

ORIGINAL

In The
SUPREME COURT OF OHIO

Ohio Power Company,	:	
	:	
Appellant,	:	Case No. 14-1290
	:	
v.	:	On appeal from the Public Utilities
	:	Commission of Ohio, Case No. 12-
The Public Utilities Commission of	:	2050-EL-ORD, <i>In the Matter of the</i>
Ohio,	:	<i>Commission's Review of Chapter</i>
	:	<i>4901:1-10, Ohio Administrative Code,</i>
Appellee.	:	<i>Regarding Electric Companies.</i>

**JOINT MOTION OF APPELLANT AEP OHIO
AND APPELLEE PUBLIC UTILITIES COMMISSION OF OHIO
TO STAY THE BRIEFING SCHEDULE**

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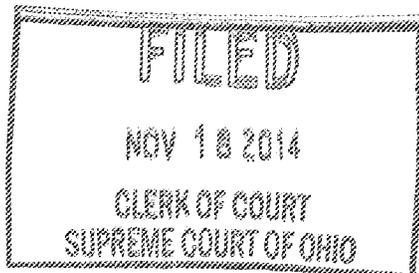


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Ohio,	:	<i>Commission's Review of Chapter</i>
	:	<i>4901:1-10, Ohio Administrative Code,</i>
Appellee.	:	<i>Regarding Electric Companies.</i>

**JOINT MOTION TO STAY THE BRIEFING SCHEDULE
SUBMITTED ON BEHALF OF APPELLANT AEP OHIO
AND APPELLEE PUBLIC UTILITIES COMMISSION OF OHIO**

Pursuant to S.Ct.Prac.R. 4.01(A)(1), Appellant Ohio Power Company (AEP Ohio) and Appellee Public Utilities Commission of Ohio (Commission) jointly move the Court to stay the briefing schedule in this appeal. The issue in this appeal concerns the validity of a Commission-proposed rule establishing crediting and billing practices that electric utilities must follow for persons operating net-metering systems. AEP Ohio has challenged the validity of the rule before this Court and through the legislative oversight process; on Friday, November 14, 2014, the Commission withdrew the rule from the Joint Committee on Agency Rule Review, thereby potentially (but not necessarily) mooting the controversy. Given the withdrawal of the rule, the parties believe it is appropriate to stay the briefing schedule to await the Commission's next steps on how it

plans to address the rule's withdrawal. The reasons supporting the motion are more fully set forth in the accompanying memorandum in support

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(Per email from
PUC on 12/20/10
- RPO)

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MEMORANDUM IN SUPPORT

Pending before the Court is a challenge brought by AEP Ohio to a Commission-proposed rule that addresses crediting and billing practices that electric utilities must follow for persons operating net-metering systems. *See* Ohio Adm. Code 4901:1-10-28(B)(9)(c), Appendix at 7; *In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-ORD (Second Entry on Rehearing at Attachment A, page 14) (May 28, 2014), Appendix at 8. The Commission filed the rule with the Joint Committee on Agency Rule Review (JCARR) on September 30, 2014. *See* Joint Committee on Agency Rule Review, Summary of Rules Filed from 9/29/2014 to 10/3/2014, Appendix at 9. Under R.C. 106.023, JCARR is given at least sixty-five days to review the rule before the Commission can file it in final form. After JCARR's review expires, the Commission may file the rule in final form, and it becomes effective ten days later. R.C. 111.15(B)(1) and (D). Under that statutorily-prescribed timeline, JCARR's review would expire on December 4, 2014, thereby making December 14, 2014 as the earliest effective date of the proposed rule.

On Friday, November 14, 2014, however, the Commission withdrew the proposed rule from JCARR, thereby potentially (but not necessarily) mooted this controversy. *See* Joint Committee on Agency Rule Review, Filing Confirmation (Nov. 14, 2014), Appendix at 10. The Commission is now in the process of deciding the next steps for

dealing with the rule's withdrawal. One option for the Commission is to make changes to the rule that would effectively address and resolve AEP Ohio's objections, in which case AEP Ohio would voluntarily dismiss its appeal.

The Commission's merit brief is currently due Tuesday, November 25, 2014. However, the parties submit that, given the withdrawal of the rule, it is appropriate to stay the briefing schedule to allow the Commission time to decide how it is going to move forward. This furthers the interests of judicial economy by conserving both the Court's and the parties' resources. As things stand now, the validity of the rule may or may not become moot, depending on how the Commission decides to proceed. At the very least, it is presently unnecessary for the parties to brief the issue and take up the Court's time until the Commission takes further action.

If the Court grants the stay, the Commission will not oppose any later effort by AEP Ohio to lift the stay – and resume the briefing schedule – once the Commission takes further action.

Respectfully submitted,

Michael DeWine (0009181)
Ohio Attorney General

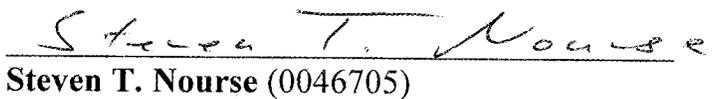
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pro-remain
authorization
- APO

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Joint Motion to Stay the Briefing Schedule, submitted on behalf of appellant, AEP Ohio, and appellee, the Public Utilities Commission of Ohio, was served by electronic mail, regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 18th day of November, 2014.



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APPENDIX

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106.023 Adoption of rules before legislative review prohibited.

An agency may not adopt a proposed rule or revised proposed rule or file it in final form unless the proposed rule has been filed with the joint committee on agency rule review under division (D) of section 111.15 or division (C) of section 119.03 of the Revised Code and the time for the joint committee to review the proposed rule has expired without recommendation of a concurrent resolution to invalidate the proposed rule.

If, before the time for its review of a proposed rule or revised proposed rule expires, the joint committee recommends adoption of a concurrent resolution invalidating the proposed rule or revised proposed rule, and the senate and house of representatives does not, within the time remaining for adoption of the concurrent resolution, hold five sessions at which its journal records a roll call vote disclosing a sufficient number of members in attendance to pass a bill, the time within which that house may adopt the concurrent resolution is extended until it has held five such sessions.

111.15 Adoption and filing of agency administrative code rules.

(A) As used in this section:

(1) "Rule" includes any rule, regulation, bylaw, or standard having a general and uniform operation adopted by an agency under the authority of the laws governing the agency; any appendix to a rule; and any internal management rule. "Rule" does not include any guideline adopted pursuant to section 3301.0714 of the Revised Code, any order respecting the duties of employees, any finding, any determination of a question of law or fact in a matter presented to an agency, or any rule promulgated pursuant to Chapter 119. or division (C)(1) or (2) of section 5117.02 of the Revised Code. "Rule" includes any amendment or rescission of a rule.

(2) "Agency" means any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the controlling board, the adjutant general's department, or any court.

(3) "Internal management rule" means any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.

(B)

(1) Any rule, other than a rule of an emergency nature, adopted by any agency pursuant to this section shall be effective on the tenth day after the day on which the rule in final form and in compliance with division (B)(3) of this section is filed as follows:

(a) The rule shall be filed in electronic form with both the secretary of state and the director of the legislative service commission;

(b) The rule shall be filed in electronic form with the joint committee on agency rule review. Division (B)(1)(b) of this section does not apply to any rule to which division (D) of this section does not apply.

An agency that adopts or amends a rule that is subject to division (D) of this section shall assign a review date to the rule that is not later than five years after its effective date. If a review date assigned to a rule exceeds the five-year maximum, the review date for the rule is five years after its effective date. A rule with a review date is subject to review under section 106.03 of the Revised Code. This paragraph does not apply to a rule of a state college or university, community college district, technical college district, or state community college.

If an agency in adopting a rule designates an effective date that is later than the effective date provided for by division (B)(1) of this section, the rule if filed as required by such division shall become effective on the later date designated by the agency.

Any rule that is required to be filed under division (B)(1) of this section is also subject to division (D) of this section if not exempted by that division.

If a rule incorporates a text or other material by reference, the agency shall comply with sections 121.71 to 121.76 of the Revised Code.

(2) A rule of an emergency nature necessary for the immediate preservation of the public peace, health, or safety shall state the reasons for the necessity. The emergency rule, in final form and in compliance with division (B)(3) of this section, shall be filed in electronic form with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review. The emergency rule is effective immediately upon completion of the latest filing, except that if the agency in adopting the emergency rule designates an effective date, or date and time of day, that is later than the effective date and time provided for by division (B)(2) of this section, the emergency rule if filed as required by such division shall become effective at the later date, or later date and time of day, designated by the agency.

An emergency rule becomes invalid at the end of the one hundred twentieth day it is in effect. Prior to that date, the agency may file the emergency rule as a nonemergency rule in compliance with division (B)(1) of this section. The agency may not refile the emergency rule in compliance with division (B)(2) of this section so that, upon the emergency rule becoming invalid under such division, the emergency rule will continue in effect without interruption for another one hundred twenty-day period.

(3) An agency shall file a rule under division (B)(1) or (2) of this section in compliance with the following standards and procedures:

(a) The rule shall be numbered in accordance with the numbering system devised by the director for the Ohio administrative code.

(b) The rule shall be prepared and submitted in compliance with the rules of the legislative service commission.

(c) The rule shall clearly state the date on which it is to be effective and the date on which it will expire, if known.

(d) Each rule that amends or rescinds another rule shall clearly refer to the rule that is amended or rescinded. Each amendment shall fully restate the rule as amended.

If the director of the legislative service commission or the director's designee gives an agency notice pursuant to section 103.05 of the Revised Code that a rule filed by the agency is not in compliance with the rules of the legislative service commission, the agency shall within thirty days after receipt of the notice conform the rule to the rules of the commission as directed in the notice.

(C) All rules filed pursuant to divisions (B)(1)(a) and (2) of this section shall be recorded by the secretary of state and the director under the title of the agency adopting the rule and shall be numbered according to the numbering system devised by the director. The secretary of state and the director shall preserve the rules in an accessible manner. Each such rule shall be a public record open to public inspection and may be transmitted to any law publishing company that wishes to reproduce it.

(D) At least sixty-five days before a board, commission, department, division, or bureau of the government of the state files a rule under division (B)(1) of this section, it shall file the full text of the proposed rule in electronic form with the joint committee on agency rule review, and the proposed rule is subject to legislative review and invalidation under section 106.021 of the Revised Code. If a state board, commission, department, division, or bureau makes a revision in a proposed rule after it is filed with the joint committee, the state board, commission, department, division, or bureau shall promptly file the full text of the proposed rule in its revised form in electronic form with the joint committee. A state board, commission, department, division, or bureau shall also file the rule summary and fiscal analysis prepared under section 127.18 of the Revised Code in electronic form along with a proposed rule, and along with a proposed rule in revised form, that is filed under this division. If a proposed rule has an adverse impact on businesses, the state board, commission, department, division, or bureau also shall file the business impact analysis, any recommendations received from the common sense initiative office, and the associated memorandum of response, if any, in electronic form along with the proposed rule, or the proposed rule in revised form, that is filed under this division.

A proposed rule that is subject to legislative review under this division may not be adopted and filed in final form under division (B)(1) of this section unless the proposed rule has been filed with the joint committee on agency rule review under this division and the time for the joint committee to review the proposed rule has expired without recommendation of a concurrent resolution to invalidate the proposed rule.

As used in this division, "commission" includes the public utilities commission when adopting rules under a federal or state statute.

This division does not apply to any of the following:

- (1) A proposed rule of an emergency nature;
- (2) A rule proposed under section 1121.05, 1121.06, 1155.18, 1163.22, 1349.33, 1707.201, 1733.412, 4123.29, 4123.34, 4123.341, 4123.342, 4123.40, 4123.411, 4123.44, or 4123.442 of the Revised Code;
- (3) A rule proposed by an agency other than a board, commission, department, division, or bureau of the government of the state;
- (4) A proposed internal management rule of a board, commission, department, division, or bureau of the government of the state;
- (5) Any proposed rule that must be adopted verbatim by an agency pursuant to federal law or rule, to become effective within sixty days of adoption, in order to continue the operation of a federally reimbursed program in this state, so long as the proposed rule contains both of the following:
 - (a) A statement that it is proposed for the purpose of complying with a federal law or rule;
 - (b) A citation to the federal law or rule that requires verbatim compliance.
- (6) An initial rule proposed by the director of health to impose safety standards and quality-of-care standards with respect to a health service specified in section 3702.11 of the Revised Code, or an initial rule proposed by the director to impose quality standards on a facility listed in division (A)(4) of section 3702.30 of the Revised Code, if section 3702.12 of the Revised Code requires that the rule be adopted under this section;
- (7) A rule of the state lottery commission pertaining to instant game rules.

If a rule is exempt from legislative review under division (D)(5) of this section, and if the federal law or rule pursuant to which the rule was adopted expires, is repealed or rescinded, or otherwise terminates, the rule is thereafter subject to legislative review under division (D) of this section.

Whenever a state board, commission, department, division, or bureau files a proposed rule or a proposed rule in revised form under division (D) of this section, it shall also file the full text of the same proposed rule or proposed rule in revised form in electronic form with the secretary of state and the director of the legislative service commission. A state board, commission, department, division, or bureau shall file the rule summary and fiscal analysis prepared under section 127.18 of the Revised Code in electronic form along with a proposed rule or proposed rule in revised form that is filed with the secretary of state or the director of the legislative service commission.

4901:1-10-28 Net metering.

(A) Standard net metering.

(A)

(1) Each EDU electric utility shall develop a tariff for net metering. Such tariff shall be made available to qualifying customer generators upon request.

(a) A qualifying customer generator is one whose generating facilities are:

(i) Fueled by solar, wind, biomass, landfill gas, or hydropower, or use a microturbine or a fuel cell.

(ii) Located on a customer generator's premises.

(iii) Operated in parallel with the electric utility's transmission and distribution facilities.

(iv) Intended primarily to offset part or all of the customer generator's electricity requirements.

(b) Net-metering arrangements shall be made available regardless of the date the customer's generating facility was installed.

(2) The electric utility's tariff for net metering shall be identical in rate structure, all retail rate components, and any monthly charges, to the tariff to which the same customer would be assigned if that customer were not a customer generator. Such terms shall not change simply because a customer becomes a customer generator.

(3) No electric utility's tariff for net metering shall require customer generators to:

(a) Comply with any additional safety or performance standards beyond those established by rules in Chapter 4901:1-22 of the Administrative Code, and the "National Electrical Code," the "Institute of Electrical and Electronics Engineers," and "Underwriters Laboratories," in effect as set forth in rule 4901:1-22-03 of the Administrative Code.

(b) Perform or pay for additional tests beyond those required by paragraph (A)(3)(a) of this rule.

(c) Purchase additional liability insurance beyond that required by paragraph (A)(3)(a) of this rule.

(4) Net metering shall be accomplished using a single meter capable of registering the flow of electricity in each direction. A customer's existing single-register meter that is capable of registering the flow of electricity in both directions satisfies this requirement. If the customer's existing electrical meter is not capable of measuring the flow of electricity in two directions, the electric utility, upon written request from the customer, shall install at the customer's expense a meter that is capable of measuring electricity flow in two directions.

(5) The electric utility, at its own expense and with the written consent of the customer generator, may install one or more additional meters to monitor the flow of electricity in each direction. No electric utility shall impose, without commission approval, any additional interconnection requirement or additional charges on customer generators refusing to give such consent.

(6) The measurement of net electricity supplied or generated shall be calculated in the following manner:

(a) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(b) If the electric utility supplies more electricity than the customer generator feeds back to the system in a given billing period, the customer generator shall be billed for the net electricity that the electric utility supplied, as measured in accordance with normal metering practices.

(c) If the customer generator feeds more electricity back to the system than the electric utility supplies to the customer generator, only the excess generation component shall be allowed to accumulate as a credit until netted against the customer generator's bill, or until the customer generator requests in writing a refund that amounts to, but is no greater than, an annual true-up of accumulated credits over a twelve-month period.

(7) In no event shall the electric utility impose on the customer generator any charges that relate to the electricity the customer generator feeds back to the system.

(B) Hospital net metering.

(1) Each electric utility shall develop a separate tariff providing for net metering for hospitals. Such tariff shall be made available to qualifying hospital customers upon request.

(a) As defined in section 3701.01 of the Revised Code, "hospital" includes public health centers and general, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, self-care units, and central service facilities operated in connection with hospitals, and also includes education and training facilities for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(b) A qualifying hospital customer generator is one whose generating facilities are:

(i) Located on a customer generator's premises.

(ii) Operated in parallel with the electric utility's transmission and distribution facilities.

(2) Net-metering arrangements shall be made available regardless of the date the hospital's generating facility was installed.

(3) The tariff shall be based both upon the rate structure, rate components, and any charges to which the hospital would otherwise be assigned if the hospital were not taking service under this rule and upon the market value of the customer-generated electricity at the time it is generated. For purposes of this rule, market value means the locational marginal price of energy determined by a regional transmission organization's operational market at the time the customer-generated electricity is generated.

(4) For hospital customer generators, net metering shall be accomplished using either two meters or a single meter with two registers that are capable of separately measuring the flow of electricity in both directions. One meter or register shall be capable of measuring the electricity generated by the hospital at the time it is generated. If the hospital's existing electrical meter is not capable of separately measuring electricity the hospital generates at the time it is generated, the electric utility, upon written request from the hospital, shall install at the hospital's expense a meter that is capable of such measurement.

(5) The tariff shall allow the hospital customer-generator to operate its electric generating facilities individually or collectively without any wattage limitation on size.

(6) The hospital customer generator's net metering service shall be calculated as follows:

(a) All electricity flowing from the electric utility to the hospital shall be charged as it would have been if the hospital were not taking service under this rule.

(b) All electricity generated by the hospital shall be credited at the market value as of the time the hospital generated the electricity.

(c) Each monthly bill shall reflect the net of paragraphs (B)(6)(a) and (B)(6)(b) of this rule. If the resulting bill indicates a net credit dollar amount, the credit shall be netted against the hospital customer generator's bill until the hospital requests in writing a refund that amounts to, but is no greater than, an annual true-up of accumulated credits over a twelve-month period.

(7) No electric utility's tariff for net metering shall require hospital customer generators to:

(a) Comply with any additional safety or performance standards beyond those established by rules in Chapter 4901:1-22 of the Administrative Code, and the National Electrical Code, the institute of electrical and electronics engineers, and underwriters laboratories, in effect as set forth in rule 4901:1-22-03 of the Administrative Code.

(b) Perform or pay for additional tests beyond those required by paragraph (B)(7)(a) of this rule.

(c) Purchase additional liability insurance beyond that required by paragraph (B)(7)(a) of this rule.

(8) In no event shall the electric utility impose on the hospital customer generator any charges that relate to the electricity the customer generator feeds back to the system.

*****DRAFT - NOT FOR FILING*****

of measuring the flow of electricity in each direction, is sufficient for net metering, and there are no set up costs, then the customer-generator shall not be charged meter fees.

- (9) The measurement of net electricity supplied or generated shall be calculated in the following manner:
- (a) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.
 - (b) If the electric utility supplies more electricity than the customer-generator feeds back to the system in a given billing period, the customer generator shall be billed for the net electricity that the electric utility supplied, as measured in accordance with normal metering practices.
 - (c) If the customer-generator accrues excess generation during a monthly billing period, the electric utility shall issue a monetary credit in the amount of the net excess generation onto the customer-generator's next monthly bill. If the full amount of the monetary credit is not used within the next monthly billing period, the remaining monetary credit shall be stored in the customer-generator's account and subsequently credited to the customer-generator in months where the monetary credit from the previous month is insufficient to cover the cost of the customer-generator's requirements for electricity. The electric utility shall issue a refund to the customer-generator for the amount of the monetary credit remaining in the account at the end of the May billing cycle, regardless of whether the customer-generator is receiving generation from the electric utility or a competitive retail electric service provider. This refund shall be calculated at the electric utility's standard service offer generation rate. The annual refund shall be issued to customer-generators by July 1.
- ~~(10) If the electric utility cannot determine the generation rate paid by a customer to a competitive retail electric supplier, the utility's SSO rate shall be applied.~~
- (110) In no event shall the electric utility impose on the customer-generator any charges that relate to the electricity the customer-generator feeds back to the system.

**JOINT COMMITTEE ON AGENCY
RULE REVIEW Summary of Rules Filed
From 9/29/2014 To 10/3/2014**

Amendment No Yes Original Filing 12/4/2014 5160-36-06 Program of all-inclusive care for the elderly (PACE) organization reimbursement.

35 Ohio Department of Medicaid

Department Contact: Tommi Potter (614-752-3877)

Total Rules: 2

Original Filing Date: 9/5/2014

Public Hearing: 10/6/2014

<u>Rule Type</u>	<u>CSI</u>	<u>FYR</u>	<u>Action</u>	<u>Jurisdiction Ends</u>	<u>Effective Date</u>	<u>Rule Number</u>	<u>Rule Title</u>
New Rule	No	No	Revised Filing	11/9/2014		5160-46-02	Ohio home care waiver program: eligibility and enrollment.
New Rule	No	No	Revised Filing	11/9/2014		5160-50-02	Transitions carve-out waiver program: eligibility and enrollment.

36 Public Utilities Commission of Ohio

Department Contact: Angela Hawkins (614-466-0122)

Total Rules: 1

Original Filing Date: 9/25/2014

Public Hearing:

<u>Rule Type</u>	<u>CSI</u>	<u>FYR</u>	<u>Action</u>	<u>Jurisdiction Ends</u>	<u>Effective Date</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Yes	Yes	Revised Filing	11/29/2014		4901-5-12	Transportation of waste products.

37 Public Utilities Commission of Ohio - Utilities

Department Contact: Angela Hawkins (614-466-0122)

Total Rules: 11

Original Filing Date: 9/30/2014

Public Hearing:

<u>Rule Type</u>	<u>CSI</u>	<u>FYR</u>	<u>Action</u>	<u>Jurisdiction Ends</u>	<u>Effective Date</u>	<u>Rule Number</u>	<u>Rule Title</u>
Amendment	Yes	Yes	Original Filing	12/4/2014		4901:1-10-22	Electric utility customer billing and payments.
Amendment	Yes	Yes	Original Filing	12/4/2014		4901:1-10-23	Billing adjustments.
Amendment	Yes	Yes	Original Filing	12/4/2014		4901:1-10-24	Customer safeguards and information.
Amendment	Yes	Yes	Original Filing	12/4/2014		4901:1-10-26	Annual system improvement plan report.
Amendment	Yes	Yes	Original Filing	12/4/2014		4901:1-10-27	Inspection, maintenance, repair, and replacement of transmission and distribution facilities (circuits and equipment).
Rescission	Yes	Yes	Original Filing	12/4/2014		4901:1-10-28	Net metering.

Click on the rule number in blue above to view the rule in its entirety on the Register of Ohio website.



Electronic Rule Filing

The Honorable Jon Huntsman
Governor of Ohio
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Legislative Services Commission
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77 South High St., Columbus 1 level
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It is hereby confirmed that the Public Utilities Commission of Ohio, Utilities, has **withdrawn** the following rule(s) from the rule-making process.

The rule(s) was originally filed on 09/30/2014.

Package Number: 112977
File Date and Time: 11/14/2014 09:00 AM
Confirmation Number: f7fef638651e61322ba5bd832227a21

WITHDRAW PROPOSED

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4901:1-10-28	Rescission	Y	Y	12/04/2014			Net metering.
4901:1-10-28	New	N	Y	12/04/2014			Net metering.