

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Adoption of Rules	)	
for Alternative and Renewable Energy	)	
Technologies and Resources, and	)	
Emission Control Reporting Requirements	)	Case No. 08-888-EL-ORD
and amendments of Chapters 4901:5-1,	)	
4901:5-3, 4901:5-5, and 4901:5-7 of the	)	
Ohio Administrative Code, pursuant	)	
to Chapter 4928, Revised Code, to	)	
Implement Senate Bill 221.	)	

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**INITIAL COMMENTS OF  
DUKE ENERGY OHIO, INC.**

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**INTRODUCTION:**

In its Entry dated August 20, 2008, the Public Utilities Commission of Ohio (Commission) proposed certain changes to its regulations pertaining to alternative and renewable energy technologies and resources and emission control reporting requirements. The Commission seeks comments from interested parties on the proposed changes no later than Tuesday, September 9, 2008.

Duke Energy Ohio, Inc. (DE-Ohio) is an Ohio corporation engaged in the business of supplying electricity and natural gas to consumers in southwestern Ohio and is a public utility as defined by Sections 4905.02 and 4905.03 of the Ohio Revised Code. The Commission's proposed changes, if adopted, will directly impact DE-Ohio's provision of electric service to its consumers.

DE-Ohio believes it has a responsibility to its customers, investors and communities to play a lead role in shaping a national policy that addresses the global warming challenge responsibly and fairly. DE-Ohio also believes it must be a good steward of the environment and do its part to meet the nation's growing energy needs to keep energy prices affordable. DE-Ohio appreciates the opportunity to offer comments to the Commission Staff's (Staff), and therefore respectfully submits the following comments regarding Staff's proposed new rules and amendments to existing regulations.

## **COMMENTS**

### **4901:1-39-01(B) Definitions**

For this proposed definition of energy efficiency, the phrase "energy content of the useful output" is unduly vague and there is no direction, either in the phrase or in the context, to give direction on how it would be measured. DE-Ohio suggests the following definition: "Energy efficiency" means the measurable reduction in energy used by a device through alteration or replacement of the device; a measurable reduction in capacity necessary to serve a specified load due to a change in energy usage or a measurable reduction in energy used by a device through alteration or replacement of the device; and demand response.

### **4901:1-39-03(A) Filing and review of the benchmark report**

This rule mandates that each electric utility file a forecast report each year on April 15. DE-Ohio would submit that it is unnecessary to make an annual formal filing.

DE-Ohio proposes that a filing every other year would be less burdensome for both the utility and the Commission Staff. On the off years, DE-Ohio suggests that utilities file updates to the previous filing to properly track applicable benchmarks. DE-Ohio also requests that the Commission specify whether utilities' benchmark values are "rolling" values or constant values set based upon a single calculation.

**4901:1-39-04(B)(1) and (2) Benchmark report requirements**

The wording of these sections is unclear. DE-Ohio requests that the Commission clarify that proposed rule 4901:1-39-04(B)(1) is seeking the total kWh purchased by distribution customers over the prior three years divided by three, the average, and 4901:1-39-04(B)(2) is seeking the average of the highest coincident peaks over the prior three years before the reporting period.

**4901:1-39-04(B)(5)(a)**

DE-Ohio requests clarification of this provision regarding customer sited or committed programs. Does "customer sited" or "customer-committed" include only programs offered by the utility to the customer or should it also include customer implemented programs? Additional clarification is needed here.

**4901:1-39-04(B)(5)(c)**

DE-Ohio requests clarification of this provision as it has been unable to determine its requirements or a compliance methodology.

**4901:1-39-04(B)(7)**

DE-Ohio requests clarification of the term "market valuation". The definition of a market valuation is unknown. For example, does Staff intend to require a market potential study? What would the parameters of such a study consist of and how often should such a study be conducted? More specificity is required. If Staff wants a study conducted to determine the energy efficiency and demand reduction potential in a specified market, it should amend the rule to so state. If a market potential study is the objective, it should be required every five years, not every year. Markets do not change that quickly requiring annual market potential studies.

**4901:1-39-04(C)(1)**

DE-Ohio suggests deletion or modification of this provision. This proposed rule states that a utility shall not count toward its energy efficiency program results, any results that are mandated by law. The provision ignores efforts undertaken by utilities to achieve the mandated provisions in a reasonable manner. For example, DE-Ohio already has Commission-approved energy efficiency programs regarding CFL replacement for incandescent lighting. Does this mean the results of such a program, before a new standard goes into effect, do not count toward DE-Ohio's energy efficiency mandates? At a minimum, issues regarding the energy efficiency achievements of an approved program versus the enactment of a legal mandate need to be addressed. Additionally, Ohio has set aggressive mandates and excluding all energy

efficiency achievements, effectively increases the mandate by making the new legal mandates incremental to the mandate set forth in SB-221. DE-Ohio suggests a cooperative effort be employed to achieve the 22% mandate by 2025. There is simply no reason to exclude past utility efforts in advance of federal standards from compliance with the state mandates. Otherwise, as federal standards change over time, it would mean past utility achievements would not count. This puts the utility in jeopardy of penalties in future years based upon future changes in federal standards. This is an untenable situation which must be rectified.

**4901:1-39-04(C)(2)**

This provision mandates that a utility provide monthly billing, usage and demand data to the U.S. E.P.A.'s agency portfolio manager database. Such a mandate is extremely burdensome on the utility as it would require the utility to first obtain customer consent and to collect the data on thousands of accounts. It further complicates the process by requiring that the customer have the opportunity to opt-out. Finally, it is unknown what the compliance costs might be and how long it will take a utility to create the infrastructure necessary to comply. Absent indication as to why such a rule might be necessary, DE-Ohio respectfully submits that it is unduly burdensome and should be deleted. If the Commission decides to retain the rule, it should include an unavoidable cost recovery provision and approve a reasonable implementation schedule of no less than eighteen months.

## **4901:1-40-01 Definitions**

### **4901:1-40-01(E)**

DE-Ohio suggests that the term "Biomass energy" should include clean demolition and construction material.

### **4901:1-40-01(G)**

DE-Ohio seeks clarification of the term "Co-firing". For example, does co-firing include fuel flexibility investments at generating units? DE-Ohio agrees that co-firing represents an issue that may provide consumers opportunities to receive lower priced generation service over time. It should be broadly construed to include all initiatives designed to utilize alternative fuels where a cost benefit analysis demonstrates long-term benefits for consumers.

### **4901:1-40-01(I)**

The phrase "Deliverable into this state" is defined as electricity that originates from a facility within a state contiguous to Ohio but may also include electricity originating from other locations, pending a demonstration that it could be physically delivered to the state. DE-Ohio respectfully suggests that the definition should be revised to include facilities located in the Midwest Independent System Operator (MISO) or PJM regional transmission organizations as long as the utility or applicable Competitive Retail Electric Service (CRES) provider demonstrate an available transmission path.

**4901:1-40-01(M)**

This definition of the term "double-counting" is vague and requires greater clarity. On one item that deserves attention, DE-Ohio recommends that the rules state specifically that energy efficiency that is counted toward the 25% mandate on alternative energy can also count towards the 22% mandate on energy efficiency.

**4901:1-40-01(HH)**

The definition of "solar thermal" should be expanded or defined differently to include the following: "Solar thermal water heating" means the heating of water through collectors or other heat exchangers directly from sunlight." This definition should also allow for the heating of water or other solutions since water is not the only liquid used in such applications.

**4901:1-40-01(LL)**

The definition of "Wind energy" should include wind into electricity or energy storage. This is important because there are emerging technologies that will develop compressors to store compressed air for daytime energy production or peaking purposes.

**4901:1-40-03(A)(3) Requirements**

DE-Ohio respectfully suggests that the proposed rule be amended as follows:  
"All energy costs incurred by an electric utility in complying with the requirements of the alternative energy portfolio standard shall be avoidable by any consumer that has

exercised choice of electricity supplier.” DE-Ohio suggests this change for two reasons. First, the only statutory requirement is that utilities and CRES providers supply energy, in the form of twenty-five percent of the total kwh sold.<sup>1</sup> Second, the rule is in conflict with the intent that renewable energy resources be developed within Ohio to spur economic development in the State. Absent an unavoidable charge, it is unlikely that utilities will invest in significant renewable capacity additions. In fact, through an ESP, and with Commission approval, 4928.143(B)(2)(b) and (c) expressly provide for an unavoidable charge for constructed capacity dedicated to Ohio for the life of the plant or purchased capacity newly dedicated to serve load in Ohio. DE-Ohio agrees that all energy costs should be avoidable by all consumers. But, there is nothing in the statute that mandates avoidability of capacity costs. As discussed, R.C. 4928.143(B)(2)(b) and (c) afford the Commission express authority for the opposite outcome. DE-Ohio suggests that in light of the states aggressive mandates, an unavoidable capacity charge is necessary to meet the mandates.

**4901:1-40-03(B)(1)**

This provision describes the baseline for compliance with the alternative energy resource requirements and sets forth how the compliance is to be measured. The provision is confusing and unclear. DE-Ohio seeks clarification of the proposed methodology. In particular, is the baseline determined as a three-year rolling average

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<sup>1</sup> Ohio Rev. Code Ann. § 4928.66(B) (Baldwin 2008).



or as three years prior to January 1, 2009, the effective date of the mandates? There is significant difference in the statutory mandates based upon the methodology chosen.

**4901:1-40-03(C)**

This proposed rule states that beginning in the year 2010, each electric utility shall annually submit a plan for compliance with future annual advanced energy and renewable energy benchmarks using a fifteen-year planning requirement. A fifteen-year planning requirement is not practical as years six through fifteen would be best estimates only. The time period should be reduced to five years.

The rules set forth in detail what elements should be included in the filed plan. DE-Ohio recommends that this reporting requirement be incorporated into an existing supply forecasting report process or resource planning process requirements in order to avoid duplicating reporting requirements and to reduce the reporting burden on the utilities.

**4901:1-40-04 Qualified resources**

**4901:1-40-04(A)(6)**

The definition of "biomass energy" and its measurements should always include biologically-derived methane gas, with or without co-firing to be consistent with R.C. 4928.01(35).

**4901:1-40-04(B)(7)**

Section 4928.66, R.C. mandates that a utility achieve twenty-two per cent energy savings through implementation of energy efficiency programs by the end of the year 2025. Section 4928.64(A)(1) mandates that by the year 2025, a utility must provide 25% of its SSO from alternative energy resources. Revised Code 4928.64 specifically states that an advanced energy resource includes energy efficiency. Statutorily, energy efficiency program results may be counted for both mandates. Consequently the rule which the Staff has proposed for the purpose of specifying qualified resources attempts to rewrite the law by stating that for purposes of meeting its mandated benchmarks for advanced energy, a utility may not include DSM and EE which has been used to comply with any other regulatory standard or program. The result of this rule is to exclude energy efficiency resources from the definition of alternative energy and this is directly contrary to S.B. 221. DE-Ohio recommends that this rule be rewritten to allow for inclusion of energy efficiency resources. Indeed, under the statutory definition of advanced energy resource in 4928.01 (34)(g), R.C., DSM and energy efficiency are again specifically included. Energy efficiency must be counted toward alternative energy benchmarks regardless of their use otherwise.

**4901:1-40-04(D) and (D)(2)(b)**

DE-Ohio suggests that this requirement should include provisions such that a renewable energy credit (REC) source/provider be a member of the attributes tracking

system. Also, this language describes reputable REC tracking systems as a means of compliance and does not preclude a utility or electric service company from acquiring RECs to meet benchmarks in other parts of the country, provided the tracking system is approved for use by the Commission. The question arises; will the REC commodity be required to demonstrate that the energy commodity from the generation source creating the purchased RECs is capable of being delivered into the state? Clarification on this point is needed.

#### **4901:1-40-07(C) Cost Cap**

DE-Ohio proposes that the Commission adopt a specific 3% cost cap methodology so that utilities and electric service companies can plan for energy portfolios appropriately. If the Commission approves the Staff's proposed rule including capacity as part of the renewable compliance costs, the cost cap methodology must apply to capacity as well. DE-Ohio suggests that the cost for renewable energy (and capacity if applicable) be compared to the wholesale market cost of traditional energy (and capacity if applicable) based upon an average price of the portfolio held by the utility or electric service company. DE-Ohio does assert that the price of renewable energy may fare better in such a comparison than the price of renewable capacity, which is significantly more than 3% in excess of the price of traditional capacity. Because R.C. 4928.64 requires utilities and electric service companies to meet energy mandates, capacity should be treated separately as previously discussed. The distinct

treatment of energy and capacity will encourage additional investment in renewable resources.

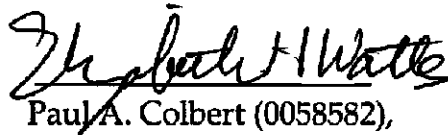
**4901:1-40-08 (B)(2)(b)**

This paragraph specifies an escalation factor to be applied to forfeitures for noncompliance with renewable energy resource benchmark requirements. This escalation factor goes well beyond the law and

**4901:1-41 Greenhouse Gas reporting and Carbon Dioxide Control Planning**

Provision (C) of this rule defines the term "Climate registry". The registry referred to is known correctly as "The Climate Registry". It might be helpful to correct the reference to avoid confusion. Also, the U.S. Environmental Protection Agency is working on its own nationwide mandatory greenhouse gas reporting program. Therefore, DE-Ohio recommends that the requirement be modified to allow reporting under any future EPA mandated reporting program as an alternative or substitute for reporting based on The Climate Registry. Also, it should be clear that the utility need not report under multiple programs.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Elizabeth H. Watts". The signature is fluid and cursive, with the first name "Elizabeth" and last name "Watts" clearly distinguishable.

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