joint petition.

- 3) The Commission will reallocate the service territories of CSP and OPCO and SCP such that Ormet's Hannibal facilities will be located in a joint CSP/OPCO certified service territory effective January 1, 2007. SCP shall have no obligation to provide electric service to Ormet's Hannibal facilities prior to January 1, 2007. Provided, however, that SCP will retain its service obligation prior to, on, and after January 1, 2007 with respect to:
 1. Flashing light and sign for the Ormet Plant on Route 7 to the west of the Ormet Plant (South Central Account No. 846-201-006). Installed 4/6/1998.
 2. Ormet employee park just to the south of Route 7 and to the east of the Ormet Plant (South Central Account No. 846-153-001). Installed 6/1/1982.
 3. Sign for the Ormet Plant on Route 7 to the east of the Ormet Plant (South Central Account No. 846-151-001). Installed 8/1/1965.
- 4) As part of this Stipulation, Ormet has entered into an electric service contract (Contract) which reflects the provisions of this Stipulation which are applicable to the Contract. The Contract, a copy of which is attached as Attachment I, shall be deemed to have been approved by the Commission as part of the Commission's approval of the Stipulation.
- 5) Generation, transmission and distribution service will be supplied by AEP Ohio. Such service will meet Ormet's peak demand of approximately 520 MW at a 99% load factor (full operation). AEP Ohio's generation service (which will be

supplied one-half (50%) by CSP and one-half (50%) by OPCO) will be supplied only for consumption at Ormet's Hannibal, Ohio facilities and such power and energy will not be resold or transferred by Ormet, regardless of any opportunities for such transactions.

- 6) This Stipulation will become effective upon approval in a final order of the Commission. Should the Commission's final order be appealed to the Supreme Court, or become involved in some other judicial process, this Stipulation and the related Contract will be suspended for the duration of such appeal or other process and/or during any remand to the Commission. Prior to January 1, 2009, Ormet shall not switch to service from a Competitive Retail Electric Service Provider. Ormet cannot initiate any proceeding or otherwise petition the Commission or any court of competent jurisdiction to require either CSP or OPCO, or both, to provide generation service under any established rate schedule of either CSP or OPCO or at a rate lower than such schedules without the express written consent of AEP Ohio.
- 7) For the period January 1, 2007 through December 31, 2008, Ormet will pay \$43 per megawatt-hour for generation service. This price is agreed upon based on Ormet's representations that after a brief ramp-up period it will operate at a full load of approximately 520 MW at a 99% load factor. In addition, Ormet will pay tariff rates and all applicable riders to AEP Ohio for transmission and distribution service. Such tariff rates and riders will be equivalent to OPCO's Schedule GS-4 for one-half (50%) of Ormet's load and CSP's Schedule GS-4 for one-half (50%) of Ormet's load. A list of the currently existing tariff rate components and riders,

and their location in CSP's and OPCO's Commission-approved tariffs, is attached to this Stipulation as Attachment II. In addition, to the extent required by law, Ormet will self assess the Ohio kWh tax.

- 8) The Contract will not be transferable by Ormet to any other party without the consent of AEP Ohio. In the event of a change in control of Ormet, and assuming the continued operation of the Hannibal facilities, Ormet agrees that it will maintain substantially the same level of operations (approximately 520 MW at a 99% load factor), employment (approximately 1,000) and local purchasing practices (about \$15,000,000 to \$18,000,000 per year in the Monroe County area).
- 9) Ormet will provide AEP Ohio a deposit equivalent to 130% of the anticipated monthly billing for Ormet's Hannibal facilities at full operation. During the ramp-up period which is expected to occur after Ormet reopens its Hannibal facilities, not to exceed six (6) months, Ormet shall provide a deposit equivalent to 130% of the anticipated next month's billing for the Hannibal facilities. The generation- and transmission-related portion of the deposit will be refunded to Ormet upon Ormet's election to take generation and transmission service from another electric supplier after December 31, 2008, provided that Ormet does not have any outstanding balance with AEP Ohio. Ormet agrees to immediately reestablish a deposit equivalent to 130% of the anticipated monthly generation- and transmission-related billing for the Hannibal facilities at full operation should Ormet return from such other electric supplier to once again take generation- and transmission-related service from either CSP or OPCO, or both. All deposits under this Stipulation shall be made by Electronic Funds Transfer not later than

five (5) business days before the beginning of the next month. Should Ormet fail to provide its deposit in accordance with these terms, Ormet agrees that AEP Ohio has the unilateral right to disconnect service to Ormet three (3) days after providing written notice of disconnect to Ormet. This provision shall remain in effect for so long as Ormet takes any service from either CSP or OPCO, or both.

- 10) Ormet will prepay, by Electronic Funds Transfer, its monthly bill for generation, transmission, and distribution service by making payments three (3) business days prior to the start of each month (December 27, 2006 for the first service month of January 2007) and prior to the 15th of each month in an amount equivalent to one-half (50%) of the anticipated billing for that month for the Hannibal facilities. Except for during the ramp-up period, the anticipated monthly billing will be based upon full operation. Should Ormet fail to make a payment within two (2) business days of when it is due, Ormet agrees that AEP Ohio has the unilateral right to disconnect service to Ormet three (3) days after providing written notice of disconnect to Ormet. This provision shall remain in effect for so long as Ormet takes any service from either CSP or OPCO, or both.
- 11) AEP Ohio will make a filing prior to the start of 2007 which will set a market rate for generation service to Ormet's Hannibal facilities for 2007. AEP Ohio will make a filing prior to the start of 2008 which will set a market rate for generation service to Ormet's Hannibal, Ohio facilities for 2008. Such market rate, which will be subject to the Commission's review, shall reflect all generation-related services, including, but not limited to the market for capacity, energy (on-peak

and off-peak), losses to the metering point and load following to meet the requirements of Ormet's Hannibal facilities.

- 12) For the purpose of compensating AEP Ohio for the differential between service at the market rate established by AEP Ohio's filings under Paragraph 11 and the \$43 per megawatt-hour charge for generation service under Paragraph 7, AEP Ohio will be permitted to amortize to income, in the amount of such differential, without reducing rates, their Ohio Franchise Tax phase-out regulatory liability, totaling \$56,968,000.
- 13) In the event that the amortization of the Ohio Franchise Tax phase-out regulatory liability does not fully compensate AEP Ohio for the differential between service at the market rate established by AEP Ohio's filings under Paragraph 11 and the \$43 per megawatt-hour charge for generation service under Paragraph 7, AEP Ohio will be permitted to recover that differential under the "Additional 4%" provision of the current Rate Stabilization Plan. See Section 3, pages 8 and 9 of AEP Ohio's February 9, 2004 application in Commission Case No. 04-169-EL-UNC. In the event that AEP Ohio recovers the entire differential between service at the market rate established by AEP Ohio's filings under Paragraph 11 and the \$43 per megawatt-hour charge for generation service under Paragraph 7, without having to amortize the entire Ohio Franchise Tax phase-out regulatory liability, AEP Ohio will retain the unamortized portion on its books and the treatment of that balance will be determined by the Commission in AEP Ohio's next base rate proceeding. AEP Ohio's recovery of the differential through either the amortization of the Ohio Franchise Tax phase-out regulatory liability and, if

necessary, the "Additional 4%" provision will be accomplished in a manner which matches the projected differential and the recovery in the same accounting period.

- 14) In the event Ormet files a petition for relief under the Bankruptcy Code or an involuntary petition for relief under Bankruptcy Code is filed against Ormet, Ormet acknowledges and agrees that:
- a. The payment arrangement specified in Paragraph 10 above, with payments made in advance of usage will remain in effect as specified in this Stipulation.
 - b. Ormet will not file a pleading with the applicable bankruptcy court that seeks to limit or avoid its obligation under the deposit or advance payment provisions of this Stipulation. See Paragraphs 9 and 10 above, respectively.
 - c. Ormet further agrees that in the event of a bankruptcy AEP Ohio has the first claim on any deposit held under this Stipulation for any amounts owed and any future costs to be incurred as result of AEP Ohio's service to Ormet.

In the event that the bankruptcy court does not permit the provisions of either Paragraph 14 a., b., or c. to be implemented, Ormet will provide AEP Ohio, within twenty (20) days of the petition date, with a post-petition security deposit, as adequate assurance under § 366 of the United States Bankruptcy Code (11 U.S.C. § 366), in the amount equivalent to 130% of the anticipated monthly billing for the plant at full operation.

- 15) All necessary waivers of Commission rules shall be considered granted by the Commission's adoption of this Stipulation.
- 16) SCP will withdraw its Notice of Appeal in Supreme Court Of Ohio Case No. 06-1866 after the Commission adoption of the Stipulation and the later of the time for administrative or appellate review of the Commission's order adopting the Stipulation has expired or, if such review is pursued, such review is completed.
- 17) Upon the Commission's adoption of the Stipulation, CSP, OPCO and SCP will submit to the Commission modified territorial maps consistent with the provisions of this Stipulation.
- 18) Since the Signatory Parties are waiving their rights to appeal the factual and legal conclusions contained in the June 14, 2006 Opinion and Order, they agree to not rely on such conclusions in any future proceeding. Further, the Signatory Parties urge the Commission to indicate in its order adopting this Stipulation that such conclusions were unique to the facts and circumstances in this proceeding and do not provide any precedent for any future proceeding.

Nothing in this Stipulation shall be used or construed for any purpose to imply, suggest or otherwise indicate that the results produced through the compromise reflected herein represent fully the objectives of any Signatory Party.

No Signatory Party will challenge or directly or indirectly support any challenge to the reasonableness or lawfulness of the provisions of this Stipulation.

This Stipulation is submitted for purposes of this proceeding only, and is not deemed binding in any other proceeding, except as expressly provided herein, nor is it to be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation.

In fact, none of the Signatory parties have submitted the entirety of the case they would have otherwise filed or will file if this Stipulation is rejected.

The agreement of the Signatory Parties reflected in this document is expressly conditioned upon its acceptance in its entirety and without alteration by the Commission.

The Signatory Parties agree that:

- A. if the Commission rejects all or any part of this Stipulation, or otherwise materially modifies its terms, any adversely affected Signatory Party shall have the right, within thirty (30) days of the Commission's order, either to file an application for rehearing or to terminate and withdraw from the Stipulation by filing a notice with the Commission;
- B. if an application for rehearing is filed, and if the Commission does not, on rehearing, accept the Stipulation without material modification, any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission within ten (10) business days of the Commission's order or entry on rehearing; and
- C. if any portion of this Stipulation is found by a reviewing Court to be unlawful, or if any law is enacted which prohibits the continued application of any term of this Stipulation, any Signatory Party adversely affected by any such judicial decision or statutory enactment may withdraw its support for this Stipulation by filing a notice to that effect with the Commission within thirty (30) days of such judicial decision becoming final or such law becoming effective.

If a Signatory Party pursues any action provided for in parts A, B or C above, a hearing shall go forward, and the parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues and pursue all remedies available in a court of competent jurisdiction.

The Signatory Parties agree and intend to support the reasonableness and legality of this Stipulation before the Commission, and in any appeal from the Commission's adoption and/or enforcement of this Stipulation.

IN WITNESS WHEREOF, this Stipulation and Recommendation has been agreed to as of this 20th day of October, 2006. The undersigned parties respectfully request the Commission to issue an Opinion and Order approving and adopting this Stipulation.

Alan J. Resnik
Ohio Power Company

Alan J. Resnik
Columbus Southern Power Company

John E. Solent /MIR
Ormet Primary Aluminum Corporation and
Ormet Aluminum Mill Products Corporation

Thomas E. Cook
South Central Power Company

Thomas W. McNamara (by [Signature])
Staff of the Public Utilities Commission of Ohio

Michael Kurtz /MIR
Ohio Energy Group

Nathaniel Hawthorne /MIR
United Steel, Paper and Forestry,
Rubber, Manufacturing, Energy, Allied Industrial and
Service Workers International Union

This Contract entered into this ___ day of October 2006, by and between Columbus Southern Power Company and Ohio Power Company, hereafter called AEP Ohio, and Ormet Primary Aluminum Corporation, 1233 Main Street, Wheeling, West Virginia 26003, hereafter called the Customer,

Witnesseth:

For and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree with each other as follows:

AEP Ohio agrees to furnish to the Customer, during the term of this Contract, and the Customer agrees to take from AEP Ohio, subject to AEP Ohio's standard Terms and Conditions of Service as regularly filed with the Public Utilities Commission of Ohio (Commission) and the terms and conditions as set forth in the Stipulation and Recommendation in Case No. 05-1057-EL-CSS as approved by the Commission which is attached hereto and hereby made a part of this Contract, all the electric energy of the character specified herein that shall be purchased by the Customer in the premises located at the Customer's Hannibal, Ohio facilities. In the event the regularly filed Terms and Conditions of Service conflict with the terms and conditions set forth in the Stipulation and Recommendation, the latter terms and conditions will be controlling.

AEP Ohio is to furnish and the Customer is to take electric energy under the terms of this Contract for a period of up to 24 months from the time such service is commenced and ending at midnight on December 31, 2008. The date that service shall be deemed to have commenced under this Contract shall be the later of January 1, 2007 or the effective date of the Stipulation in Case No. 05-1057-EL-CSS.

The electric energy delivered hereunder shall be alternating current at approximately 138,000 volts, 3-wire, 3-phase and it shall be delivered at the interconnection of AEP Ohio's two double-circuit 138-kV steel tower transmission lines with the Customer's two double-circuit 138-kV steel tower transmission lines (i.e. in Ohio Township, Monroe County, Ohio at Tower 39 on double circuit Line #1 and at Tower 38 on double circuit Line #2), which shall constitute the point of delivery under this Contract. The said electric energy shall be delivered at reasonably close maintenance to constant potential and frequency, and it shall be measured by a meter or meters owned and installed by AEP Ohio and located at the Kammer Substation.

The Customer's contract capacity is hereby fixed at 520,000 kW/kVA. Beginning July 1, 2007, the minimum billing demand for this Contract shall be 312,000 kW/kVA.

There are no unwritten understandings or agreements relating to the service herein above provided. This Contract shall be in full force and effect when signed by the authorized representatives of the parties hereto, subject to the approval of the Public Utilities Commission of Ohio in Case No. 05-1057-EL-CSS.

The Customer agrees that its electrical facilities shall not be interconnected with any facilities other than AEP Ohio's facilities unless written authorization is received from AEP Ohio.

Columbus Southern Power Company
Ohio Power Company

Ormet Primary Aluminum Corporation

By: _____
(Signature)

By: _____
(Signature)

(Printed Name)

(Printed Name)

Title: _____

Title: _____

Date: _____

Date: _____

Tariff Rate or Rider	Sheet No.	
	CSP	OPCo
Customer Charge	24-1	24-1
Demand Charge	24-1	24-1
Reactive Demand Charge		24-1
Universal Service Fund Rider	60-1	60-1
Energy Efficiency Fund Rider	61-1	61-1
kWh Tax Rider	62-1	62-1
Gross Receipts Tax Credit Rider	63-1	63-1
Municipal Income Tax Rider	65-1	65-1
Franchise Tax Rider	66-1	66-1
Regulatory Asset Charge Rider	67-1	67-1
Provider of Last Resort Charge Rider	69-1	69-1
Monongahela Power Litigation Termination Rider	73-1	
Transmission Cost Recovery Rider	75-1	75-1
Major Storm Cost Recovery Rider	77-1	77-1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for)
 Standard Service Offer, Corporate Separation,)
 Reasonable Arrangements, and Transmission)
 Riders for Electric Utilities Pursuant to) Case No. 08-777-EL-ORD
 Sections 4928.14, 4928.17, and 4905.31,)
 Revised Code, as amended by Amended)
 Substitute Senate Bill No. 221.)

ENTRY ON REHEARING

The Commission finds:

- (1) On July 7, 1999, the governor of the state of Ohio signed Amended Substitute Senate Bill No. 3 (SB 3). That legislation, among many things, established a starting date for competitive retail electric service (CRES) in the state of Ohio and provided for the establishment of a market development period (MDP) for each electric utility. After the MDP, pursuant to Section 4928.14(A), Revised Code, as originally enacted into law, each electric utility was required to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a market-based standard service offer (MBSSO) to maintain essential electric service to consumers, including a firm supply of electric generation service. Pursuant to Section 4928.14(B), Revised Code, each electric utility was required to offer customers within its certified territory an option to purchase CRES after its MDP ends, the price of which is to be determined through a competitive bidding process (CBP). On December 17, 2003, the Commission issued a Finding and Order in Case No. 01-2164-EL-ORD which adopted, with certain modifications, staff's proposed rules for processing applications to establish the MBSSO and CBP in Chapter 4901:1-35-01, Ohio Administrative Code (O.A.C.).
- (2) On May 1, 2008, the governor signed into law Amended Substitute Senate Bill No. 221 (SB 221) amending various provisions of SB 3. Among those amendments were changes to Section 4928.14, Revised Code, to establish a standard service offer (SSO); Section 4905.31, Revised Code, to approve

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reasonable arrangements; and Section 4928.17, Revised Code, to establish corporate separation plans. Pursuant to the amended language of Section 4928.14, Revised Code, and new Section 4928.141, Revised Code, electric utilities are required to provide consumers with an SSO, consisting of either a market-rate offer (MRO) or an electric security plan (ESP). The SSO is to serve as the electric utility's default SSO. Electric utilities may apply simultaneously under both options; however, at a minimum, the first SSO application must include an application for an ESP. The amendments to Section 4905.31, Revised Code, modify the applicability of reasonable arrangements and the amendments to Section 4928.17, Revised Code, impose additional requirements on electric utilities relating to the transfer of assets.

- (3) On September 17, 2008, the Commission issued a Finding and Order (Order) adopting four chapters of administrative rules.¹ The four chapters are as follows:
 - (a) A complete rewrite of Chapter 4901:1-35, O.A.C., which includes procedural requirements for filing applications for an MRO and ESP as well as filing requirements for such applications in accordance with SB 221;
 - (b) Chapter 4901:1-36 to establish procedures for the implementation of transmission riders;
 - (c) Rescind Rule 4901:1-20-16, O.A.C., and revise and place the existing Commission requirements in a stand-alone Chapter 4901:1-37 to address electric utility corporate separation between affiliated entities, as well as new SB 221 requirements;
 - (d) Chapter 4901:1-38 to establish procedures for approving reasonable arrangements between the electric utility and customers.
- (4) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by filing

¹ Hereafter, the Commission will refer to specific rules by their last two numbers instead of the full code section being discussed in each subsection of the Entry on Rehearing.

an application within 30 days after the entry of the order upon the journal of the Commission.

- (5) On October 17, 2008, the Commission received applications for rehearing from the Ohio Consumer and Environmental Advocates (OCEA), Columbus Southern Power Company and Ohio Power Company (AEP), Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (FirstEnergy), Alliance for Real Energy Options (Alliance), Duke Energy Ohio, Inc. (Duke), and the Ohio Environmental Council (OEC). On October 27, 2008, memoranda contra were filed by OCEA, Industrial Energy Users-Ohio (IEU), and FirstEnergy. Additionally, Duke filed a motion for a protective order to protect the confidential information contained in responses to its RFP for peaking and/or intermediate power supply in response to SB 221, which was attached to its application for rehearing. No one responded to Duke's motion. The Commission will grant Duke's motion for a protective order for purposes of this rehearing only. The protective order shall be in effect for 18 months from the date of this Entry on Rehearing.

These parties raised a number of assignments of error associated with the rules that the Commission adopted on September 17, 2008. By entry dated November 5, 2008, we granted rehearing for further consideration of the matters specified in the applications for rehearing. In this entry, the Commission will address the assignments of error raised which we believe warrant modification to the rules that we have adopted or where further clarification or discussion is needed. To the extent an allegation of error is raised that is not directly addressed herein or not incorporated in the rule modifications that we adopt, it has been rejected. Additionally, we have modified Rule 02 for each of the four chapters to clarify that the Commission's ability to waive rule requirements does not extend to requirements mandated by statute. Consideration of the applications for rehearing will be addressed under the four rule chapters set forth below.

Chapter 4901:1-35, Electric Utility Standard Service Offer

- (6) Several of the arguments raised on rehearing involved Rule 03. In general, FirstEnergy and AEP contended that various provisions of the rules exceed legislative authority or are inconsistent with the provisions of SB 221. We have made certain modifications to clarify our intent of these rules; however, for the most part we believe that the rules, as originally adopted, provide a process to carry out the directives of SB 221 and amplify its provisions. The following paragraphs address various arguments raised on rehearing regarding Chapter 35.
- (7) AEP questions the Commission's definition of "Rate Plan" as an SSO approved by the Commission prior to January 1, 2009, instead of an SSO in effect on the effective date of SB 221 as set forth in Section 4928.01(A)(33), Revised Code. The Commission used the terminology "prior to January 1, 2009," to make it clear that we are giving consideration to all the terms of a rate plan in effect on the effective date of SB 221, even those terms of a rate plan that may take effect after the effective date of SB 221.
- (8) OCEA argues that a new section designated as Rule 03(B) should be adopted regarding portfolio management to address requirements to implement a 10-year procurement plan for both MROs and ESPs. The Commission supports procurement planning but believes that such activities should be reviewed as part of long-term forecasting rather than as part of SSO plans that are more likely to be three years or less. We also find that OCEA's requirements for such procurement plans do not provide enough flexibility for electric utilities to develop specific portfolio management and resource procurement plans to meet their specific needs.
- (9) AEP argues that Rule 03(B)(1)(a), which describes conditions that utilities must meet for transmission alternatives for utilities that are not part of a Regional Transmission Organization (RTO), goes beyond the scope of the language of Section 4928.142(B)(1), Revised Code. The purpose of this rule provision is to clarify what the Commission considers "comparable and nondiscriminatory access to the electric transmission grid" as set forth in the statute. The fact that the

Commission amplifies the statute by stating in its rules that alternative conditions for electric utilities that are not part of an RTO "include non-pancaked rates, open access by generation suppliers, and full interconnection with the distribution grid" can hardly be considered as the Commission being inconsistent with the statute. Under Section 4928.06, Revised Code, the Commission has the ability to adopt rules to carry out the intent of SB 221. By promulgating this rule provision, the Commission has not exceeded its authority.

- (10) FirstEnergy also makes similar arguments as AEP with regard to Rule 03(B)(1)(b), concerning the establishment of an RTO independent market monitor. FirstEnergy states that Section 4928.142(B)(2) provides that an RTO must have a market monitor function and the ability to identify and mitigate market power. It argues that the Commission's rule goes beyond the statutory intent by requiring that there exists a market monitor independent from the RTO and that such monitor has the ability to identify and mitigate market power. The Commission believes that it is critical that there be an independent market monitor function that has the ability to identify market abuses and to effectively mitigate the conduct of the market participants because experience demonstrates that these characteristics are necessary components of the ability to mitigate market power. Without such a requirement, the RTO does not have a viable market monitoring function that the statute requires. The market monitor or RTO must have the flexibility to identify and mitigate the exercise of market power in the markets essential to creating a competitive market. The risk that a generator may use its market power to discriminate or alter the costs paid by independent competitive retail electric suppliers poses a significant barrier to entry into the retail market. Moreover, pursuant to Section 4928.02(H), Revised Code, it is the policy of this state to ensure retail electric consumers protection against market deficiencies and market power. The Commission's rule is necessary to carry out the intent of the statute and state policy. The Commission has revised Rule 03(B)(1)(b) to more clearly capture our position and at the same time more closely adhere to the intent of Section 4928.142(B)(2), Revised Code.

- (11) AEP and FirstEnergy both take issue with Rule 03(B)(1)(c), regarding public availability of electricity pricing information. They believe that the Commission's rule on this subject exceeds the statutory requirements of Section 4928.142(B)(3), Revised Code, which only requires that the information be "available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis." The Commission's rule, as adopted in our Order, requires that the information be "independent and reliable," that the information be for "any product or service necessary for a winning bidder to fulfill contractual obligations," that the information "be available to any person requesting it" and "for use in a proceeding before the commission," and lastly that the information "be updated on at least a monthly basis." Among other things, FirstEnergy argues that requiring pricing information on any product or service necessary for a winning bidder to fulfill contractual obligations resulting from a competitive bid is much broader than just for on- and off-peak power. Rule 03(B)(1)(c) must implement Section 4928.142(B)(3), Revised Code, in a manner consistent with the statute as a whole, which was intended to ensure effective competition, including competitive bidding to provide standard offer service under an MRO. In implementing the requirement for published information on the prices of "energy products," AEP and FirstEnergy would have us use an overly narrow and technical definition. To ensure that many different suppliers can compete to provide standard offer service, reliable forward price information needs to be available so that suppliers making physical or financial forward commitments can commit to future prices and manage their risks. The rule appropriately adopts a common parlance meaning for the term "energy products," encompassing those products of electric energy production that would be "necessary for a winning bidder to fulfill the contractual obligations resulting from the competitive bidding process." The rule ensures that what will be acquired on a forward contract basis through the competitive bidding process is consistent with available forward price data. The rule requires that price data be reliable so as to avoid circumstances observed in other energy commodity markets where published price data have been called into question.

However, we are modifying our proposed rule to delete the reference to the information being sufficiently reliable and available for use in a proceeding before the Commission, as it appears to be unnecessary to the proper operation of the rule. Also, we have clarified the rule to indicate that a pay subscription service shall be available "under standard pricing, terms, and conditions" to any person requesting "a subscription." The rule requires the information to be updated at least monthly based on the availability of monthly products and services in the market. Information that is available more frequently than monthly would qualify under the rule.

- (12) With regard to Rule 03(B)(2)(b) and (c) concerning pro forma financial projections and rate impacts of CBP plans, AEP and FirstEnergy argue that the rule is too broad. AEP argues that such information is not needed from the electric utility's transmission and distribution services, as the rule requires, but only from generation service which is encompassed by an MRO. FirstEnergy adds that requiring pro forma projections of the effect of the CBP plan upon generation, transmission, and distribution of the electric utility or its affiliates goes beyond statutory requirements as it applies to affiliates. The Commission finds that although the impact of a CBP will be largely on generation service, there may be some impact on transmission and distribution services based upon what a utility proposes as part of its MRO. With respect to looking at the impact on affiliates, we have reconsidered this requirement and have deleted language related to affiliates in Rule 03(B)(2)(b) as not being necessary to consider CBP effects on the electric utility.
- (13) In the Order, we modified the Commission staff's (Staff) proposed language in Rule 03(B)(2)(d) and (n) and 03(C)(8) to reflect that provisions of an SSO application must be "consistent with and advances" instead of "achieve" the policies of the state as set forth in divisions (A) to (N) of Section 4928.02, Revised Code, recognizing the need for flexibility in attempting to satisfy those policies. AEP and FirstEnergy object to the addition of the term "advances," stating that certain of the policy statements are not necessarily compatible with each other nor should they be prerequisites to approval of an MRO or ESP application. The Commission finds that the intent of this

language is to ensure that all of the policy statements in Section 4928.02, Revised Code, are considered when an electric utility develops an SSO application. We, therefore, find no modification of this language is warranted.

- (14) OCEA requests, with respect to Rule 03(B), that a new division be added to the list of what is to be included in a CBP plan. OCEA contends that division (o) be added to 03(B)(2) which would require the reporting of existing obstacles to providing an MRO. OCEA's proposed language is as follows:

An explanation of known and anticipated obstacles that would provide difficulties or create barriers for the adoption of the proposed bidding process so that participation by electric suppliers will be encouraged.

The Commission finds this information will be helpful in developing a CBP for an MRO and the rule has been modified accordingly. OCEA also points out that Rule 03(B)(4) regarding government aggregation programs in relation to an MRO should be corrected to reference Section 4928.20(K) rather than Section 4928.20(J) of the Revised Code, inasmuch as (J) only relates to ESPs. The Commission finds this modification to be appropriate and has made the change to the rule.

- (15) Among the general requirements for ESPs in Rule 03(C)(2) is the requirement that an electric utility provide pro forma financial projections of the effect of the ESP's implementation upon the electric utility. AEP argues that an ESP does not establish the SSO on a cost-based analysis and is ultimately governed by a top-down retrospective excessive earnings review. AEP asserts that the requirement of pro forma financial information is without basis in statute and constitutes improper prospective evaluations of the significantly excessive earnings test and should thus be deleted. In our Order, we rejected AEP's characterization of this information as constituting an excess earnings test and found that, due to the complexity of an ESP, the approval of such a plan should be made in the context of all available information, including pro forma financial projections. By requesting such information, the Commission is not changing the statutory standard of Section 4928.143(C)(1), Revised Code, under which an ESP is to be approved, nor is it

requiring a cost-based ESP. Further, in determining whether an ESP is in the aggregate more beneficial, the Commission must find that the ESP so approved, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. The requested financial information will be helpful in making these determinations. Accordingly, we conclude that the requested modification is unnecessary and we decline to adopt it.

- (16) OCEA has requested that the Commission add additional details to various paragraphs of Rule 03(C). The Commission has considered these suggestions and finds such additional details are either unnecessary or more appropriate for consideration in individual ESP application reviews.
- (17) FirstEnergy raises a concern with the phrase "as an offset" in Rule 03(C)(9)(a)(ii) when considering any benefits available to the electric utility as a result of the sale of emission allowances or coal in ESP applications. FirstEnergy argues that this phrase assumes that the treatment and accounting of emission allowances always should result in a credit to customers, which is not always the case. The Commission agrees and has modified the rule to delete "as an offset" to encompass all circumstances.
- (18) Both AEP and FirstEnergy argue that Rule 03(C)(9)(a)(iii), relating to an electric utility's demonstration in an ESP that costs passed through a fuel cost automatic recovery mechanism are prudent, is misplaced and that such a prudence review be performed in subsequent reviews required by Rule 09(C). Inasmuch as Rule 09(C) requires that costs incurred and recovered through quarterly adjustments are to be reviewed in a separate proceeding outside of the automatic recovery provision of an ESP, the Commission has deleted Rule 03(C)(9)(a)(iii) as unnecessary and added this provision to Rule 09(C).
- (19) AEP asserts that Rule 03(C)(9)(b)(i) is inconsistent with the provisions of Section 4928.143(B)(2)(b), Revised Code, by requiring that a proposed facility being built as part of an ESP, and costs recovered through an unavoidable surcharge, must

have been already reviewed by the Commission through a separate integrated resource planning (IRP) process. The Commission does not believe that requiring the IRP process be performed as part of a filing pursuant to Rule 4901:5-5-05 is prohibited by Section 4928.143(B)(2)(b), Revised Code. It is not unreasonable for the Commission to use the results of the IRP process to determine the need for construction of a facility being proposed as part of an ESP proceeding. Making a determination of need for a generating facility requires consideration of forecasts, existing and new resources, and the impacts of alternative resource strategies. Given that an IRP proceeding is where an electric utility files its forecasts and resource plans and the Commission reviews the electric utility's analysis of resource alternatives, an IRP proceeding is the appropriate proceeding in which to identify the characteristics of needed new resources. Accordingly, the purpose of this rule provision is to recognize that it is a more efficient use of time to already have the facility previously considered as part of an IRP process prior to making a request for an unavoidable surcharge in an ESP proceeding.

- (20) With respect to the inclusion of a proposed competitive bidding process for construction of facilities as part of an ESP application, AEP argues that having a previously approved process for the proposed facility on a case-by-case approval is not practical or efficient. AEP believes a standardized bidding process should be approved by the Commission or established through the Commission's rules. The Commission has modified Rule 03(C)(9)(b)(ii) to provide for the possibility of the use of a previously approved process for competitive bidding which would be applicable to the facility in question.
- (21) Rule 03(C)(9)(b) provides requirements for an electric utility which is seeking to include unavoidable surcharges for certain expenditures pursuant to division (B)(2)(b) and (B)(2)(c) of Section 4928.143, Revised Code. In its rehearing application, Duke proposes a bidding process appropriate for the dedication of load from existing generating assets, rather than newly constructed facilities. Duke argues that the purchase price of long-term capacity dedicated to serve customer load in Duke's certified territory can be locked in for the life of the generating asset. Absent the recovery of the cost of such an arrangement

through an unavoidable charge, Duke argues it is unable to take the economic risk of obtaining dedicated long-term capacity. As we stated in our Order, we believe that the impetus for division (B)(2)(b) and (B)(2)(c) of Section 4928.143, Revised Code, was a concern that the market might not provide sufficient means for the creation of additional generation resources which might be needed in the future. Existing resources are already available to Ohio consumers through the market. Further, we agree with Duke that Section 4928.143(B)(2)(c), Revised Code, provides for an unavoidable surcharge for a long-term capacity arrangement. The subject of this code section is electric generating facilities that are sourced through a competitive bid process, that have undergone an integrated resource review, will be dedicated to Ohio consumers for the life of the facility, and, most importantly, must be newly used and useful after January 1, 2009. Duke's use of its existing generation plants does not meet this last requirement nor can the facilities be dedicated for the life of the facilities if they were constructed many years before being dedicated. Accordingly, Duke's argument is rejected.

- (22) FirstEnergy asserts that paragraphs (C)(9)(g) and (h) of Rule 03 impose cost-based type requirements on any alternative mechanism to distribution service ratemaking and a cost-benefit analysis for proposed economic development, job retention or energy efficiency programs to be included in an ESP application. FirstEnergy argues that divisions (B)(2)(h) and (i) of Section 4928.143, Revised Code, do not require cost-based standards or cost-benefit analysis with regard to the establishment of these mechanisms and programs. The Commission finds no merit to FirstEnergy's arguments. In an ESP application, the fact that the Commission requests (a) cost-savings and rate-impact information for alternative rate mechanisms and (b) a cost-benefit analysis of economic development and energy efficiency programs does not mean that the Commission will impose programs on electric utilities beyond the scope of SB 221. The cost-savings and rate impact information and cost-benefit analysis are needed for the Commission to determine whether the electric utility's ESP is, on balance, beneficial and whether it is beneficial to include or modify the distribution infrastructure and modernization component of the ESP, given the alternative of addressing similar issues in a distribution rate case. With respect to

economic development, job retention, and energy efficiency programs of the electric utility under paragraph (C)(9)(h) of Rule 03, Section 4928.143(B)(2)(i), Revised Code, specifically authorizes the costs of such programs to be allocated to rates charged to other consumers. A reasonable determination regarding whether any such proposal is a beneficial component of an electric utility's ESP requires a comparison of the benefits relative to the costs that will be borne by other consumers. Moreover, such information is helpful in determining whether alternative rate mechanisms or economic development and energy efficiency programs are reasonable.

- (23) FirstEnergy contends that Rule 03(D), addressing time frames for Commission action on MRO and ESP applications, is not in compliance with Sections 4928.143(C)(1) and 4928.142(B), Revised Code. FirstEnergy argues that Rule 03(D) allows the Commission to extend the statutory periods for the Commission to issue an order on an MRO or ESP application beyond the respective 90-day and 150-day periods by requiring initial applications that are not in substantive compliance with the rules to be amended or refiled. FirstEnergy argues that an MRO application must be acted upon within 90 days of the filing of the application and the initial filing of an ESP must be acted upon within 150 days, and that the Commission cannot delay the start of the statutory deadlines until the submission of an application that substantively complies with the Commission rules. The Commission finds that it may be impossible to have initial applications acted upon with the 90- and 150-day periods set forth in the statutes and at the same time have an electric utility conform its filing to the Commission's rules upon their taking effect when proposed rules do not become effective until after the periods for ruling on MRO and ESP applications. For this reason, the Commission's Rule 03(D) states the following:

First applications that are filed with the commission prior to the effective date of this rule and that are determined by the commission to be not in substantive compliance with this rule shall be amended or refiled at the direction of the commission. The commission shall endeavor to make a determination on an application for an ESP that substantively conforms to the requirements of

this rule within one hundred fifty days of the filing of such complete application.

FirstEnergy's arguments only look at the part of the statute that establishes time periods for reviewing applications without considering the language in Sections 4928.142(B) and 4928.143(A), Revised Code, that requires an electric utility that files an application prior to the effective date of the Commission's rules, to immediately conform its filing to those rules upon their taking effect. The first sentence of the rule quoted above was adopted as a direct result of the language in Sections 4928.142(B) and 4928.143(A), Revised Code. With respect to the second quoted sentence, the Commission adopted this provision to cover a scenario where the rules would not become effective until after the time periods for reviewing initial ESP applications had expired, which is what has occurred. The rule was adopted to provide guidance for the reviews of initial ESP applications that have been filed prior to the effective date of rules. It was not intended to apply to all ESP applications. We have modified the rule to clarify this point.

- (24) Rule 06(A) addresses the hearings to be held to review an SSO application. AEP and FirstEnergy take issue with the provision of the rule that states that "the burden of proof to show that the proposals in the application are just and reasonable and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code shall be upon the electric utility." They argue that this provision is beyond the standard of review established by statute for MROs and ESPs in Sections 4928.142(A)(1) and 4928.143(C)(1), Revised Code. The Commission cannot agree that requiring an electric utility to show that its application is just and reasonable and consistent with the policy set for in the statute is somehow improper or beyond the intent of SB 221. Although, Sections 4928.142(A)(1) and 4928.143(C)(1), Revised Code, set forth criteria for reviewing MRO and ESP applications, there are other provisions of SB 221 that use reasonableness standards when looking at certain provisions of MRO and ESP applications and the policies of Ohio. See Sections 4928.02(A) and (I), 4928.142(D) and 4928.143((B)(2)(h), Revised Code. Section 4928.02, Revised Code, establishes the policy of the State

to be implemented throughout Chapter 4928, Revised Code, and thus, any reference thereto is proper. Furthermore, the Supreme Court of Ohio has held that standard service offers must be consistent with the state policy under Section 4928.02, Revised Code. *Elyria Foundry Co. v. Pub. Util. Comm.* (2007), 114 Ohio St. 3d 305. Section 4928.02, states, in part, that the Commission must "ensure the availability to consumers of . . . nondiscriminatory and reasonably priced retail electric service." Our use of the phrase "just and reasonable" to describe what the applicant should demonstrate is consistent with the state policy, including Section 4928.02(A), Revised Code. It is hard to imagine that, although the legislature set forth certain criteria that SSO applications must meet, it was their intent that electric utility rates set as a result of an MRO or ESP application need not be just and reasonable or that the numerous policies set for in Section 4928.02, Revised Code, need not be considered.

- (25) Rule 08 establishes a process for conducting the competitive bidding process for providing an MRO. OCEA requests that a hearing be held on the reasonableness of the CBP plan upon the request of an interested person. The Commission's rules already provide for a hearing on the CBP plan as part of the SSO application process. If OCEA is requesting that an additional hearing be held based on any recommended modifications or additions to the CBP plan by the independent third party who is administering the CBP plan, the Commission does not believe there will be time to conduct such a hearing before or during the selection of the least-cost winning bidders. However, the rules already provide for the filing of a report by the independent third party who is administering the bidding process and for the hiring of consultants to assist the Commission with its review of the CBP. FirstEnergy has concerns with the provision of this rule that requires the independent third party to include in his report a list of retail rates. It believes that this requirement should be performed by the electric utility. The rule does not preclude the electric utility from preparing the list of retail rates; it only requires that the rates should be included in the report. FirstEnergy also contends that the rule should include the statutorily mandated time period for the Commission's final decision on the results of the CBP. Section 4928.142(C), Revised Code, already provides the Commission three days to make its final determination on the CBP.

- (26) With regard to Rule 09 which addresses automatic adjustment mechanisms approved in an ESP, OCEA suggests that the Commission remove the limiting phrase "fuel and purchased power" in the title to the rule. OCEA argues that automatic adjustments may also include emission allowance and federally mandated carbon and energy taxes. The Commission finds the rule itself does not limit automatic adjustments to just fuel and purchased power. Consequently, no change is required.
- (27) Alliance argues that the Commission should create a new rule 12 to address credits for deferred fuel and purchased power charges. Alliance states that the electric utility's fuel and purchased power costs are avoidable when customers elect to take service from a CRES provider. Alliance asserts that there needs to be a rule to handle a deferral of fuel and/or purchased power costs approved as part of an ESP. It proposes the establishment of a credit for retail customers who are not taking generation service from the utility. The credit would be for the value of the fuel and purchased power being deferred. When the deferral is recovered in future years, the CRES customer would then also pay the deferral along with the standard service customers. Alliance contends that the deferral creates an artificially low price for the ESP which is anti-competitive. Alliance argues that granting a credit for the amount of the deferral would give customers more accurate and market-reflective pricing information. The Commission finds that issues involving how deferrals should be allocated or recovered are best considered in individual applications where deferrals are being requested rather than by rule.

Chapter 4901:1-36, Transmission Cost Recovery

- (28) Rules 02 and 04 of this chapter set forth the purpose and scope for the establishment of an electric utility transmission cost recovery rider. Alliance argues that transmission congestion costs, which are recoverable under a transmission cost recovery rider approved pursuant to this chapter, are generally recognized as being part of the energy component of electric rates. As a result, Alliance contends that congestion costs should not be recovered through a transmission rider. OCEA asserts that only those transmission costs that are authorized by

the Federal Energy Regulatory Commission (FERC) should be recoverable through the rider. The Commission finds these requested revisions are not consistent with Section 4928.05(A)(2), Revised Code, which provides for the recovery of congestion costs through the transmission rider and which includes charges imposed not only by FERC but from an RTO, independent transmission operator, or similar organizations approved by FERC. We also note that if an electric utility's generation rates are based on the delivered market price of generation, such market prices may include congestion and other costs associated with transmission service. While SB 221 gives the Commission authority to establish a transmission rider, it is not our intent to permit the double recovery of such costs. We will therefore clarify Rule 04(C) to indicate that transmission related costs and associated revenues are recoverable to the extent such costs and associated revenues are not included in any other tariff or rider.

- (29) Division (E) of Rule 03, entitled Application, establishes when interim applications are to be filed due to substantial cost changes between yearly updates of the transmission rider. Alliance asserts that the Commission needs to be more specific regarding when an interim application is needed. Alliance suggests that the use of the term "substantially" when referring to the difference between costs projected in a previous application and current actual costs should be revised to "three percent or more." OCEA also takes issue with the use of the term "projected" and suggests that the term "authorized" is more appropriate. To maintain flexibility in conducting interim reviews of transmission charges, the Commission will retain the use of the word "substantially". However, we find OCEA's suggestion to use the word "authorized" instead of "projected" is appropriate. We have revised the rule accordingly.
- (30) OCEA also argues that Rules 03 and 05 do not adequately address the process for approving transmission cost recovery riders. OCEA believes that hearings should be held and intervention permitted to adequately consider applications filed pursuant to this chapter. Further, OCEA believes that the Commission's federal advocate should monitor and periodically file reports on regional transmission organization costs that are transmission related so that they can be used in conjunction

with transmission rider applications pursuant to this chapter. The rules, as adopted, provide affected parties 40 days to file comments and provide that the Commission shall approve the application or set the matter for hearing within 75 days. Unless ordered otherwise, the rider becomes effective on the 75th day subject to reconciliation following any hearing. We find that Section 4928.05(A)(2), Revised Code, authorizes the Commission to establish reconcilable transmission cost recovery riders and that the process we have implemented provides adequate input from affected parties. Further, we have modified Rule 03(F) to clarify that affected parties may also file motions to intervene within the forty-day comment period. We also note that Staff will be reviewing the rider applications as it has done in the past and that a specific rule requirement that the *federal advocate review transmission costs is not required* inasmuch as the Commission can request the advocate's review of transmission costs as a member of the Staff.

- (31) Alliance also seeks clarity as to whether transmission costs are to be recovered using a single commodity-type rate or as two separate rates, one commodity and the other demand. Alliance also is unclear whether Schedule B-4 of the Appendix to Rule 03 is requesting that the electric utility provide information on all quarterly actual transmission costs back to January 2006 or just the past two years. The Commission finds that the determination of whether a one or a two-part rate is appropriate should be considered on a case-by-case basis rather than by rule. We have, however, modified Schedule B-4 to include historical quarterly actual transmission cost recovery rider costs for the most recent two-year period rather than go back to January 2006.

Chapter 4901:1-37, Corporate Separation

- (32) Alliance, referring back to its original comments, argues that the Commission's rules do not go far enough in addressing record keeping, nondiscrimination standards regarding employee separation, and separation between electric's utility and affiliates' business operations. We find that the information we require from the electric utilities as part of the corporate separation plan, the code of conduct policies to be followed by the employees of the electric utilities and the utilities' affiliates,

and the complaint procedures, all contained in Rules 04 through 09, are more than adequate to address Alliance's concerns.

- (33) With respect to Rule 04, OCEA requests modifications to provisions (A)(1) and (A)(2) as they relate to electric utilities and their affiliates functioning independently. OCEA argues that the applicability of these provisions should be expanded to the electric utility's employees selling power outside the electric utility's service territory and to affiliates providing service to customers in other electric utility service territories. Also, OCEA requests that the cost allocation manual (CAM) should be made available to parties in Commission proceedings. It further contends that electric utility-comprised customer lists, used by affiliate and nonaffiliated CRES providers to solicit customers, should not include phone numbers and usage data for residential customers, should be considered confidential, and be used for only selling electric services. The Commission finds paragraphs (A)(1) and (A)(2) to this rule are meant to protect against market power in the electric utility's service territory and are appropriate as adopted. With regard to the electric utility-comprised customer list set forth in paragraph (D)(2), we find the inclusion of name, address and phone number to be appropriate as adopted in the rule. However, we have added language that the list cannot be used by the CRES provider for any other purpose than the marketing of electric service to the customer.
- (34) In Rule 05, OCEA wishes to limit joint advertising between the electric utility and its affiliates unless it is provided on a nondiscriminatory basis to other electric services companies. Further, OCEA believes that all parties to Commission proceedings should have access to the electric utility's designated compliance officer for corporate separation policy matters. The Commission finds, as it has in the past, that it would be unduly restrictive to prohibit joint advertising between an electric utility and its affiliates as proposed by OCEA. This chapter and the Commission's CRES and Electric Service and Safety Standards rules already establish certain requirements that apply to joint marketing between the electric utility and its affiliates. Further, we believe it is more appropriate to address the accessibility of the electric utility's compliance officer and any other employee, as well as access to

electric utility records showing compliance with this chapter, in actual proceedings where corporate separations issues have been raised rather than in this rule.

- (35) With regard to the establishment of CAMs set forth in Rule 08, OCEA requests that the minutes of the electric utility's board meetings be maintained for three years following cessation of the corporation and that underlying affiliate transaction information be maintained for five years instead of three. OCEA also contends that Staff audits of CAMs should be performed annually in writing, filed with the Commission, and include records of affiliates sharing employees and resources with the electric utility. The Commission has considered these issues when we adopted this rule and find no change is warranted. We also find that the process for auditing the CAMs can be established by the Commission and its Staff when an audit is initiated.
- (36) The last rule in this chapter, Rule 09, addresses the sale or transfer of generation assets. OCEA asserts that an application to sell or transfer generating assets should include information regarding the fair market value and the book value of the assets being transferred, and state how the fair market value was determined. The Commission finds this additional information could be helpful in determining whether the transfer is in the public interest. The rule has been revised accordingly. AEP argues that paragraph (F) of Rule 09, dealing with Staff access to records of the transferor and transferee, is too broad. The Commission finds this paragraph is not overly broad and only relates to records relevant to the transaction.
- (37) In its Order adopting this chapter, the Commission directed all electric utilities to file a corporate separation plan within 60 days of the effective of this chapter. FirstEnergy has requested that it be given 180 days to file its plan inasmuch as it currently has a plan on file with the Commission. The Commission finds that, with the revisions to corporate separation rules and the many changes that have occurred regarding electric industry restructuring, existing corporate separation plans adopted as part of earlier transition plans under SB 3 need to be updated. We believe that 60 days from the effective date of this chapter is

sufficient time to comply with the Commission's directive. Accordingly, the request is denied.

Chapter 4901:1-38, Reasonable Arrangements

- (38) OCEA suggests that, as part of Rules 03 and 04, the customer be required to provide additional information to the electric utility and the Commission as part of an application for approval of an economic development or energy efficiency arrangement. OCEA believes that the customer should provide the contract terms and conditions, the associated incentives, the term of the incentives if different than the contract term, estimated annual electric on-peak/off-peak demand and usage over the term of the incentives, estimated annual electric billings without incentives over the term of the incentives, and the estimated annual delta revenues over the term of the incentives. When the Commission adopted these rules and provided for the filing of applications for the approval of reasonable arrangements, we believed that the arrangements, which would contain certain of the information OCEA seeks to be added to the eligibility criteria, would be included with the application. To provide further clarity, we have amended Rules 03 and 04 to require that a copy of the proposed arrangement be filed with the application. We also will modify these rules to require additional information on the costs of incentives provided. Information regarding estimated costs of incentives and delta revenue will be considered with the electric utility's request for a rider for revenue recovery under this chapter. Further, we have modified these rules and Rule 05 to put parties on notice that reasonable arrangements are not to violate Sections 4905.33 and 4905.35, Revised Code. Lastly, we have modified these rules, as well as Rule 08, to permit affected parties to file motions to intervene and file comments and objections to any application filed pursuant to these rules.
- (39) Alliance and OCEA have requested that the Commission's rules provide more clarity with regard to confidential customer information provided to the electric utility and the Commission. The Commission has revised Rules 03(D) and 04(C) to provide that the electric utility shall request confidential treatment of customer-specific information that is filed with the Commission, with the exception of customer names and addresses. For

consistency, we have also added a provision on confidentiality to Rule 05, unique arrangements.

- (40) OEC disagrees with the Commission's decision not to adopt Staff's proposed rule provisions that would have required the electric utilities to file tariffs to implement energy efficiency programs tied to Section 4928.66(A), Revised Code. OEC believes that the better way to promote and encourage energy saving measures by customers is through established tariffs rather than a case-by-case approval basis. Specifically, OEC expresses concern that the Commission's decision "will mean that customer participation in every program developed by the utility to provide incentives to customers to undertake energy savings measures will have to be separately approved by the Commission as a 'unique arrangement.'" This concern is misplaced. The Commission agrees that a tariff designed to induce customers to implement energy savings measures could be a powerful and useful tool in meeting our State's goals. As such, we will consider implementing appropriate tariffs in suitable circumstances. We simply do not choose to use this rule as the vehicle by which to accomplish this outcome.
- (41) Rule 05, which addresses unique arrangements, allows mercantile customers to apply to the Commission for a unique arrangement with an electric utility. FirstEnergy argues that the Commission should make it clear that such applications require the electric utility's consent before they can be approved by the Commission. We believe FirstEnergy's position is not consistent with Section 4905.31, Revised Code, as modified by SB 221. This section provides that a mercantile customer may apply to the Commission to establish a reasonable arrangement with an electric utility. Although such arrangement requires Commission approval, there is no requirement that the electric utility must consent to the arrangement before the Commission approves it.
- (42) Alliance also believes that Rule 05 should be modified to provide a period of reexamination, at least every three years, of arrangements approved by the Commission. Inasmuch as the Commission is considering each application for a reasonable arrangement separately, the Commission believes it is best to consider when and how often each arrangement needs to be

reexamined on a case-by-case basis rather than a fixed set period established by rule.

- (43) Rule 06 requires the filing of annual reports by each customer and electric utility that have entered into reasonable arrangements pursuant to this chapter. With regard to the reporting requirements set forth in Rule 06, OCEA expressed concern that some of the provisions of this rule are directed at the customers receiving the reasonable arrangements instead of the electric utilities that the Commission regulates. FirstEnergy argues that the customer reports should be submitted directly to the Commission and that no summary of these reports needs to be filed by the electric utilities as currently required by the rule. The Commission has modified this rule to direct its action at the electric utility. However, we believe it is important for the electric utilities to summarize the customer reports and submit those summaries to the Staff to ensure that the electric utilities are aware of every customer's compliance with the terms of the reasonable arrangements.
- (44) Rule 08 addresses the recovery of costs and delta revenue associated with reasonable arrangements. OCEA asserts that there should be a 50/50 split of the cost recovery between customers and the utility as has been done in the past. FirstEnergy on the other hand believes that all costs associated with reasonable arrangements should be guaranteed recovery by the electric utility before the arrangements go into effect. FirstEnergy believes that such an approach will advance regional economic growth and foster job creation. As stated in our Order, Section 4905.31(E), Revised Code, requires Commission approval for the recovery of costs incurred and revenues forgone as a result of reasonable arrangements. We do not agree with FirstEnergy's interpretation of Section 4905.31, Revised Code. At the discretion of the Commission, a determination on cost recovery may be made at the time the arrangement is approved or after the filing of an application for a rider for the recovery of costs and foregone revenues. We also note that pursuant to Section 4905.31(E), Revised Code, that a schedule or arrangement "may include a device to recover costs incurred in conjunction with any economic development or job retention program of the utility . . . , including recovery of revenue foregone," but the statute does not require the

inclusion of such a device. Accordingly, no change to this rule is warranted based on the arguments raised by OCEA and FirstEnergy.

- (45) OCEA believes that a customer's failure to substantially comply with the reporting requirements addressed in Rule 06 should also be a reason for the electric utility to terminate the arrangement under Rule 09. The Commission finds this modification to be appropriate to help ensure compliance by the customer receiving service under a reasonable arrangement. FirstEnergy argues that the term "substantially" should be deleted as being too ambiguous and providing too much discretion. The Commission believes that to modify the rule as proposed by FirstEnergy would provide too little flexibility in monitoring customer compliance and could create harsh consequences for minor noncompliance issues. Therefore, FirstEnergy's request is denied.

CONCLUSION:

The Commission finds that, based on the arguments raised by various parties on rehearing, the rules adopted by the Commission on September 17, 2008 should be modified as set forth in this Entry on Rehearing. Attached is a copy of Rules 4901:1-35-02, 03 and 09, 4901:1-36-02, 03 and 04, 4901:1-37-02, 04 and 09, and 4901:1-38-02, 03, 04, 05, 06, 08, and 09 as modified on rehearing.

ORDER:

It is, therefore,

ORDERED, That the attached rules as modified are hereby adopted. It is, further,

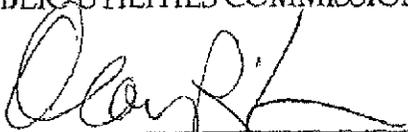
ORDERED, That Duke's motion for a protective order is granted for a period of 18 months from the issuance of this Entry on Rehearing. It is, further,

ORDERED, That Chapters 4901:1-35, 4901:1-36, 4901:1-37, and 4901:1-38 as modified by this Entry on Rehearing should be refiled with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the review date for Chapters 4901:1-35, 4901:1-36, 4901:1-37, and 4901:1-38 shall be September 30, 2013. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties filing comments in this docket and all interested parties of record.

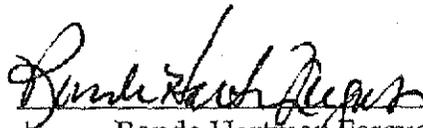
THE PUBLIC UTILITIES COMMISSION OF OHIO



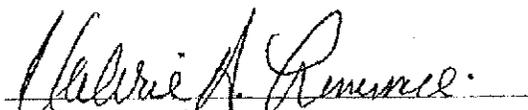
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

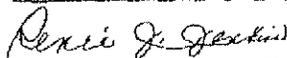


Cheryl L. Roberto

KWB:ct/geb

Entered in the Journal

FEB 11 2009



Reneé J. Jenkins
Secretary

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4901:1-35-02

Purpose and scope.

(A) Pursuant to division (A) of section 4928.141 of the Revised Code, beginning January 1, 2009, each electric utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Pursuant to this chapter, an electric utility shall file an application for commission approval of an SSO. Such application shall be in the form of an electric security plan or market rate offer pursuant to sections 4928.142 and 4928.143 of the Revised Code. The purpose of this chapter is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the commission's review of that application.

(B) To the extent not mandated by statute, the commission may waive any requirement of Chapter 4901:1-35 of the Administrative Code for good cause shown.

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4901:1-35-03

Filing and contents of applications.

Each electric utility in this state filing an application for a standard service offer (SSO) in the form of an electric security plan (ESP), a market-rate offer (MRO), or both, shall comply with the requirements set forth in this rule.

(A) SSO applications shall be case captioned as (XX-XXX-EL-SSO). Twenty copies plus an original of the application shall be filed. The application must include a complete set of direct testimony of the electric utility personnel or other expert witnesses. This testimony shall be in question and answer format and shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.

(B) An SSO application that contains a proposal for an MRO shall comply with the requirements set forth below.

(1) The following electric utility requirements are to be demonstrated in a separate section of the standard service offer SSO application proposing a market-rate offer MRO:

(a) The electric utility shall establish one of the following: that it, or its transmission affiliate, belongs to at least one regional transmission organization (RTO) that has been approved by the federal energy regulatory commission; or, if the electric utility or its transmission affiliate does not belong to an RTO, then the electric utility shall demonstrate that alternative conditions exist with regard to the transmission system, which include non-pancaked rates, open access by generation suppliers, and full interconnection with the distribution grid.

(b) The electric utility shall establish one of the following: that its RTO retains an independent market-monitor function that has the ability to identify any potential for a market participant or the electric utility to exercise market power in any energy, capacity, and/or ancillary service markets, whether such market is administered by the RTO or whether it is a bilateral market, by virtue of access to the RTO and the market participant's data and personnel, and that has the ability to effectively mitigate the conduct of the market participants so as to prevent or preclude the exercise of such market power by any market participant or the electric utility; or the electric utility shall demonstrate that an equivalent function exists which can monitor, identify, and mitigate conduct associated with the exercise of such market power.

(c) The electric utility shall demonstrate that an independent and reliable source of electricity pricing information for any product or service necessary for a winning bidder to fulfill the contractual obligations resulting from the

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competitive bidding process (CBP) is publicly available. The information may be offered through a pay subscription service, but the pay subscription service shall be available under standard pricing, terms, and conditions to any person requesting a subscription. The published information shall be representative of prices and changes in prices in the electric utility's electricity market, and shall identify pricing of on-peak and off-peak energy products that represent contracts for delivery, encompassing a time frame beginning at least two years from the date of the publication. The published information shall be updated on at least a monthly basis.

- (2) Prior to establishing an MRO under division (A) of section 4928.142 of the Revised Code, an electric utility shall file a plan for a CBP with the commission. The electric utility shall provide justification of its proposed CBP plan, considering alternative possible methods of procurement. Each CBP plan that is to be used to establish an MRO shall include the following:
- (a) A complete description of the CBP plan and testimony explaining and supporting each aspect of the CBP plan. The description shall include a discussion of any relationship between the wholesale procurement process and the retail rate design that may be proposed in the CBP plan. The description shall include a discussion of alternative methods of procurement that were considered and the rationale for selection of the CBP plan being presented. The description shall also include an explanation of every proposed non-avoidable charge, if any, and why the charge is proposed to be non-avoidable.
 - (b) Pro forma financial projections of the effect of the CBP plan's implementation, including implementation of division (D) of section 4928.142 of the Revised Code, upon generation, transmission, and distribution of the electric utility, for the duration of the CBP plan.
 - (c) Projected generation, transmission, and distribution rate impacts by customer class and rate schedules for the duration of the CBP plan. The electric utility shall clearly indicate how projected bid clearing prices used for this purpose were derived.
 - (d) Detailed descriptions of how the CBP plan ensures an open, fair, and transparent competitive solicitation that is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code.
 - (e) Detailed descriptions of the customer load(s) to be served by the winning bidder(s), and any known factors that may affect such customer loads. The descriptions shall include, but not be limited to, load subdivisions defined for bidding purposes, load and rate class descriptions, customer load profiles that include historical hourly load data for each load and rate class

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for at least the two most recent years, applicable tariffs, historical shopping data, and plans for meeting targets pertaining to load reductions, energy efficiency, renewable energy, advanced energy, and advanced energy technologies. If customers will be served pursuant to time-differentiated or dynamic pricing, the descriptions shall include a summary of available data regarding the price elasticity of the load. Any fixed load provides to be served by winning bidder(s) shall be described.

- (f) Detailed descriptions of the generation and related services that are to be provided by the winning bidder(s). The descriptions shall include, at a minimum, capacity, energy, transmission, ancillary and resource adequacy services, and the term during which generation and related services are to be provided. The descriptions shall clearly indicate which services are to be provided by the winning bidder(s) and which services are to be provided by the electric utility.
- (g) Draft copies of all forms, contracts, or agreements that must be executed during or upon completion of the CBP.
- (h) A clear description of the proposed methodology by which all bids would be evaluated, in sufficient detail so that bidders and other observers can ascertain the evaluated result of any bids or potential bids.
- (i) The CBP plan shall include a discussion of time-differentiated pricing, dynamic retail pricing, and other alternative retail rate options that were considered in the development of the CBP plan. A clear description of the rate structure ultimately chosen by the electric utility, the electric utility's rationale for selection of the chosen rate structure, and the methodology by which the electric utility proposes to convert the winning bid(s) to retail rates of the electric utility shall be included in the CBP plan.
- (j) The first application for a market rate offer by an electric utility that, as of July 31, 2008, directly owned, in whole or in part, operating electric generation facilities that had been used and useful in this state shall include a description of the electric utility's proposed blending of the CBP rates for the first five years of the market rate offer pursuant to division (D) of section 4928.142 of the Revised Code. The proposed blending shall show the generation service price(s) that will be blended with the CBP determined rates, and any descriptions, formulas, and/or tables necessary to show how the blending will be accomplished. The proposed blending shall show all adjustments, to be made on a quarterly basis, included in the generation service price(s) that the electric utility proposes for changes in costs of fuel, purchased power, portfolio requirements, and environmental compliance incurred during the blending period. The electric utility shall provide its best current estimate of anticipated adjustment amounts for the duration of the blending period, and compare the projected adjusted

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generation service prices under the CBP plan to the projected adjusted generation service prices under its proposed electric security plan.

- (k) The electric utility's application to establish a CBP shall include such information as necessary to demonstrate whether or not, as of July 31, 2008, the electric utility directly owned, in whole or in part, operating electric generation facilities that had been used and useful in the state of Ohio.
 - (l) The CBP plan shall provide for funding of a consultant that may be selected by the commission to assess and report to the commission on the design of the solicitation, the oversight of the bidding process, the clarity of the product definition, the fairness, openness, and transparency of the solicitation and bidding process, the market factors that could affect the solicitation, and other relevant criteria as directed by the commission. Recovery of the cost of such consultant(s) may be included by the electric utility in its CBP plan.
 - (m) The CBP plan shall include a discussion of generation service procurement options that were considered in development of the CBP plan, including but not limited to, portfolio approaches, staggered procurement, forward procurement, electric utility participation in day-ahead and/or real-time balancing markets, and spot market purchases and sales. The CBP plan shall also include the rationale for selection of any or all of the procurement options.
 - (n) The electric utility shall show, as a part of its CBP plan, any relationship between the CBP plan and the electric utility's plans to comply with alternative energy portfolio requirements of section 4928.64 of the Revised Code, and energy efficiency requirements and peak demand reduction requirements of section 4928.66 of the Revised Code. The initial filing of a CBP plan shall include a detailed account of how the plan is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include a discussion of how the state policy continues to be advanced by the plan.
 - (o) An explanation of known and anticipated obstacles that may create difficulties or barriers for the adoption of the proposed bidding process.
- (3) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the Commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the Commission pursuant to Chapter 4901:1-37 of the Administrative Code.

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(4) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I) and (K) of section 4928.20 of the Revised Code.

(C) An SSO application that contains a proposal for an ESP shall comply with the requirements set forth below.

(1) A complete description of the ESP and testimony explaining and supporting each aspect of the ESP.

(2) Pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP, together with testimony and work papers sufficient to provide an understanding of the assumptions made and methodologies used in deriving the pro forma projections.

(3) Projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any.

(4) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including, but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the commission pursuant to Chapter 4901:1-37 of the Administrative Code.

(5) Division (A)(3) of section 4928.31 of the Revised Code required each electric utility to file an operational support plan as a part of its electric transition plan. Each electric utility shall provide a statement as to whether its operational support plan has been implemented and whether there are any outstanding problems with the implementation.

(6) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.

(7) A description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP.

(8) The initial filing for an ESP shall include a detailed account of how the ESP is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include how the state policy is advanced by the ESP.

(9) Specific Information

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Division (B)(2) of Section 4928.143 of the Revised Code authorizes the provision or inclusion in an ESP of a number of features or mechanisms. To the extent that an electric utility includes any of these features in its ESP, it shall file the corresponding information in its application.

(a) Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions shall include, at a minimum, the information described below:

(i) The type of cost the electric utility is seeking recovery for under division (B)(2) of section 4928.143 of the Revised Code including a summary and detailed description of such cost. The description shall include the plant(s) that the cost pertains to as well as a narrative pertaining to the electric utility's procurement policies and procedures regarding such cost.

(ii) The electric utility shall include in the application any benefits available to the electric utility as a result of or in connection with such costs including but not limited to profits from emission allowance sales and profits from resold coal contracts.

(iii) The specific means by which these costs will be recovered by the electric utility. In this specification, the electric utility must clearly distinguish whether these costs are to be recovered from all distribution customers or only from the customers taking service under the ESP.

(iv) A complete set of work papers supporting the cost must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative and other support of assumptions made in completing the work papers.

(b) Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an electric utility to include unavoidable surcharges for construction, generation, or environmental expenditures for electric generation facilities owned or operated by the electric utility. Any plan which seeks to impose surcharge under these provisions shall include the following sections, as appropriate:

(i) The application must include a description of the projected costs of the proposed facility. The need for the proposed facility must have already been reviewed and determined by the commission through an

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integrated resource planning process filed pursuant to rule 4901:5-5-05 of the Administrative Code.

(ii) The application must also include a proposed process, subject to modification and approval by the commission, for the competitive bidding of the construction of the facility unless the commission has previously approved a process for competitive bidding, which would be applicable to that specific facility.

(iii) An application which provides for the recovery of a reasonable allowance for construction work in progress shall include a detailed description of the actual costs as of a date certain for which the applicant seeks recovery, a detailed description of the impact upon rates of the proposed surcharge, and a demonstration that such a construction work in progress allowance is consistent with the applicable limitations of division (A) of section 4909.15 of the Revised Code.

(iv) An application which provides recovery of a surcharge for an electric generation facility shall include a detailed description of the actual costs, as of a date certain, for which the applicant seeks recovery and a detailed description of the impact upon rates of the proposed surcharge.

(v) An application which provides for recovery of a surcharge for an electric generation facility shall include the proposed terms for the capacity, energy, and associated rates for the life of the facility.

(c) Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:

(i) A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.

(ii) A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery.

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together with the carrying costs, amortization periods, and avoidability of such charges.

(iii) A listing, description, and quantitative justification of any unavoidable charges for standby, back-up, or supplemental power.

(d) Division (B)(2)(e) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for automatic increases or decreases in any component of the standard service offer price. Pursuant to this authority, if the ESP proposes automatic increases or decreases to be implemented during the life of the plan for any component of the standard service offer, other than those covered by division (B)(2)(a) of section 4928.143 of the Revised Code, the electric utility must provide in its application a description of the component, the proposed means for changing the component, and the proposed means for verifying the reasonableness of the change.

(e) Division (B)(2)(f) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the securitization of authorized phase-in recovery of the standard service offer price. If a phase-in deferred asset is proposed to be securitized, the electric utility shall provide, at the time of an application for securitization, a description of the securitization instrument and an accounting of that securitization, including the deferred cash flow due to the phase-in, carrying charges, and the incremental cost of the securitization. The electric utility will also describe any efforts to minimize the incremental cost of the securitization. The electric utility shall provide all documentation associated with securitization, including but not limited to, a summary sheet of terms and conditions. The electric utility shall also provide a comparison of costs associated with securitization with the costs associated with other forms of financing to demonstrate that securitization is the least cost strategy.

(f) Division (B)(2)(g) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions relating to transmission and other specified related services. Moreover, division (A)(2) of section 4928.05 of the Revised Code states that, notwithstanding Chapters 4905, and 4909, of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs (net of transmission related revenues), including ancillary and net congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

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Any utility which seeks to create or modify its transmission cost recovery rider in its ESP shall file the rider in accordance with the requirements delineated in Chapter 4901:1-36 of the Administrative Code.

(g) Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility shall provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:

(i) A description of the infrastructure modernization plan, including but not limited to, the electric utility's existing infrastructure, its existing asset management system and related capabilities, the type of technology and reason chosen, the portion of service territory affected, the percentage of customers directly impacted (non-rate impact), and the implementation schedule by geographic location and/or type of activity. A description of any communication infrastructure included in the infrastructure modernization plan and any metering, distribution automation, or other applications that may be supported by this communication infrastructure also shall be included.

(ii) A description of the benefits of the infrastructure modernization plan (in total and by activity or type), including but not limited to the following as they may apply to the plan: the impacts on current reliability, the number of circuits impacted, the number of customers impacted, the timing of impacts, whether the impact is on the frequency or duration of outages, whether the infrastructure modernization plan addresses primary outage causes, what problems are addressed by the infrastructure modernization plan, the resulting dollar savings and additional costs, the activities affected and related accounts, the timing of savings, other customer benefits, and societal benefits. Through metrics and milestones, the infrastructure modernization plan shall include a description of how the performance and outcomes of the plan will be measured.

(iii) A detailed description of the costs of the infrastructure modernization plan, including a breakdown of capital costs and operating and

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maintenance expenses net of any related savings, the revenue requirement, including recovery of stranded investment related to replacement of un-depreciated plant with new technology, the impact on customer bills, service disruptions associated with plan implementation, and description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement. The infrastructure modernization plan shall also include a description of efforts made to mitigate such stranded investment.

(iv) A detailed description of any proposed cost recovery mechanism, including the components of any regulatory asset created by the infrastructure modernization plan, the reporting structure and schedule, and the proposed process for approval of cost recovery and increase in rates.

(v) A detailed explanation of how the infrastructure modernization plan aligns customer and electric utility reliability and power quality expectations by customer class.

(h) Division (B)(2)(i) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for economic development, job retention, and energy efficiency programs. Pursuant to this section, the electric utility shall provide a complete description of the proposal, together with cost-benefit analysis or other quantitative justification, and quantification of the program's projected impact on rates.

(10) Additional required information

Divisions (E) and (F) of section 4928.143 of the Revised Code provide for tests of the ESP with respect to significantly excessive earnings. Division (E) of section 4928.143 of the Revised Code is applicable only if an ESP has a term exceeding three years, and would require an earnings determination to be made in the fourth year. Division (F) of section 4928.143 of the Revised Code applies to any ESP and examines earnings after each year. In each case, the burden of proof for demonstrating that the return on equity is not significantly excessive is borne by the electric utility.

(a) For the annual review pursuant to division (F) of section 4928.143 of the Revised Code, the electric utility shall provide testimony and analysis demonstrating the return on equity that was earned during the year and the returns on equity earned during the same period by publicly traded companies that face comparable business and financial risks as the electric utility. In addition, the electric utility shall provide the following information:

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- (i) The federal energy regulatory commission form 1 (FERC form 1) in its entirety for the annual period under review. The electric utility may seek protection of any confidential or proprietary data if necessary. If the FERC form 1 is not available, the electric utility shall provide balance sheet and income statement information of at least the level of detail as required by FERC form 1.
- (ii) The latest securities and exchange commission form 10-K in its entirety. The electric utility may seek protection of any confidential or proprietary data if necessary.
- (iii) Capital budget requirements for future committed investments in Ohio for each annual period remaining in the ESP.
- (b) For demonstration under division (E) of section 4928.143 of the Revised Code, the electric utility shall also provide, in addition to the requirements under division (F) of section 4928.143 of the Revised Code, calculations of its projected return on equity for each remaining year of the ESP. The electric utility shall support these calculations by providing projected balance sheet and income statement information for the remainder of the ESP, together with testimony and work papers detailing the methodologies, adjustments, and assumptions used in making these projections.
- (D) The first application for an SSO filed after the effective date of section 4928.141 of the Revised Code by each electric utility shall include an ESP and shall be filed at least one hundred fifty days before the electric utility proposes to have such SSO in effect. The first application may also include a proposal for an MRO. First applications that are filed with the commission prior to the initial effective date of this rule and that are determined by the commission to be not in substantive compliance with this rule shall be amended or refiled at the direction of the commission. The commission shall endeavor to make a determination on an amended or refiled ESP application, which substantively conforms to the requirements of this rule, within one hundred fifty days of the filing of the amended or refiled application.
- (E) Subsequent applications for an SSO may include an ESP and/or MRO; however, an ESP may not be proposed once the electric utility has implemented an MRO approved by the commission.
- (F) The SSO application shall include a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. If any waivers of the corporate separation plan have been granted and are to be continued, the applicant shall justify the continued need for those waivers.

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- (G) A complete set of work papers must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative or other support of assumptions made in the work papers. Work papers shall be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used.
- (H) All schedules, tariff sheets, and work papers prepared by, or at the direction of, the electric utility for the application and included in the application must be available in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers. The electronic form does not have to be filed with the application but must be made available within two business days to staff and any intervening party that requests it.

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4901:1-35-09

Electric security plan fuel and purchased power adjustments.

- (A) Each electric utility for which the commission has approved an electric security plan (ESP) which includes automatic adjustments under division (B)(2)(a) of section 4928.143 of the Revised Code shall file for such adjustments in accordance with the provisions of this rule.
- (B) The electric utility shall calculate a proposed quarterly adjustment based on projected costs and reconciliation requirements by filing an application four times per year. The staff shall review the quarterly filing for completeness and computational accuracy. If staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date. Although rates are to be adjusted and provided on a quarterly basis, the cost information shall be summarized monthly.
- (C) On an annual basis, the prudence of the costs incurred and recovered through quarterly adjustments shall be reviewed in a separate proceeding outside of the automatic recovery provision of the electric utility's ESP. The electric utility shall demonstrate that the costs were prudently incurred as required under division (B)(2)(a) of section 4928.143 of the Revised Code and, if a significant change in costs has incurred, include an analysis comparing the electric utility's resource and/or environmental compliance strategy with supply and demand-side alternatives. The process and timeframes for that separate proceeding shall be set by order of the commission, the legal director, deputy legal director, or attorney examiner.
- (D) The commission may order that consultants be hired, with the costs billed to the electric utility, to conduct prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments.

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4901:1-36-02 **Purpose and scope.**

(A) This chapter authorizes an electric utility to recover, through a reconcilable rider on the electric utility's distribution rates, all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility, net of financial transmission rights and other transmission-related revenues credited to the electric utility, by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

(B) To the extent not mandated by statute, the commission may waive any requirement of Chapter 4901:1-36 of the Administrative Code for good cause shown.

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4901:1-36-03 Application.

- (A) Each electric utility which seeks recovery of transmission and transmission-related costs shall file an application with the Commission for a transmission cost recovery rider. The initial application shall include all information set forth in the appendix to this rule.
- (B) Each electric utility with an approved transmission cost recovery rider shall update the rider on an annual basis pursuant to a schedule set forth by commission order. Each application to update the transmission cost recovery rider shall include all information set forth in the appendix to this rule.
- (C) The commission may order that consultants be hired, with the costs billed to the electric utility and recoverable through the rider, to conduct prudence and/or financial reviews of the costs incurred and recovered through the transmission cost recovery rider.
- (D) Each annual application to update the transmission cost recovery rider should be made not less than seventy-five days prior to the proposed effective date of the updated rider.
- (E) If at anytime during the period between annual update filings, the electric utility or staff determines that costs are or will be substantially different than the amounts authorized as the result of the electric utility's previous application, the electric utility should file, on its own initiative or by order of the commission, an interim application to adjust the transmission cost recovery rider in order to avoid excessive carrying costs and to minimize rate impacts for the following update filing.
- (F) Affected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule within forty days of the date of the filing of the application.

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4901:1-36-04 Limitations.

- (A) The transmission cost recovery rider costs are reconcilable on an annual basis, with carrying charges to be applied to both over- and under-recovery of costs.
- (B) The transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers and the electric utility no longer bears the responsibility of providing generation and transmission service to the customers.
- (C) The transmission cost recovery rider shall include transmission and transmission-related costs and off-setting revenues, including ancillary and congestion-related costs and revenues, charged or credited to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission to the extent such costs and revenues are not included in any other schedule or rider in the electric utility's tariff on file with the commission.

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4901:1-37-02 Purpose and scope.

- (A) The purpose of this chapter is to require all of the state's electric utilities to meet the same standards so a competitive advantage is not gained solely because of corporate affiliation.
- (B) This chapter is intended to create competitive equality, prevent unfair competitive advantage, prohibit the abuse of market power and effectuate the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (C) To the extent not mandated by statute, the commission may waive any requirement of Chapter 4901:1-37 of the Administrative Code for good cause shown.
- (D) To ensure compliance with this chapter, examination of the books and records of affiliates may be necessary.
- (E) Violations of this chapter shall be subject to section 4928.18 of the Revised Code. The electric utility has the burden of proof to demonstrate compliance with this chapter.

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4901:1-37-04 General provisions.

(A) Structural safeguards.

- (1) Each electric utility and its affiliates that provide services to customers within the electric utility's service territory shall function independently of each other.
- (2) Each electric utility and its affiliates that provide services to customers within the electric utility's service territory shall not share facilities and services if such sharing in any way violates paragraph (D) of this rule.
- (3) Cross-subsidies between an electric utility and its affiliates are prohibited. An electric utility's operating employees and those of its affiliates shall function independently of each other.
- (4) An electric utility may not share employees and/or facilities with any affiliate, if the sharing, in any way, violates paragraph (D) of this rule.
- (5) An electric utility shall ensure that all shared employees appropriately record and charge their time based on fully allocated costs.
- (6) Transactions made in accordance with rules, regulations, or service agreements approved by the federal energy regulatory commission, securities and exchange commission, and the commission, which rules the electric utility shall maintain in its cost allocation manual (CAM) and file with the commission, shall provide a rebuttable presumption of compliance with the costing principles contained in this chapter.

(B) Separate accounting.

Each electric utility and its affiliates shall maintain, in accordance with generally accepted accounting principles and an applicable uniform system of accounts, books, records, and accounts that are separate from the books, records, and accounts of its affiliates.

(C) Financial arrangements.

Unless otherwise approved by the commission, the financial arrangements of an electric utility are subject to the following restrictions:

- (1) Any indebtedness incurred by an affiliate shall be without recourse to the electric utility.

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- (2) An electric utility shall not enter into any agreement with terms under which the electric utility is obligated to commit funds to maintain the financial viability of an affiliate.
- (3) An electric utility shall not make any investment in an affiliate under any circumstances in which the electric utility would be liable for the debts and/or liabilities of the affiliate incurred as a result of actions or omissions of an affiliate.
- (4) An electric utility shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an affiliate.
- (5) An electric utility shall not assume any obligation or liability as a guarantor, endorser, surety, or otherwise with respect to any security of an affiliate.
- (6) An electric utility shall not pledge, mortgage, or use as collateral any assets of the electric utility for the benefit of an affiliate.

(D) Code of Conduct.

- (1) The electric utility shall not release any proprietary customer information (e.g., individual customer load profiles or billing histories) to an affiliate, or otherwise, without the prior authorization of the customer, except as required by a regulatory agency or court of law.
- (2) On or after the effective date of this chapter, the electric utility shall make customer lists, which include name, address, and telephone number, available on a nondiscriminatory basis to all nonaffiliated and affiliated certified retail electric service providers transacting business in its service territory, unless otherwise directed by the customer. This provision does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services. This information shall not be used by the certified retail electric service providers for any other purpose than the marketing of electric service to the customer.
- (3) Employees of the electric utility's affiliates shall not have access to any information about the electric utility's transmission or distribution systems (e.g., system operations, capability, price, curtailments, and ancillary services) that is not contemporaneously available, readily accessible, and in the same form and manner available to a nonaffiliated competitors providing retail electric service.
- (4) An electric utility shall treat as confidential all information obtained from a competitive retail electric service provider, both affiliated and nonaffiliated, and shall not release such information, unless a competitive retail electric service provider provides authorization to do so or unless the information was or

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thereafter becomes available to the public other than as a result of disclosure by the electric utility.

- (5) The electric utility shall not tie (or allow an affiliate to tie), as defined by state and federal antitrust laws, or otherwise condition the provision of the electric utility's regulated services, discounts, rebates, fee waivers, or any other waivers of the electric utility's ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and/or services from the electric utility's affiliates.
- (6) The electric utility shall ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.
- (7) The electric utility, upon request from a customer, shall provide a complete list of all competitive retail electric service providers operating on the system, but shall not endorse any competitive retail electric service providers, indicate that an electric services company is an affiliate, or indicate that any competitive retail electric service provider will receive preference because of an affiliate relationship.
- (8) The electric utility shall use reasonable efforts to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power and the electric utility's compliance officer shall promptly report any such unreasonable sales practices, market deficiencies, and market power to the director of the utilities department (or their designee).
- (9) Employees of the electric utility or persons representing the electric utility shall not indicate a preference for an affiliated electric services company.
- (10) The electric utility shall provide comparable access to products and services related to tariffed products and services and specifically comply with the following:
 - (a) An electric utility shall be prohibited from unduly discriminating in the offering of its products and/or services.
 - (b) The electric utility shall apply all tariff provisions in the same manner to the same or similarly situated entities, regardless of any affiliation or nonaffiliation.
 - (c) The electric utility shall not, through a tariff provision, a contract, or otherwise, give its affiliates or customers of affiliates preferential treatment or advantages over nonaffiliated competitors of retail electric service or their customers in matters relating to any product and/or service.

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(d) The electric utility shall strictly follow all tariff provisions.

(e) Except to the extent allowed by any applicable law, regulation, or commission order, the electric utility shall not be permitted to provide discounts, rebates, or fee waivers for any retail electric service.

(11) Shared representatives or shared employees of the electric utility and affiliated electric services company shall clearly disclose upon whose behalf their public representations are being made when such representations concern the entity's provision of electric services.

(E) Emergency.

(1) Notwithstanding the foregoing, in a declared emergency situation, an electric utility may take actions necessary to ensure public safety and system reliability.

(2) The electric utility shall maintain a log of all such actions that do not comply with this chapter, and such log shall be subject to review by the commission and its staff.

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4901:1-37-09

Sale or transfer of generating assets.

- (A) Consistent with division (E) of section 4928.17 of the Revised Code, an electric utility shall not sell or transfer any generating asset it wholly or partly owns without prior commission approval.
- (B) An electric utility may apply for commission approval to sell or transfer its generating assets by filing an application to sell or transfer.
- (C) An application to sell or transfer generating assets shall, at a minimum:
- (1) Clearly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same.
 - (2) Demonstrate how the sale or transfer will affect the current and future standard service offer established pursuant to section 4928.141 of the Revised Code.
 - (3) Demonstrate how the proposed sale or transfer will affect the public interest.
 - (4) State the fair market value and book value of all property to be transferred from the electric utility, and state how the fair market value was determined.
- (D) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust, unreasonable, or not in the public interest. The commission shall fix a time and place for a hearing with respect to any application that proposes to alter the jurisdiction of the commission over a generation asset.
- (E) If, after such hearing or in the case that no hearing is required, the commission is satisfied that the sale or transfer is just, reasonable, and in the public interest, it shall issue an order approving the application to sell or transfer.
- (F) Staff shall have access to all books, accounts, and/or other pertinent records maintained by the transferor and transferee as related to the application to sell or transfer generating assets and in accordance with rule 4901:1-37-07 of the Administrative Code.

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4901:1-38-02 Purpose and scope.

(A) The purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency and to provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates in furtherance of the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.

(B) To the extent not mandated by statute, the commission may waive any requirement of Chapter 4901:1-38 of the Administrative Code for good cause shown.

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4901:1-38-03

Economic development arrangements.

(A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an economic development arrangement between the electric utility and a new or expanding customer or group of customers. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.

(1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.

(2) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, at a minimum, meet the following criteria, submit to the electric utility and the commission verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:

(a) Eligible projects shall be for non retail purposes.

(b) At least twenty-five new, full-time or full-time equivalent jobs shall be created within three years of initial operations.

(c) The average hourly base wage rate of the new, full-time or full-time equivalent jobs shall be at least one hundred fifty per cent of the federal minimum wage.

(d) The customer shall demonstrate financial viability.

(e) The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.

(f) The customer shall identify potential secondary and tertiary benefits resulting from its project including, but not limited to, local/state tax dollars and related employment or business opportunities resulting from the location of the facility.

(g) The customer shall agree to maintain operations at the project site for the term of the incentives.

(3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development

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arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.

(B) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for an economic development arrangement between the electric utility and its customer or group of customers for the retention of an existing customer(s) likely to cease, reduce, or relocate its operations out of state. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.

(1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.

(2) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, at a minimum, meet the following criteria, submit to the electric utility verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:

(a) Eligible projects shall be for non-retail purposes.

(b) The number of full-time or full-time equivalent jobs to be retained shall be at least twenty-five.

(c) The average billing load (in kilowatts to be retained) shall be at least two hundred fifty kilowatts.

(d) The customer shall demonstrate that the cost of electricity is a major factor in its decision to cease, reduce, or relocate its operations to an out-of-state site. In-state relocations are not eligible. If the customer has the potential to relocate to an out-of-state site, the site(s) shall be identified, along with the expected costs of electricity at the site(s) and the expected costs of other significant expenses including, but not limited to, labor and taxes.

(e) The customer shall identify any other local, state, or federal assistance sought and/or received in order to maintain its current operations.

(f) The customer shall agree to maintain its current operations for the term of the incentives.

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- (3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (C) Upon the filing of an economic development application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
- (1) The economic development arrangement shall be subject to change, alteration, or modification by the commission.
- (2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the economic development arrangements.
- (D) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.
- (E) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

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4901:1-38-04

Energy efficiency arrangements.

(A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an energy efficiency arrangement between the electric utility and its customer or group of customers that have new or expanded energy efficiency production facilities. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.

(1) Each customer requesting to take service pursuant to an energy efficiency arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.

(2) Each customer requesting to take service pursuant to an energy efficiency arrangement with the electric utility shall meet the following criteria, submit to the electric utility verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:

(a) The customer shall be an energy efficiency production facility as defined in this chapter.

(b) At least ten new, full-time or full-time equivalent jobs shall be created within three years of initial operations.

(c) The average hourly base wage rate of the new, full-time, or full-time equivalent jobs shall be at least one hundred fifty per cent of federal minimum wage.

(d) The customer shall demonstrate financial viability.

(e) The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.

(f) The customer shall agree to maintain operations at the project site for the term of the incentives.

(3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an energy efficiency arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35

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of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.

(B) Upon the filing of an energy efficiency application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.

(1) The energy efficiency arrangement shall be subject to change, alteration, or modification by the commission.

(2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the energy efficiency arrangements.

(C) Customer information provided to demonstrate eligibility under paragraph (A) of this rule shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.

(D) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

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4901:1-38-05 Unique arrangements.

(A) Notwithstanding rules 4901:1-38-03 and 4901:1-38-04 of the Administrative Code, an electric utility may file an application pursuant to section 4905.31 of the Revised Code for commission approval of a unique arrangement with one or more of its customers, consumers, or employees.

(1) An electric utility filing an application for commission approval of a unique arrangement with one or more of its customers, consumers, or employees bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.

(2) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.

(3) The unique arrangement shall be subject to change, alteration, or modification by the commission.

(B) A mercantile customer, or a group of mercantile customers, of an electric utility may apply to the commission for a unique arrangement with the electric utility.

(1) Each customer applying for a unique arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement.

(2) The customer shall provide an affidavit from a company official as to the veracity of the information provided.

(3) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.

(4) The unique arrangement shall be subject to change, alteration, or modification by the commission.

(C) Each applicant applying for approval of a unique arrangement between an electric utility and one or more of its customers, consumers, or employees shall describe how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.

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- (D) Unique arrangements shall reflect terms and conditions for circumstances for which the electric utility's tariffs have not already provided.
- (E) Customer information provided to the electric utility to obtain a unique arrangement shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.
- (F) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

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4901:1-38-06

Reporting requirements.

(A) Each electric utility shall require each of its customers served under any reasonable arrangement established pursuant to this chapter to submit an annual report to the electric utility and staff no later than April thirtieth of each year. The format of that report shall be determined by staff such that a determination of the compliance with the eligibility criteria can be determined, the value of any incentives received by the customer(s) is identified, and the potential impact on other customers can be calculated.

(B) The burden of proof to demonstrate ongoing compliance with the reasonable arrangement lies with the customer(s). The electric utility shall summarize the reports provided by customers under paragraph (A) of this rule and submit such summary to staff for review and audit no later than June fifteenth of each year.

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4901:1-38-08 Revenue recovery.

(A) Each electric utility that is serving customers pursuant to approved reasonable arrangements, may apply for a rider for the recovery of certain costs associated with its delta revenue for serving those customers pursuant to reasonable arrangements in accordance with the following:

- (1) The approval of the request for revenue recovery, including the level of such recovery, shall be at the commission's discretion.
- (2) The electric utility may request recovery of direct incremental administrative costs related to the programs as part of the rider. Such cost recovery shall be subject to audit, review, and approval by the commission.
- (3) For reasonable arrangements in which incentives are given based upon cost savings to the electric utility (including, but not limited to, nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates, real-time-pricing rates), the cost savings shall be an offset to the recovery of the delta revenues.
- (4) The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change, alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.
- (5) The rider shall be updated and reconciled, by application to the commission, semiannually. All data submitted in support of the rider update is subject to commission review and audit.

(B) If it appears to the commission that the proposals in the application may be unjust and unreasonable, the commission shall set the matter for hearing.

- (1) At such hearing, the burden of proof to show that the revenue recovery rider proposal in the application is just and reasonable shall be upon the electric utility.
- (2) The revenue recovery rider shall be subject to change, alteration, or modification by the commission.
- (3) The staff shall have access to all customer and electric utility information related to service provided pursuant to the reasonable arrangements that created the delta revenue triggering the electric utility's application to recover the costs associated with said delta revenue.

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(C) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

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4901:1-38-09 Failure to comply.

- (A) If the customer being provided with service pursuant to a reasonable arrangement established pursuant to this chapter fails to substantially comply with any of the criteria for eligibility or fails to substantially comply with reporting requirements, the electric utility, after reasonable notice to the customer, shall terminate the arrangement unless otherwise ordered by the commission.
- (B) The commission may also direct the electric utility to charge the customer for all or part of the incentives previously provided by the electric utility.
- (C) If the customer is required to pay for all or part of the incentives previously provided, the recovered amounts shall be reflected in the calculation of the revenue recovery rider established pursuant to rule 4901:1-38-08 of the Administrative Code.

CERTIFICATE OF SERVICE

I certify that the Appendix of Intervening Appellee Ormet Primary Aluminum Corporation was served by First-Class U.S. Mail upon counsel for all parties of record identified below this 4th day of March, 2010.



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