

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**COMMENTS  
BY  
THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

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**I. INTRODUCTION**

The Ohio Consumer and Environmental Advocates<sup>1</sup> (collectively, “OCEA”) jointly submit these comments regarding rules proposed in the Entry issued in this proceeding on August 20, 2008. OCEA requests that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) adopt the revisions to the proposed rules as set forth by OCEA. Utilities exist to serve the public and the public interest. In return for that service, they are entitled to reasonable compensation. In order to assure that a proper balance is maintained – the public as the provider of compensation to the utilities and the Commission as the entity that determines the amount that is appropriate for customers to pay are entitled to full and complete data. Utilities have the burden of proving that their

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<sup>1</sup> OCEA includes the Office of the Ohio Consumers’ Counsel, City of Toledo, Ohio Partners for Affordable Energy, Ohio Interfaith Power and Light, Appalachian People’s Action Coalition, Citizen Power, Northwest Ohio Aggregation Coalition, Edgemont Neighborhood Coalition of Dayton, Sierra Club Ohio Chapter (signing on for comments to Ohio Adm. Code Chapters 4901:1-39, 4901:1-40 and 4901:5), Environment Ohio (signing on for comments to Ohio Adm. Code Chapters 4901:1-39, 4901:1-40 and 4901:5); Midwest Energy Efficiency Alliance (signing on for comments to Ohio Adm. Code Chapters 4901:1-39 and 4901:1-40); Natural Resources Defense Council; and AARP (signing on for comments to Ohio Adm. Code Chapters 4901:1-39, 4901:1-40 and 4901:5).

requests are justified and this requires sufficient information to justify its claims. These rules are instrumental in setting forth the minimal requirements to satisfy these objectives.

The statutory requirements for rulemaking have imposed an extremely hasty process upon rulemaking and the subsequent filing of plans. OCEA believes that the PUCO should develop an explicit review process in advance of the obligatory five-year review of these rules as part of the final rulemaking, so parties can anticipate and perhaps fine tune the outcome of this process in a more thoughtful proceeding that gives better access to the dialogue for entities who have more complex review processes or who lack the capability to examine multiple hundred-page drafts in a matter of hours. We recommend an annual review process for the next two years followed by a biennial review process thereafter.

As the Commission deliberates on these rules, OCEA members urge the Commission to keep in the forefront the public interest and the utilities' duty to serve that interest in a just and reasonable manner. In its simplest form, the message is: Remember the public interest.

## **II. ENERGY EFFICIENCY AND DEMAND REDUCTION BENCHMARKS – CHAPTER 4901:1-39**

### **Comments about new proposed definition – Energy Efficiency Baseline**

OCEA suggests adding the specified definition of Baseline from the Revised Code. Incorporating the statutory definition of “baseline” will reduce the chance for confusion and make this document more free-standing.



PROPOSED RULE CHANGE:

“ENERGY EFFICIENCY BASELINE,” HAS THE MEANING SET FORTH IN DIVISION (A)(2)(A) OF SECTION 4928.66 OF THE REVISED CODE, WHICH READS “THE AVERAGE OF THE TOTAL KILOWATT HOURS THE ELECTRIC DISTRIBUTION UTILITY SOLD IN THE PRECEDING THREE CALENDAR YEARS.”

**Comments about proposed new definition – Demand Response Baseline**

OCEA suggests adding the specified definition of Baseline from the Revised Code. Incorporating the statutory definition of “baseline” will reduce the chance for confusion and make this document more free-standing.

PROPOSED RULE CHANGE:

“DEMAND RESPONSE BASELINE,” HAS THE MEANING SET FORTH IN DIVISION (A)(2)(A) OF SECTION 4928.66 OF THE REVISED CODE, WHICH READS “THE AVERAGE PEAK DEMAND ON THE UTILITY IN THE PRECEDING THREE CALENDAR YEARS.”

**Comments about proposed new definition – Energy Efficiency Benchmark**

OCEA suggests adding the specified definition of “benchmark” from the Revised Code. Incorporating the statutory definition of “benchmark” will reduce the chance for confusion and make this document more free-standing.

PROPOSED RULE CHANGE:

“ENERGY EFFICIENCY BENCHMARK,” MEANS A LEVEL OF ENERGY SAVINGS THAT COMPLIES WITH DIVISION (A)(1)(A) OF SECTION 4928.66 OF THE REVISED CODE, WHICH READS “BEGINNING IN 2009, AN ELECTRIC DISTRIBUTION UTILITY SHALL IMPLEMENT ENERGY EFFICIENCY PROGRAMS THAT ACHIEVE ENERGY SAVINGS EQUIVALENT TO AT LEAST THREE-TENTHS OF ONE PER CENT OF THE TOTAL, ANNUAL AVERAGE, AND NORMALIZED KILOWATT-HOUR SALES OF THE ELECTRIC DISTRIBUTION UTILITY DURING THE PRECEDING THREE CALENDAR YEARS TO CUSTOMERS

IN THIS STATE. THE SAVINGS REQUIREMENT, USING SUCH A THREE-YEAR AVERAGE, SHALL INCREASE TO AN ADDITIONAL FIVE-TENTHS OF ONE PER CENT IN 2010, SEVEN-TENTHS OF ONE PER CENT IN 2011, EIGHT-TENTHS OF ONE PER CENT IN 2012, NINE-TENTHS OF ONE PER CENT IN 2013, ONE PER CENT FROM 2014 TO 2018, AND TWO PER CENT EACH YEAR THEREAFTER, ACHIEVING A CUMULATIVE, ANNUAL ENERGY SAVINGS IN EXCESS OF TWENTY-TWO PER CENT BY THE END OF 2025.”

**Comments about proposed new definition – Peak Demand Reductions Benchmark**

OCEA suggests adding the specified definition of “benchmark” from the Revised Code. Incorporating the statutory definition of “benchmark” will reduce the chance for confusion and make this document more free-standing.

**PROPOSED RULE CHANGE:**

“PEAK DEMAND REDUCTIONS BENCHMARK,” MEANS A LEVEL OF PEAK DEMAND REDUCTIONS THAT COMPLIES WITH DIVISION (A)(1)(B) OF SECTION 4928.66 OF THE REVISED CODE, WHICH READS “BEGINNING IN 2009, AN ELECTRIC DISTRIBUTION UTILITY SHALL IMPLEMENT PEAK DEMAND REDUCTION PROGRAMS DESIGNED TO ACHIEVE A ONE PER CENT REDUCTION IN PEAK DEMAND IN 2009 AND AN ADDITIONAL SEVENTY-FIVE HUNDREDTHS OF ONE PER CENT REDUCTION EACH YEAR THROUGH 2018. IN 2018, THE STANDING COMMITTEES IN THE HOUSE OF REPRESENTATIVES AND THE SENATE PRIMARILY DEALING WITH ENERGY ISSUES SHALL MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING FUTURE PEAK DEMAND REDUCTION TARGETS.”

**Comments about proposed new definition – Collaborative**

Ohio has a long tradition of using groups of stakeholders and/or parties to oversee demand side management programs. Given the traditional disinterest of utilities in demand side resources and the lack of

experience of Ohio distribution utilities, having an independent collaborative oversee the work of an administrator is important to achieving state policy as enunciated by R.C. 4928.02. This historical and successful approach should be reflected in the rules.

**PROPOSED RULE CHANGE:**

“COLLABORATIVE” MEANS A COMMITTEE OF PARTIES AND OTHER INTERESTED PERSONS AS APPROVED BY THE PARTIES THAT IS RESPONSIBLE FOR MANAGING THE ENERGY EFFICIENCY AND DEMAND REDUCTION PROGRAMS OF A UTILITY. THE COLLABORATIVE SHALL BE AUTHORIZED TO SELECT THE PROGRAM ADMINISTRATOR THAT WILL MANAGE THE PROGRAMS. THE PROGRAM ADMINISTRATOR CAN BE A UTILITY, A PUBLIC BODY, A NONPROFIT ORGANIZATION, OR A FOR-PROFIT CONTRACTOR SELECTED BY THE COLLABORATIVE.

**Comments about proposed definition (A) – Demand Response**

Typically the term “demand response” addresses reducing peak demand and not energy savings. OCEA’s proposed language is intended to make the definition more distinct from energy efficiency.

**PROPOSED RULE CHANGE:**

- (A) “Demand response” means a change in customer behavior or a change in customer owned or operated assets that effects the quantity ~~and/or timing~~ of electricity consumed AT A PARTICULAR TIME (USUALLY DURING THE UTILITY’S PEAK ) as a result of price signals or other incentives. Demand response can reduce kilowatts of demand and/or kilowatt-hours of energy usage. Demand response includes economic interruption or reduction of customer load, ~~and may include certain types of energy conservation.~~

### **Comments about proposed definition (B) – Energy Efficiency**

The phrase “energy content” in the proposed definition might lead to different interpretations. OCEA’s revised wording was taken from a glossary on the web site of the Massachusetts Technology Collaborative, Renewable Energy Trust (<http://www.mtpc.org/cleanenergy/energy/glossaryefficiency.htm>).]

#### **PROPOSED RULE CHANGE:**

- (B) “Energy efficiency” ~~means the energy content of the useful output from a process, device, or system divided by the energy input into that process, device, or system.~~ REFERS TO PRODUCTS OR SYSTEMS DESIGNED TO USE LESS ENERGY FOR THE SAME OR HIGHER PERFORMANCE THAN REGULAR PRODUCTS OR SYSTEMS. ENERGY-EFFICIENT BUILDINGS ARE DESIGNED TO USE LESS ENERGY THAN TRADITIONAL BUILDINGS.<sup>2</sup>

### **Comments about proposed definition (E) – Peak Demand Reduction**

As addressed above regarding the definition of “Demand Response,” typically the term “peak demand reduction” does not address energy savings. OCEA’s proposed edit is intended to make the definition more distinct from energy efficiency. Peak demand reduction – if done effectively – will mean fewer kWh are used during peak periods but it does not necessarily follow that fewer kWh will be used over a longer period of a day or more. For example, peak shifting strategies are properly within the peak demand reduction toolkit but move energy use from on-peak hours to off-peak and do not attempt to reduce energy use overall.

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<sup>2</sup> In the alternative, OCEA suggests the following:

(B) “Energy efficiency” ~~means the energy content of the useful output from a process, device, or system divided by the energy input into that process, device, or system.~~ IS WHEN THE RATIO OF THE ENERGY CONTENT OF THE USEFUL OUTPUT FROM A PROCESS, DEVICE, OR SYSTEM INCREASES WHEN DIVIDED BY THE ENERGY INPUT INTO THAT PROCESS, DEVICE, OR SYSTEM.

PROPOSED RULE CHANGE:

- (E) “Peak demand reduction” means altering the ~~time and/or~~ quantity of electricity consumed AT A PARTICULAR TIME to reduce the electric distribution utility’s peak period requirements. Peak demand reduction results in fewer kilowatts of load during peak periods, and may or may not result in fewer kilowatt-hours of energy usage OVER A GIVEN TIME PERIOD OF A DAY OR LONGER.

**Comments about proposed new definition – Program**

OCEA recommend making a clear distinction between a program and a project.

This distinction should reduce the likelihood of confusion. OCEA proposes adopting the definition of “program” from the Association for Energy Services Professionals “Common Energy Efficiency/Self Generation Terms and Definitions.”

PROPOSED RULE CHANGE:

“PROGRAM” IS A COLLECTION OF DEFINED ACTIVITIES AND MEASURES THAT

- (1) ARE APPROVED BY THE COLLABORATIVE,
- (2) ARE CARRIED OUT BY THE ADMINISTRATOR AND/OR THEIR SUBCONTRACTORS AND IMPLEMENTERS,
- (3) TARGET A SPECIFIC MARKET SEGMENT, CUSTOMER CLASS, A DEFINED END USE, OR A DEFINED SET OF MARKET ACTORS (E.G., DESIGNERS, ARCHITECTS, HOMEOWNERS),
- (4) ARE DESIGNED TO ACHIEVE SPECIFIC EFFICIENCY RELATED CHANGES IN BEHAVIOR, INVESTMENT PRACTICES OR MAINTENANCE PRACTICE IN THE ENERGY MARKET,
- (5) AND ARE GUIDED BY A SPECIFIC BUDGET AND IMPLEMENTATION PLAN.

### **Comments about proposed new definition – Project**

As discussed above, OCEA recommend making a clear distinction between a program and a project. This distinction should reduce the likelihood of confusion.

OCEA proposes adopting the definition of “project” from the Association for Energy Services Professionals “Common Energy Efficiency/Self Generation Terms and Definitions.”

#### **PROPOSED RULE CHANGE:**

“PROJECT” MEANS AN UNDERTAKING WITHIN A SINGLE COMPANY (DEFINED AS END USERS OR UTILITY CUSTOMERS) TO BRING ABOUT AN ENERGY EFFICIENCY IMPROVEMENT. A PROJECT HAS A DEFINED STARTING AND ENDING POINT. IT OFTEN CORRESPONDS TO THE SET OF ACTIVITIES DESCRIBED IN AN APPLICATION FOR PARTICIPATION IN A PROGRAM OR TO RECEIVE A REBATE. PROGRAMS ARE TYPICALLY MADE UP OF NUMEROUS PROJECTS.

#### **4901:1-39-03 through 4901:1-39-07**

OCEA proposes deleting the current sections:

4901:1-39-03 Filing and review of the benchmark report

4901:1-39-04 Benchmark report requirements.

As part of OCEA’s proposal to delete the two sections, OCEA also proposes language for four new sections 4901:1-39-03 through 4901:1-39-07. OCEA asserts that the four new sections incorporate the assumed intent of Ohio Adm. Code 4901:1-39-03 and Ohio Adm. Code 4901:1-39-04. OCEA incorporated some of the language from the original sections into OCEA’s proposed sections. The intent of these changes was to provide a clear distinction between program design activities, independent verification activities, and utility reporting on achievements.

PROPOSED RULE CHANGE:

**~~4901:1-39-03 FILING AND REVIEW OF THE  
BENCHMARK REPORT~~**

- ~~(A) — On April fifteenth of each year, each electric utility shall file with its long-term forecast report, a benchmark report in accordance with this chapter, regarding compliance with baselines and benchmarks for energy efficiency and peak reduction programs.~~
- ~~(B) — Any person may file comments regarding an electric utility's benchmark report within thirty days of the filing of such report.~~
- ~~(C) — The staff shall review the utility's benchmark report and any comments, and file a report of its findings regarding the baselines and benchmarks, and any proposed modifications thereto, and the utility's compliance with the mandated energy efficiency improvements and demand reductions. If staff finds that an electric utility has not demonstrated compliance with the annual sales reductions required by division (A) of section 4928.66 of the Revised Code, staff may recommend the imposition of a forfeiture.~~
- ~~(D) — If staff recommends the assessment of a forfeiture, the electric utility may file, within thirty days, a request for hearing.~~

**~~4901:1-39-04 BENCHMARK REPORT REQUIREMENTS~~**

- ~~(A) — Each electric utility shall include in its benchmark report:
  - ~~(1) — A calculation of its baselines for kilowatt-hour sales and kilowatt demand for the current year.~~
  - ~~(2) — Any proposed adjustments to the baselines and benchmarks for the current calendar year.~~
  - ~~(3) — A description of all actions considered and taken to comply with the adjusted benchmarks for the prior calendar year.~~
  - ~~(4) — All plans for meeting future benchmarks.~~~~
- ~~(B) — In calculating and amending an electric utility's baselines and benchmarks for energy sales and demand:~~

- (1) — ~~The baseline for energy savings shall be the average of the total kilowatt hours purchased by the electric utility's Ohio distribution customers in the preceding three calendar years as reported in the utility's three most recent forecast reports or reporting forms.~~
- (2) — ~~The baseline for peak demand reduction shall be the highest seasonal hourly integrated peak demand in each of the past three calendar years as reported in the utility's three most recent forecast reports or reporting forms.~~
- (3) — ~~An electric utility may propose adjustments to its baselines. The electric utility shall include all assumptions, rationale, and calculations, and shall propose methodologies and practices to be used for adjustments and normalizations which, unless modified by the commission, shall be used for all subsequent adjustments and normalizations, and consistently applied from year to year.~~
- (4) — ~~An electric utility may apply to amend the benchmarks due to regulatory, economic, or technological reasons beyond the electric utility's reasonable control. In any such proposal, the electric utility shall demonstrate that it has exhausted all compliance options.~~
- (5) — ~~An electric utility shall describe all actions considered and taken in the prior calendar year to comply with the approved benchmarks, including:~~
  - (a) — ~~All energy efficiency programs, peak demand reduction programs, and demand response programs implemented by the utility, customer-sited or customer-committed energy efficiency, peak demand reduction, and demand response programs.~~
  - (b) — ~~All measurements and verification of the impacts of programs based upon engineering estimates, direct metered measurements, inspections, audits, and sampling and statistical analysis that confirm installation and operation of devices and processes~~



installed or implemented as a part of such programs, and verifications of the impacts of installed or implemented devices or programs.

~~(c) — Measurements of changes in usage and demand over time in buildings, facilities, and community systems based on the United States environmental protection agency's portfolio manager data base.~~

~~(6) — An electric utility shall include in its benchmark report a ten-year projection of energy efficiency, peak demand reduction, demand response programs, and a five-year action plan for current programs including program budgets.~~

~~(7) — An electric utility shall include in its benchmark report an assessment and market valuation of demand reduction potential and energy efficiency resources.~~

~~(C) — An electric utility shall include in its benchmark report a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results. Staff may publish guidelines for program measurement and verification of compliance with division (A)(1) of section 4928.66 of the Revised Code, and the utility should identify and explain any deviations from such guidelines.~~

~~(1) — An electric utility shall not count technologies or measures that are mandated by law including those embodied in the Energy Independence and Security Act of 2007.~~

~~(2) — An electric utility shall provide monthly billing, usage, and demand data to United States environmental protection agency's portfolio manager database, subject to customer consent, for buildings, facilities, and community systems. The utility shall provide customers with notice and opportunity to opt-out of the sharing of customer-specific data.~~

### **4901:1-39-03 Baseline Definitions**

OCEA proposes using two definitions that were moved from the original section 4901:1-39-04 part (B).

#### **PROPOSED RULE CHANGE:**

- (A) IN CALCULATING AND AMENDING AN ELECTRIC UTILITY'S BASELINES AND BENCHMARKS FOR ENERGY SALES AND DEMAND:
  - (1) THE BASELINE FOR ENERGY SAVINGS SHALL BE THE AVERAGE OF THE TOTAL KILOWATT HOURS PURCHASED BY THE ELECTRIC UTILITY'S OHIO DISTRIBUTION CUSTOMERS IN THE PRECEDING THREE CALENDAR YEARS AS REPORTED IN THE UTILITY'S THREE MOST RECENT FORECAST REPORTS OR REPORTING FORMS.

The language in Senate Bill 221 ("S.B. 221") concerning the peak demand baseline could be interpreted several ways. The draft rule language implies the baseline should be the maximum peak occurring at any time in the past three calendar years. The intent of the language in S.B. 221 seems to be that the baseline should be the average of three values, each being the maximum peak in each of the previous three calendar years.

- (2) THE BASELINE FOR PEAK DEMAND REDUCTION SHALL BE THE AVERAGE OF THE HIGHEST YEARLY SEASONAL HOURLY INTEGRATED PEAK DEMAND IN EACH OF THE PAST THREE CALENDAR YEARS AS REPORTED IN THE UTILITY'S THREE MOST RECENT FORECAST REPORTS OR REPORTING FORMS.

### **4901:1-39-04 Annual Reporting of Baseline and Energy Efficiency and Demand Response Targets**

This newly assembled section is designed to pull together in one place all text relating to the reporting on the baseline and target benchmark.

**Comments about Rule 4901:1-39-04(A)**

- (A) ON APRIL FIFTEENTH OF EACH YEAR, EACH ELECTRIC UTILITY SHALL FILE WITH ITS LONG-TERM FORECAST REPORT A REPORT CONTAINING COMPUTATIONS OF ITS BASELINES FOR THAT YEAR AND ITS COMPLIANCE WITH ITS ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION BENCHMARKS AND SUCH REPORT WILL DESCRIBE ITS ESTIMATED BASELINE AND TARGET BENCHMARK FOR THE UPCOMING YEAR. THAT REPORT SHALL CONTAIN THE FOLLOWING:

Note: The text in (1) and (3) below were moved from the Staff proposed section 4901:1-39-04 (A).

- (1) A calculation of its baselines for kilowatt-hour sales and kilowatt demand for the current year.
- (2) METHOD OF CALCULATING THE BASELINE INCLUDING SUPPORTING DATA AND CALCULATIONS.
- (3) Any proposed adjustments to the baselines and benchmarks ALLOWED BY THE REVISED CODE for the current calendar year.
- (4) TARGET FOR ENERGY EFFICIENCY INCLUDING SUPPORTING DATA AND CALCULATIONS.
- (5) TARGET FOR DEMAND RESPONSE INCLUDING SUPPORTING DATA AND CALCULATIONS.

The Commission may discount an adjustment if it does not exceed some reasonable threshold. For example, the baseline can be reduced to account for economic growth. However, economic growth is already taken account of by utility companies in preparing their annual forecast reports. Therefore, a threshold to consider whether to adjust the baseline for economic growth might be if such growth exceeds the utility's

prior year forecast by 25 percent. Finally, two options are provided for the treatment of any excess energy savings.

CONTINUED PROPOSED RULE CHANGE:

- (B) AN ELECTRIC UTILITY MAY PROPOSE ADJUSTMENTS TO ITS BASELINES AS SPECIFIED IN THIS CHAPTER. THE ELECTRIC UTILITY SHALL INCLUDE ALL ASSUMPTIONS, RATIONALE, AND CALCULATIONS, AND SHALL PROPOSE METHODOLOGIES AND PRACTICES TO BE USED FOR ADJUSTMENTS AND NORMALIZATIONS WHICH, UNLESS MODIFIED BY THE COMMISSION, SHALL BE USED FOR ALL SUBSEQUENT ADJUSTMENTS AND NORMALIZATIONS, AND CONSISTENTLY APPLIED FROM YEAR TO YEAR. THE COMMISSION MAY REQUIRE CERTAIN THRESHOLDS TO BE EXCEEDED BEFORE AN ADJUSTMENT IS ALLOWED.
- (C) AN ELECTRIC UTILITY MAY APPLY TO AMEND THE BENCHMARKS DUE TO REGULATORY, ECONOMIC, OR TECHNOLOGICAL REASONS BEYOND THE ELECTRIC UTILITY'S REASONABLE CONTROL. IN ANY SUCH PROPOSAL, THE ELECTRIC UTILITY SHALL DEMONSTRATE THAT IT HAS EXHAUSTED ALL COMPLIANCE OPTIONS.
- (D) ALL ENERGY SAVINGS IN EXCESS OF THE ANNUAL TARGET GOALS CAN BE APPLIED TO FOLLOWING YEAR'S ENERGY SAVINGS BENCHMARKS OR APPLIED TOWARD MEETING THE ADVANCED ENERGY REQUIREMENTS. ANY SUCH ADJUSTMENTS WILL BE IDENTIFIED IN THE ANNUAL REPORT.

Depending on the number of utilities filing simultaneously, 30 days may be a challenge for parties to review and file comments. Also, there is no apparent provision for discovery. For both reasons, OCEA requests that the Commission consider recommending a requirement to file work papers simultaneously, a longer comment

period, or both. In addition, the rule does not specify any public notice or distribution of this report.

- (E) ANY PERSON MAY FILE COMMENTS REGARDING AN ELECTRIC UTILITY'S REPORT WITHIN SIXTY DAYS OF THE FILING OF SUCH REPORT.
- (F) THE STAFF SHALL REVIEW THE UTILITY'S REPORT AND ANY COMMENTS, AND FILE A REPORT OF ITS FINDINGS BY THE FIRST OF AUGUST. THE STAFF REPORT SHALL CONTAIN:
  - (1) FINDINGS REGARDING THE BASELINE DETERMINATION.
  - (2) FINDINGS REGARDING MODIFICATIONS TO THE BASELINES.
  - (3) FINDINGS REGARDING THE TARGET FOR ENERGY EFFICIENCY
  - (4) FINDINGS REGARDING THE TARGET FOR DEMAND RESPONSE
  - (5) FINDINGS REGARDING COMPLIANCE OF THE PLAN FILED UNDER RULE 4901:5-5-05.

#### **4901:1-39-05 Program Planning Process**

This newly assembled section is designed to pull together in one place all text relating to reporting, commenting, and approving program plans. It also specifies that the Total Resource Cost Test as defined in the California Standard Practice Manual will be used to determine the cost-effectiveness of demand side management ("DSM") programs. Finally, it requires that energy efficiency programs be made available to all customer classes.

#### **PROPOSED RULE CHANGE:**

- (A) EACH DISTRIBUTION UTILITY SHALL COORDINATE SIMILAR PROGRAM OFFERINGS TO ENSURE STATEWIDE COORDINATION AND

INCREASED EFFICIENCIES IN PROGRAM IMPLEMENTATION. NO LESS THAN FORTY PERCENT OF DSM PROGRAM SAVINGS SHALL COME FROM THE RESIDENTIAL CLASS.

- (B) BY DATE, EACH DISTRIBUTION UTILITY SHALL FILE WITH THE COMMISSION A DESCRIPTION OF THE ACTIVITIES AND MEASURES DESIGNED TO ACHIEVE THEIR TARGET ENERGY EFFICIENCY AND DEMAND RESPONSE GOALS.<sup>3</sup>
- (C) THIS PROGRAM SHALL INCLUDE THE FOLLOWING:
  - (1) A DESCRIPTION OF EACH PROPOSED ENERGY EFFICIENCY AND DEMAND RESPONSE ACTIVITIES AND MEASURES INCLUDING AT A MINIMUM THE FOLLOWING:
  - (2) PROGRAM DESCRIPTION SUMMARY
  - (3) TARGET AUDIENCE (E.G., SECTOR OR SUBSECTOR OF THE ECONOMY)
  - (4) MARKETING APPROACH
  - (5) PROGRAM DELIVERY APPROACH
  - (6) EXPECTED ENERGY SAVINGS AND/OR DEMAND SAVINGS
  - (7) EXPECTED PROGRAM PARTICIPATION
  - (8) INTERNAL MONITORING & VERIFICATION PLAN
  - (9) EXTERNAL EVALUATION PLAN
  - (10) DATA REPORTING PLAN
  - (11) PROGRAM BUDGET

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<sup>3</sup> Ohio Partners for Affordable Energy (list other parties) support including an additional sentence at the end of proposed Rule 4901:1-39-05(B) as follows: FIFTY PERCENT OF THE ACTIVITIES AND MEASURES INCLUDED IN THE PROGRAM FOR THE RESIDENTIAL CLASS SHALL BE TARGETED TO CUSTOMERS WITH INCOMES LESS THAN THE MEDIAN INCOME OF THE STATE.

- (12) COST EFFECTIVENESS ESTIMATE USING THE TRC TEST AND/OR OTHER APPROPRIATE COST TEST(S) AS DETERMINED BY THE COLLABORATIVE
- (D) THE PLAN SHALL PROVIDE A SUMMARY ACROSS ALL UTILITY PROGRAMS INCLUDING AT A MINIMUM THE FOLLOWING:
  - (1) PROJECTED ENERGY SAVINGS BY PROGRAM AND BY SECTOR
  - (2) PROJECTED DEMAND SAVINGS BY PROGRAM AND BY SECTOR
  - (3) PORTFOLIO BUDGET
  - (4) PORTFOLIO COST EFFECTIVENESS ESTIMATE
  - (5) ALL COSTS AND BENEFITS SHALL BE EXPRESSED IN NOMINAL DOLLARS.

NOTE: (E) was moved from the first sentence of the original section 4901:1-39-04(C).

PROPOSED RULE CHANGE:

- (E) The ~~utility~~ PROGRAM shall include in ~~its~~ THE planning report a description of all methodologies, protocols, and practices proposed to be used in producing energy efficiency and demand response savings and in measuring and verifying program results.

NOTE: (F) Was moved from the original section 4901:1-39-04(B)(6).

PROPOSED RULE CHANGE:

- (F) The ~~utility~~ PROGRAM shall include in its ~~benchmark report~~ PLAN a ten-year projection of energy efficiency savings, peak demand reduction, and a five-year action plan for current programs including program budgets.

NOTE: (G) Was replaced the original section 4901:1-39-04(B)(7). Typically market potential studies are performed every few years, not every year as it is rare for the market to change significantly from one year to the next.

PROPOSED RULE CHANGE:

- (G) THE ~~UTILITY~~ PROGRAM SHALL INCLUDE IN ITS PLAN A SCHEDULE FOR PERFORMING A MARKET POTENTIAL STUDY WITHIN ONE YEAR TO ESTIMATE THE POTENTIAL FOR DEMAND RESPONSE AND ENERGY EFFICIENCY IN ITS TERRITORY. THE DISTRIBUTION UTILITIES CAN CO-FUND A STATE-WIDE STUDY IF THEY SO DESIRE.
- (H) THE ~~UTILITY~~ COLLABORATIVE SHALL REPEAT THE MARKET POTENTIAL STUDY EVERY FOUR YEARS TO EXAMINE THE EFFECTS OF THE PROGRAM ON THE MARKET.

NOTE: (I) Was moved from the original section 4901:1-39-04(C)(1). The time for filing should be extended to sixty days to recognize the fact that there will be multiple utility filings at the same time. Consideration should also be given to staggering the filings by one month each.

PROPOSED RULE CHANGE:

- (I) An electric utility shall ~~not count~~ IDENTIFY technologies or measures that are mandated by law including those embodied in the Energy Independence and Security Act of 2007 IN ITS BASELINE ANALYSIS AND ANY MARKET STUDIES AS AN EXPLICIT COMPONENT OF THE BASELINE, SO AS TO DISTINGUISH THOSE TECHNOLOGIES AND MEASURES FROM THE EFFECT OF ONGOING ACTIVITIES BY THE PROGRAM.
- (J) ANY PERSON MAY FILE COMMENTS REGARDING A PROGRAM REPORT WITHIN SIXTY DAYS OF THE FILING OF SUCH REPORT.
- (K) THE STAFF SHALL REVIEW THE PROGRAM REPORT AND ANY PUBLIC COMMENTS, AND FILE A REPORT OF ITS FINDINGS BY THE FIRST OF AUGUST. THE STAFF REPORT SHALL CONTAIN AN APPROVAL OF THE PLAN OR THE CHANGES NEEDED TO ACHIEVE APPROVAL.



#### **4901:1-39-06 Evaluation, Measurement and Verification Requirements**

One of the most important aspects of any utility-managed energy efficiency program or portfolio of programs is the process for measuring and verifying the impact of those programs, and evaluating and modifying programs as necessary to achieve the desired outcome. It is critical for the utility, the Commission, and other stakeholders to obtain an accurate and objective report on the effectiveness of each program and of the portfolio as a whole. Only with this information can we be assured that the benchmarks were met. Moreover, good program evaluation both during and at the end of a planning cycle allows program managers to adjust program offerings to modify or eliminate programs that are not delivering enough benefits to warrant their costs, and to expand or add programs that are proven winners in the relevant service territory.

The proposed rules leave many of the important decisions about measurement and evaluation without answers, by default giving the utilities broad latitude in this matter. For example, the proposed rule allows but does not require the Commission's staff to "publish guidelines for program measurement and verification of compliance with division (A)(1) of section 4928.66 of the Revised Code...." If OCEA's comments above relating to the role of the collaborative are adopted, this concern is substantially mitigated. Nonetheless, appropriate guidance will ensure that a collaborative or utility will achieve the goals envisioned by the General Assembly.

OCEA strongly urges the Commission to publish guidelines as part of this rulemaking to ensure careful, diligent and standardized measurement and evaluation protocols for each Ohio utility's energy efficiency and demand response programs. It is the Commission's obligation to ensure that utility resource investments are in fact serving the interest of utility customers and that the utility is investing in cost-effective energy

efficiency and demand response portfolio. The General Assembly charged the commission with this critical function stating, “In accordance with rules it shall adopt, the public utilities commission shall produce and docket at the commission an annual report containing the results of its verification of the annual levels of energy efficiency and of peak demand reductions achieved by each electric distribution utility...”<sup>4</sup> The Commission will be far better able to carry out this obligation if it creates a standardized approach and requires adherence to that approach across all Ohio utilities.

In addition, OCEA recommends that the Commission include a requirement in this rulemaking that each utility use an independent third-party evaluator. As with any kind of audit, the credibility and reliability of the results of for energy efficiency and demand response program evaluation is dramatically enhanced if the evaluation is performed by a truly independent entity, rather than by an entity that has a stake in the outcome of the evaluation.

For this reason, many states have specified either statutorily or in regulation that the programs must be evaluated by an independent third-party. Recently, in Illinois, the General Assembly specified that the utility’s annual evaluation be independent, and the Illinois Commerce Commission further construed that language to mean that the utility must not be allowed to hire or fire the evaluator. Rather, the commission, or in the case of Ohio the collaborative, should ultimately controls the hiring and firing of the independent evaluator.<sup>5</sup>

Beyond ensuring that the annual evaluations are conducted independently, the rules should designate a common framework to be used by each of the Ohio utilities.

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<sup>4</sup> R.C. 4928.66(B) (emphasis added).

<sup>5</sup> Order of the Illinois Commerce Commission in Docket No. 07-0540, February 6, 2008 at page 45.

Considerable experience with measurement and evaluation has been gained in several states, and that experience has resulted in several published evaluation frameworks that can be used by Ohio regulators, including the 2004 *California Evaluation Framework*, and the National Action Plan for Energy Efficiency's *Model Energy Efficiency Program Impact Evaluation Guide* and the *International Performance Measurement and Verification Protocol*.

PROPOSED NEW RULE:

- (A) COLLABORATIVES SHALL HIRE INDEPENDENT, THIRD-PARTY EVALUATORS TO PERFORM PROCESS AND IMPACT EVALUATIONS OF ALL THEIR PROGRAMS. PROCESS EVALUATIONS WILL BE CONDUCTED NOT LATER THAN THE SECOND YEAR AND AGAIN IN THE FOURTH YEAR OF A PROGRAM AND IMPACT EVALUATIONS WILL BE CONDUCTED IN THE THIRD AND FIFTH YEAR OF THE PROGRAM. THE COMMISSION STAFF WILL DETERMINE THE FREQUENCY OF EVALUATION AFTER THE FIRST FIVE YEARS.
- (B) THE EVALUATION BUDGET SHALL BE NO MORE THAN 6% OF TOTAL PROGRAM COSTS IN THE FIRST 3 YEARS, DROPPING TO NO MORE THAN 3%. THE COLLABORATIVE MAY ESTABLISH A BUDGET EXCEEDING THESE LEVELS AS APPROPRIATE.
- (C) THE IMPACT EVALUATIONS WILL PERFORM THE FOLLOWING:
  - (1) SUMMARIZE GROSS ENERGY AND DEMAND SAVINGS, AS REPORTED BY THE UTILITIES FOR EACH CUSTOMER CLASS
  - (2) ESTIMATE COST EFFECTIVENESS
- (D) THE PROCESS EVALUATIONS WILL ADDRESS THE EFFECTIVENESS OF PROGRAM DESIGN AND DELIVERY, INCLUDING ASSESSING CUSTOMER SATISFACTION AND BARRIERS TO PARTICIPATION.

- (E) COMMISSION STAFF WILL REVIEW AND APPROVE THE ANNUAL EVALUATION PLANS.
- (F) COMMISSION STAFF WILL REVIEW AND COMMENT ON THE MAJOR EVALUATION REPORTS.

NOTE: (G) was moved from the original section 4901:1-39-04(C).

- (G) Staff WILL publish guidelines for program measurement and verification of compliance with division (A)(1) of section 4928.66 of the Revised Code, and the utility should identify and explain any deviations from such guidelines.

**4901:1-39-07 Filing and Review of the Energy Efficiency and Demand Response Achievements Report**

This newly assembled section is designed to pull together in one place all text relating to reporting on the actual achievements of the programs. It is distinct from the new sections 4901:1-39-03, 4, and 5 in that it describes reports focused on past activities, whereas 3, 4, and 5 are forward looking documents.

NOTE: (A) and (B) Were moved from the original section 4901:1-39-03(A) and (B).

**PROPOSED RULE CHANGE:**

- (A) On April fifteenth of each year, each electric utility shall file with its long-term forecast report, a ~~benchmark~~ report in accordance with this chapter, ~~regarding compliance with baselines and benchmarks for energy efficiency and peak reduction programs~~ DETAILING THEIR ENERGY EFFICIENCY AND DEMAND RESPONSE ACHIEVEMENTS RELATIVE TO THEIR BASELINE.
- (B) Any person may file comments regarding an electric utility's ~~benchmark~~ ACHIEVEMENTS report within thirty days of the filing of such report.
- (C) IN THE REPORT, EACH ELECTRIC UTILITY SHALL DESCRIBE ALL ACTIONS TAKEN IN THE PRIOR

CALENDAR YEAR TO COMPLY WITH THE  
APPROVED BENCHMARKS, INCLUDING:

- (3) A DESCRIPTION OF EACH ENERGY EFFICIENCY PROGRAM, THE KEY ACTIVITIES TAKEN IN THOSE PROGRAMS, THE NUMBER AND TYPE OF PARTICIPANTS, AND THE SAVINGS ACHIEVED BY THOSE PROGRAMS.
  - (4) A DESCRIPTION OF EACH DEMAND RESPONSE PROGRAM, THE KEY ACTIVITIES TAKEN IN THOSE PROGRAMS, THE NUMBER AND TYPE OF PARTICIPANTS, AND THE SAVINGS ACHIEVED BY THOSE PROGRAMS.
  - (5) A DESCRIPTION OF ALL ENERGY SAVINGS PRODUCED BY MERCANTILE CUSTOMERS AND COUNTED AS PART OF THE UTILITIES' GOALS, INCLUDING A DESCRIPTION OF THE METHODS TAKEN TO SAVE ENERGY AND A LIST AND DESCRIPTION OF THE COMPANIES INVOLVED.
  - (6) A DESCRIPTION OF ALL DEMAND SAVED BY MERCANTILE CUSTOMERS AND COUNTED AS PART OF THE UTILITIES' GOALS, INCLUDING A DESCRIPTION OF THE METHODS TAKEN TO SAVE ENERGY AND A LIST AND DESCRIPTION OF THE COMPANIES INVOLVED.
  - (7) A DESCRIPTION OF THE TRANSMISSION LOSS MITIGATION EFFORTS TAKEN TO MEET PART OF THE UTILITIES' GOALS.
  - (8) A DESCRIPTION OF ALL ENERGY SAVINGS IN EXCESS OF THE ANNUAL TARGET GOALS THAT WILL BE APPLIED TO FOLLOWING YEAR'S ENERGY SAVINGS BENCHMARKS.
  - (9) ALL PLANS FOR MEETING FUTURE BENCHMARKS.
- (D) THE UTILITY SHALL REPORT THE EVALUATION OF THE COST-EFFECTIVENESS OF EACH DEMAND SIDE AND ENERGY EFFICIENCY PROGRAM USING

THE COST TEST APPROVED BY THE COLLABORATIVE. ALL COSTS AND BENEFITS SHALL BE EXPRESSED IN NOMINAL DOLLARS.

- (E) THE DESCRIPTIONS OF THE PROGRAM ENERGY AND DEMAND SAVINGS, WHETHER BY PROGRAMS OR MERCANTILE CUSTOMERS, SHALL INCLUDE A DESCRIPTION OF THE METHODS USED TO CALCULATE THE SAVINGS ALONG WITH A DESCRIPTION OF STEPS TAKEN TO VERIFY ENERGY AND DEMAND SAVINGS.
- (F) THE STAFF SHALL REVIEW THE UTILITY'S ANNUAL ACHIEVEMENT REPORT AND ANY COMMENTS, AND FILE A REPORT OF ITS FINDINGS BY THE FIRST OF AUGUST. THE STAFF REPORT SHALL CONTAIN:
  - (1) FINDINGS REGARDING THE UTILITY'S COMPLIANCE WITH THE ENERGY EFFICIENCY IMPROVEMENTS AND ACHIEVEMENT OF THEIR TARGET GOALS.
  - (2) FINDINGS REGARDING THE UTILITY'S COMPLIANCE WITH THE DEMAND RESPONSE IMPROVEMENTS AND ACHIEVEMENT OF THEIR TARGET GOALS.
  - (3) STAFF RECOMMENDATION ON WHETHER OR NOT THE UTILITY SHOULD BE ASSESSED A FORFEITURE FOR UNDERCOMPLIANCE OR NONCOMPLIANCE WITH THE ANNUAL SALES REDUCTIONS REQUIRED BY DIVISION (A) OF SECTION 4928.66 OF THE REVISED CODE.

### **Reporting Frequency**

Under the draft rules, the commission would receive reports on utility implementation of the energy efficiency and demand response programs on an annual basis, with no obligation to provide any data on program performance throughout the year. OCEA urges the commission to require additional, less extensive quarterly reports. These reports would minimally detail year-to-date expenditures by customer class, year-

to-date energy and peak savings by customer class, percentage of annual estimated budget spent and percentage of annual savings realized.

It is fairly standard for utilities to provide updates on a quarterly or even monthly basis, in addition to their more comprehensive annual reports. Efficiency Vermont, for example, reports to the Vermont Public Service Board on a monthly basis. Many low-income efficiency programs in Ohio utilize quarterly reporting. The main benefit of interim reports is to allow the Commission, the utilities and other stakeholders to monitor program implementation and make mid-course corrections if programs are not achieving their expected results.

**PROPOSED RULE CHANGE:**

- (G) ELECTRIC UTILITIES ARE ALSO REQUIRED TO FILE ADDITIONAL, LESS EXTENSIVE QUARTERLY REPORTS. THESE REPORTS SHOULD MINIMALLY DETAIL YEAR-TO-DATE EXPENDITURES BY PROGRAM AND CUSTOMER CLASS, YEAR-TO-DATE ENERGY AND PEAK SAVINGS BY CUSTOMER CLASS, PERCENTAGE OF ANNUAL ESTIMATED BUDGET SPENT AND PERCENTAGE OF ANNUAL SAVINGS REALIZED.

**Forfeiture for Noncompliance**

The draft rules grant the commission staff discretion over whether to recommend a forfeiture for noncompliance be imposed upon a utility where, based on the utility's annual report regarding the baselines and benchmarks, the staff has determined that the utility has failed to comply. Specifically, Section 4901:1-39-03(C) of the draft rules states that "[i]f staff finds that an electric utility has not demonstrated compliance with the annual sales reductions required by division (A) of section 4928.66 of the Revised Code, staff *may* recommend the imposition of a forfeiture." (Emphasis added.)

However, the statutory authority clearly imposes the nondiscretionary obligation upon the Commission to both make a determination as to whether the utility has complied with the energy savings standards, and impose forfeiture whenever the Commission makes a determination that a utility has failed to comply. Section 4928.66(C) states that “[i]f the commission determines, after notice and opportunity for hearing and based upon its report under division (B) of this section, that an electric distribution utility has failed to comply with an energy efficiency or peak demand reduction requirement of division (A) of this section, the commission *shall* assess a forfeiture on the utility....” (Emphasis added.)

Since the statute does not impose any obligation on the commission staff to make any recommendation with regard to a forfeiture, the draft rules do not necessarily undermine the clear intent of the legislature to require a mandatory penalty for noncompliance. Rather, one could read the draft rules as simply adding a step wherein the staff would, at its discretion, make a recommendation regarding the imposition of a forfeiture for noncompliance. However, under this reading, in any instance of noncompliance where staff recommended not imposing a forfeiture, the Commission would be obliged to disregard the staff’s recommendation. This outcome would be confusing for the Commission, confusing for the utility, and would result in unnecessary complication and delay with respect to enforcement of the energy efficiency and demand response standards.

The legislature clearly recognized the need for an effective enforcement scheme to ensure that the energy efficiency and demand response standards adopted in S.B. 221 are met, barring any extreme circumstances under which the utility could not reasonably



comply. Moreover, the legislature restricted the Commission to two choices regarding the level of a forfeiture for noncompliance to either \$10,000 per day per violation or “an amount equal to the then existing market value of one renewable energy credit per megawatt hour of under-compliance or noncompliance.”<sup>6</sup>

Therefore, OCEA recommends the following changes to 4901:1-39-03(C) which, under OCEA’s recommendations, would be 4901:1-39-07(H):

**PROPOSED RULE CHANGE:**

- (H) The staff shall review the utility’s benchmark report and any comments, and file a report of its findings regarding the baselines and benchmarks, and any proposed modifications thereto, and the utility’s compliance with the mandated energy efficiency improvements and demand reductions. If staff OR THE COMMISSION finds that an electric utility has not demonstrated compliance with the annual sales reductions required by division (A) of section 4928.66 of the Revised Code, ~~staff may~~ THE COMMISSION SHALL ~~recommend the imposition of~~ IMPOSE a forfeiture.

**4901:1-39-058 Recovery Mechanism**

Utilities are required under law to meet the energy efficiency standards set out in S.B. 221 and are subject to penalties if they fail to do so. Before any incentives are contemplated, the Commission should hold a generic investigation after two years of utility filings, into the merits of DSM incentive mechanisms.

**PROPOSED RULE CHANGE:**

- (A) Upon approval of an electric utility’s long-term forecast and benchmark reports as set forth in Chapter 4901:1-5-1 of the Administrative Code, and this chapter, the utility may file an application for recovery of costs due to peak demand reduction, demand response, energy efficiency program costs, AND appropriate lost distribution revenues. ~~, and potential shared savings. THE COMMISSION~~

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<sup>6</sup> R.C. 4928.66(C).

WILL CONDUCT AN INVESTIGATION INTO  
POTENTIAL DSM PROGRAM INCENTIVES NO  
LATER THAN DECEMBER OF 2011.

- (1) INVESTMENTS IN ENERGY EFFICIENCY  
THAT RESULT IN A DECREASE IN  
NECESSARY INVESTMENT IN TRANSMISSION  
AND DISTRIBUTION INFRASTRUCTURE  
SHALL BE FUNDED BY EITHER THE ENERGY  
EFFICIENCY PROGRAM OR THROUGH A  
DISTRIBUTION RATE CASE OR THROUGH  
THE INFRASTRUCTURE MODERNIZATION  
PLAN. THE EFFICIENCY SAVING MAY BE  
COUNTED TOWARDS THE STANDARD.  
Recovery of transmission and distribution  
infrastructure investments pursuant to division  
(A)(2)(d) of section 4928.66 of the Revised Code is  
limited to the portion of those investments that are  
attributable to energy efficiency purposes as  
opposed to reliability, OPERATIONAL COST  
SAVINGS, or market purposes.

Requiring mercantile customers to meet the same energy and demand savings benchmarks that the programs must meet as defined in S.B. 221 would meet the intent of the legislation in terms of requiring specified energy and demand savings to be achieved, but allowing mercantile customers the flexibility to do so on their own without requiring them to participate in specific utility programs. Furthermore, language has been inserted that clarifies that mercantile customers who are granted exemptions are not responsible for paying for utility DSM program costs but are still responsible for paying for any utility lost revenues, utility incentives, and monitoring and verification costs necessitated by that customer class.

**PROPOSED RULE CHANGE:**

- (2) Mercantile customers who MEET OR EXCEED  
THE REQUIRED PERCENTAGE BENCHMARK  
REDUCTIONS APPLIED TO THEIR OWN  
ELECTRIC ENERGY CONSUMPTION AND  
PEAK DEMAND SPECIFIED IN THE

BENCHMARK DEFINITIONS IN SECTION 4901:1-39-01 FOR ANY GIVEN YEAR AND commit their peak demand reduction, demand response, or energy efficiency programs for integration with the electric utility's programs may apply for exemption from UTILITY DSM PROGRAM COSTS recovery, EXCLUDING RECOVERY OF ANY LOST REVENUES, UTILITY INCENTIVES, AND MONITORING AND VERIFICATION COSTS NECESITATED BY THAT CUSTOMER CLASS, as set forth in rule 4901:1-39-06 of the Administrative Code.

- (B) Any person may file ~~objections~~ COMMENTS within SIXTY days of the filing of an electric utility's application for recovery. The commission staff shall review the utility's application and any ~~objections~~ COMMENTS, and file its report and recommendations within ninety days of the filing of the application. If a stipulation resolving all issues in the proceeding is not filed on behalf of all parties with thirty days of the filing of the staff report, the commission will set the matter for hearing and publish notice of hearing.

**4901:1-39-069 Commitment for Meeting Energy Savings and Peak Demand Savings Benchmarks and Integration by Mercantile Customers<sup>7</sup>**

**Comments about Rule 4901:1-39-069(A)**

Throughout this section OCEA has replaced "program" with "project," where appropriate, to conform with the definitions proposed at the beginning of this section.

**PROPOSED RULE CHANGE:**

- (A) A mercantile customer may enter into a special arrangement with an electric utility, pursuant to division (A)(2)(d) of section 4928.66 of the Revised Code, to commit the customer's demand reduction, demand response, or energy efficiency ~~programs~~ PROJECTS for integration with the electric utility's demand reduction, demand response, and energy efficiency programs. Such arrangement shall:....

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<sup>7</sup> OCEA proposes changing the title of this section to better address the content of the section.

**Comments about Rule 4901:1-39-069(A)(2)**

Given that the word “all” could be interpreted quite literally, it seems a qualifier of “the most important” would more clearly specify the intent.

**PROPOSED RULE CHANGE:**

- (2) Specify ~~all~~THE MOST IMPORTANT circumstances under which demand reductions may be effectuated by the customer.

Requiring mercantile customers to meet the same energy and demand savings benchmarks and evaluation protocols that the programs must meet as defined in S.B. 221 would meet the intent of the legislation in terms of requiring specified energy and demand savings to be achieved, but allowing mercantile customers the flexibility to do so on their own without requiring them to participate in specific utility programs would not.

**Comments about Rule 4901:1-39-069(A)(3)**

**PROPOSED RULE CHANGE:**

- (3) Grant permission to the electric utility and staff to measure and verify energy savings and/or demand reductions, USING THE SAME EVALUATION STANDARDS AS USED FOR UTILITY PROGRAMS MANAGED BY A COLLABORATIVE, resulting from customer-sited ~~programs~~PROJECTS and resources, AND TO VERIFY THAT THE MERCANTILE CUSTOMERS’ ENERGY SAVINGS AND DEMAND SAVINGS ACCOMPLISHMENTS IN EACH YEAR MEET THE PERCENTAGE BENCHMARK REQUIREMENTS THAT UTILITY PROGRAMS FACE AS SPECIFIED IN RULE 4901:1-39-01.

**Comments about Rule 4901:1-39-069(B)**

The key issue here is getting a report of the energy saved by the mercantile customer. There are many possible options for that reporting, the Portfolio Manager

being one such option. The Portfolio Manager is targeted at commercial buildings (not industrial applications nor residential) and so may not be appropriate for all mercantile applications. The details provided in (B)(3) and (B)(4) below will enable a more accurate assessment of project-specific savings than Portfolio Manager is likely to provide. More detail in the reporting will enable a more thorough assessment of the accuracy of the claimed savings.

**PROPOSED RULE CHANGE:**

- (B) The electric utility and mercantile customer shall file an application for approval of a special arrangement under this rule. That application may include a request for an exemption from the rate recovery mechanism set forth in rule 4901:1-39-05 of the Administrative Code. In order to be eligible for such exemption, the mercantile customer must consent to providing AN ANNUAL REPORT ON THE ENERGY SAVINGS AND PEAK DEMAND REDUCTIONS THEY HAVE ACHIEVED IN THEIR OWN FACILITIES IN THE MOST RECENT YEAR, AS SPECIFIED BELOW ~~data on its facilities to the United States environmental protection agency's portfolio manager as described in rule 4901:1-39-04~~ WHICH SHALL BE REVIEWED BY THE COLLABORATIVE. If the application includes a request for exemption from the rate recovery mechanism the application shall include the following:
- (1) Baselines for kilowatt-hour consumption and kilowatt demand based upon averages of the three most recent years of metered data or, if metered data is not available, based upon a reasonable method of estimation.
  - (2) An accounting of energy saved and demand reductions achieved, and the resulting new levels of kilowatt-hour consumption and kilowatt demand.
  - (3) A listing and description of ~~programs~~ PROJECTS undertaken by the customer
  - (4) A description of measures taken, devices or equipment installed, processes modified, or other

actions taken to increase energy efficiency and reduce demand, INCLUDING SPECIFIC DETAILS SUCH AS THE NUMBER, TYPE, AND EFFICIENCY LEVELS BOTH OF THE INSTALLED EQUIPMENT AND THE OLD EQUIPMENT THAT IS BEING REPLACED (IF APPLICABLE).

**Comments about Rule 4901:1-39-069(B)**

As proposed in (B)(5), more detail on the measures installed or implemented will support more accurate independent verification of the claimed savings.

**PROPOSED RULE CHANGE:**

- (5) An accounting of expenditures made for each ~~program~~ PROJECT AND ITS COMPONENT ENERGY SAVING AND DEMAND SAVINGS MEASURES ~~and for each program element~~.

**Comments about Rule 4901:1-39-069(B)(6), (B)(7), (C) and (D)**

The proposed language in (B)(6), (B)(7), (C) and (D) clarifies that only projects completed during the years used in determining the utility baseline are eligible. This provides consistency with the original statute and makes the regulation practical and enforceable. If any mercantile project completed in any year going as far back as the industrial revolution were eligible, it would be impossible for the Commission to administer this regulation.

**PROPOSED RULE CHANGE:**

- (6) The time line of when each ~~program~~ PROJECT OR MEASURE went into effect, and when the energy savings and demand reductions took place. ONLY PROJECTS COMPLETED AND EXISTING DURING THE YEARS USED IN DETERMINING THE UTILITY BASELINE ARE ELIGIBLE.
- (7) A copy of the formal declaration or agreement that commits the mercantile customer's ~~programs~~ PROJECTS for integration.

- (C) The application shall include a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying ~~program~~PROJECT results. The application should also identify and explain all deviations from any guidelines which may be published by the staff for ~~program~~PROJECT measurement and verification of compliance.
- (D) Any special arrangement under this rule may be combined with any other arrangement made pursuant to section 4905.31 of the Revised Code, if such arrangement contains appropriate measurements and verification of ~~program~~PROJECT results.

### **III. ENERGY EFFICIENCY AND DEMAND REDUCTION BENCHMARKS – CHAPTER 4901:1-40**

#### **4901:1-40 – Definitions**

##### **Proposed new Definition – Clean Coal Facility**

OCEA requests that the Commission adopt the definition of clean coal facility that is used in Illinois.

#### **PROPOSED RULE CHANGE:**

“CLEAN COAL FACILITY” MEANS AN ELECTRIC GENERATING FACILITY THAT USES PRIMARILY COAL AS A FEEDSTOCK AND THAT CAPTURES AND SEQUESTERS CARBON EMISSIONS AT THE FOLLOWING LEVELS: AT LEAST 65% OF THE TOTAL CARBON EMISSIONS THAT THE FACILITY WOULD OTHERWISE EMIT IF, AT THE TIME CONSTRUCTION COMMENCES, THE FACILITY IS SCHEDULED TO COMMENCE OPERATION BEFORE 2016, AT LEAST 75% OF THE TOTAL CARBON EMISSIONS THAT THE FACILITY WOULD OTHERWISE EMIT IF, AT THE TIME CONSTRUCTION COMMENCES, THE FACILITY IS SCHEDULED TO COMMENCE OPERATION DURING 2016 OR 2017, AND AT LEAST 90% OF THE TOTAL CARBON EMISSIONS THAT THE FACILITY WOULD OTHERWISE EMIT IF, AT THE TIME CONSTRUCTION COMMENCES, THE FACILITY IS SCHEDULED TO COMMENCE OPERATION AFTER 2017. THE CLEAN COAL FACILITY SHALL NOT EXCEED ALLOWABLE EMISSION RATES FOR SULFUR DIOXIDE,

NITROGEN OXIDES, CARBON MONOXIDE,  
PARTICULATES AND MERCURY FOR A NATURAL GAS-  
FIRED COMBINED-CYCLE FACILITY THE SAME SIZE AS  
AND IN THE SAME LOCATION AS THE CLEAN COAL  
FACILITY AT THE TIME THE CLEAN COAL FACILITY  
OBTAINS AN APPROVED AIR PERMIT.

### **Proposed Definition of (F) – Clean Coal Technology**

Ohio Revised Code section 4928.01(A)(34)(c) defines “Clean coal technology” as including any technology with the:

design capability to control or prevent the emission of carbon dioxide, **which design capability the commission shall adopt by rule** and shall be based on economically feasible best available technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion;....

(Emphasis added.) Thus, the General Assembly has required the Commission to establish specific design capability standards to govern whether a given coal technology application should be designated “clean coal.” However, proposed Rule 4901:1-40-01(F) merely defines “clean coal technology” in the same manner as the statute.<sup>8</sup>

Far from clarifying the issue, this circular definition leaves open the possibility that a technology with the mere statement that its “design capability” will remove “criteria pollutants and carbon dioxide” from a coal facility will qualify the facility as “clean coal” for purposes of the advanced energy benchmark. In effect, the proposed rule could allow a proposed project to *designate itself* as a “clean coal technology” because there are no design standards against which to measure a project’s capability. Thus, a coal facility with design capability to be upgraded to an Integrated Gasification Combined Cycle facility might already meet this test, without having removed a single

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<sup>8</sup> The proposed rule defines “Clean coal technology” as “any technology that removes or has the design capability to remove criteria pollutants and carbon dioxide from an electric generating facility....”



pollutant from the air, merely based upon its own statement of its “design capability.”

The same is true for existing and planned coal-fired generation that is designed to accept a back-end sequestration technology.

OCEA asserts that the statutory definition set forth in R.C. 4928.01(A)(34)(c) mandates that the Commission adopt specific design capability standards. To correct this deficiency, this proposed Rule 4901:1-40 should be revised to include specific design capability standards.

#### **Proposed Definition of (I) – Deliverable into this State**

For purposes of the renewable tier of the alternative energy portfolio standard, one-half of the electricity supplied shall come from facilities located in the state of Ohio; the other half must be met with resources “that can be shown to be deliverable into this state.”<sup>9</sup>

OCEA supports the definition of “deliverable into this state” in the proposed rule.

#### **Proposed Definition of (L) – Distributed Generation**

Although the proposed definition of “distributed generation” in proposed Rule 4901:1-40-01(L) appears to contemplate including the broadest possible range of electricity production, it does not address the ownership of the projects that comprise the electricity production or whether such projects may be net-metered. In keeping with the state’s policy of “encouraging distributed generation across customer classes,”<sup>10</sup> the definition should make clear that all ownership arrangements will qualify as distributed generation. Additionally, it should clarify that net-metered systems will qualify as distributed generation.

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<sup>9</sup> R.C. 4928.64.

<sup>10</sup> Ohio Rev. Code Ann. § 4928.02(K)) (Baldwin 2008).

The revised definition we propose will ensure that electricity distribution installed pursuant to power purchase agreements will qualify as distributed generation, thereby making distributed generation available to customers who might not otherwise be able to afford it. Additionally, the expanded definition will avoid any ambiguity over whether net-metered systems qualify as distributed generation.

Therefore, OCEA proposes that the draft definition be revised as follows:

**PROPOSED RULE CHANGE:**

- (L) “Distributed generation” means electricity production that is on-site or close to the load center and is capable of supplying energy to the utility distribution system. DISTRIBUTED GENERATION INCLUDES, WITHOUT LIMITATION, ELECTRICITY PRODUCTION FROM ALTERNATIVE ENERGY RESOURCES AND RENEWABLE ENERGY RESOURCES, REGARDLESS OF WHETHER ANY SUCH ALTERNATIVE ENERGY RESOURCE OR RENEWABLE ENERGY RESOURCE IS OWNED BY THE UTILITY CUSTOMER, A THIRD-PARTY OR ANOTHER OWNERSHIP ARRANGEMENT. NET-METERED ELECTRICITY PRODUCTION THAT MEETS THE CRITERIA SET FORTH IN THIS DEFINITION SHALL QUALIFY AS DISTRIBUTED GENERATION.

**Proposed Definition of (M) – Double-counting**

OCEA understands the need for a definition of “double-counting” to ensure that the multiple policy aims in S.B. 221 are not short-circuited. However, the definition of “double-counting” is proposed in Rule 4901:1-40-01(M) appears somewhat vague and may not lend itself to straightforward interpretation. To provide utilities and regulators with a clear standard, OCEA proposes revising the definition. This revised definition provides a more explicit guide for determining what actions constitute double-counting:

PROPOSED RULE CHANGE:

- (M) “Double-counting” means utilizing ~~renewable energy~~, AN INDIVIDUAL renewable energy credits (WHETHER OR NOT BUNDLED WITH ELECTRIC POWER), or energy efficiency savings to (1) satisfy multiple regulatory requirements, (2) support multiple voluntary product offerings, (3) substantiate multiple marketing claims, or (4) some combination of these.

**Proposed Definition of (Y) – Incremental Capacity**

In order to clarify that only the upgrades or enhancements that meet the criteria are to be considered “qualified resources,” OCEA recommends the following addition to the proposed Rule 4901:1-40 of “incremental capacity” and that the subsequent definitions be renumbered:

PROPOSED RULE CHANGE:

- (Y) “INCREMENTAL CAPACITY” MEANS THE ADDITIONAL GENERATION CAPACITY ADDED AS A RESULT OF A MODIFICATION TO AN ELECTRIC GENERATING FACILITY OR SIGNIFICANT IMPROVEMENT TO AN EXISTING FACILITY.

**Proposed Definition of (CC) – Placed in Service**

This proposed modification adds some specificity to the definition to handle cases when plants go offline or are mothballed and then come back online, or are refurbished.

PROPOSED RULE CHANGE:

- (CC) “Placed-in-service” means when a NEW facility or NEW technology becomes operational OR WHEN EXISTING FACILITIES THAT UNDERGO SIGNIFICANT MODIFICATION AS DEFINED IN THE PROVISIONS OF SECTION 4901:1-40-04(B).

**Proposed Definition of (HH) – Solar Thermal**

OCEA recommends the following language change to clarify that the definition of solar thermal applies only to solar thermal applications that produce electricity. Note that

solar thermal applications in the home to heat hot water or that provide space heating should be treated as an energy efficiency application since it is reducing the need for either natural gas or electricity and is better handled under the energy efficiency portion of the regulations.

**PROPOSED RULE CHANGE:**

(HH) “Solar thermal” means the concentration of the sun’s energy, typically through the use of lenses or mirrors, to drive a generator or engine TO PRODUCE ELECTRICITY.

**A. Solid Wastes (qualifying as a renewable resource)**

“Solid wastes” are included in the definition of renewable energy resources in

S.B. 221. Proposed rule 4901:1-40-01(II) defines “solid wastes” by reference to Revised

Code 3734.01. The definition there appears as follows:

[U]nwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. “Solid wastes” does not include any material that is an infectious waste or a hazardous waste.<sup>11</sup>

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<sup>11</sup> R.C. 3734.01.

However, in S.B. 221 the General Assembly *narrowed* the definition to include only fuel derived from solid wastes “through fractionation, biological decomposition, or other process that does not principally involve combustion.”<sup>12</sup>

Oddly, this limitation is not reflected in the proposed rules either in the definition of solid wastes in section 4901:1-40-01(II) or in the list of qualifying resources in section 4901:1-40-04(A)(5). OCEA urges that the limitation be incorporated in both places to prevent solid waste technologies principally involving combustion to qualify as a renewable resource. The change OCEA suggests is as follows:

**PROPOSED RULE CHANGE:**

- (II) “Solid wastes” has the meaning set forth in section 3734.01 of the Revised Code, AS MODIFIED IN SECTION 4928.01 (A)(35) TO INCLUDE ONLY FUEL DERIVED THROUGH FRACTIONATION, BIOLOGICAL DECOMPOSITION, OR OTHER PROCESS THAT DOES NOT PRINCIPALLY INVOLVE COMBUSTION.”

**B. Biomass (qualifying as a renewable resource)**

In 2007 Congress adopted a definition of renewable biomass energy in the Energy Independence and Security Act. While there is substantial overlap between the federal and the proposed Ohio definition, the proposed 4901:40-1-01(E) fails to take into consideration the land-use implications of encouraging undeveloped land to be used to produce biomass energy. OCEA urges the Commission to adopt a definition of qualifying renewable biomass energy that is identical to the one adopted by Congress, specifically:

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<sup>12</sup> R.C. 4928.01(A)(35).

PROPOSED RULE CHANGE:

“RENEWABLE BIOMASS” MEANS EACH OF THE FOLLOWING:

- (A) PLANTED CROPS AND CROP RESIDUE HARVESTED FROM AGRICULTURAL LAND CLEARED OR CULTIVATED AT ANY TIME PRIOR TO THE ENACTMENT OF THIS SENTENCE THAT IS EITHER ACTIVELY MANAGED OR FALLOW, AND NONFORESTED.
- (B) PLANTED TREES AND TREE RESIDUE FROM ACTIVELY MANAGED TREE PLANTATIONS ON NON-FEDERAL LAND CLEARED AT ANY TIME PRIOR TO ENACTMENT OF THIS SENTENCE, INCLUDING LAND BELONGING TO AN INDIAN TRIBE OR AN INDIAN INDIVIDUAL, THAT IS HELD IN TRUST BY THE UNITED STATES OR SUBJECT TO A RESTRICTION AGAINST ALIENATION IMPOSED BY THE UNITED STATES.
- (C) ANIMAL WASTE MATERIAL AND ANIMAL BYPRODUCTS.
- (D) SLASH AND PRE-COMMERCIAL THINNINGS THAT ARE FROM NON-FEDERAL FORESTLANDS, INCLUDING FORESTLANDS BELONGING TO AN INDIAN TRIBE OR AN INDIAN INDIVIDUAL, THAT ARE HELD IN TRUST BY THE UNITED STATES OR SUBJECT TO A RESTRICTION AGAINST ALIENATION IMPOSED BY THE UNITED STATES, BUT NOT FORESTS OR FORESTLANDS THAT ARE ECOLOGICAL COMMUNITIES WITH A GLOBAL OR STATE RANKING OF CRITICALLY IMPERILED, IMPERILED, OR RARE PURSUANT TO A STATE NATURAL HERITAGE PROGRAM, OLD GROWTH FOREST, OR LATE SUCCESSIONAL FOREST.
- (E) BIOMASS OBTAINED FROM THE IMMEDIATE VICINITY OF BUILDINGS AND OTHER AREAS REGULARLY OCCUPIED BY PEOPLE, OR OF PUBLIC INFRASTRUCTURE, AT RISK FROM WILDFIRE.
- (F) ALGAE.

- (G) SEPARATED YARD WASTE OR FOOD WASTE,  
INCLUDING RECYCLED COOKING AND TRAP  
GREASE.

**4901:1-40-02 Purpose and Scope**

**Comments about Rule 4901:1-40-02(B)**

Proposed Rule 4901:1-40-02(B) gives the Commission blanket authority to waive any requirement of the Alternative Energy Portfolio Standard (“AEPS”). This overly broad language clearly oversteps the specific and comprehensive method for excused compliance that the General Assembly specifically sets forth in R.C. 4928.64, and may increase the cost of implementing the AEPS by decreasing the predictability of the standard.

Revised Code section 4928.64(C)(3) provides the Commission with ample authority to excuse compliance and otherwise provide relief under well-defined, predictable circumstances. The Commission may excuse a utility from meeting a benchmark if its cost of compliance is reasonably expected to exceed the cost of otherwise producing or acquiring the requisite energy by three percent or more.<sup>13</sup>

Further, the Commission may make a determination that a utility or company’s noncompliance is due to *force majeure*, in which case the Commission must modify that utility or company’s obligation “as the commission determines appropriate....”<sup>14</sup>

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<sup>13</sup> R.C. 4928.64(C)(3).

<sup>14</sup> R.C. 4928.64(C)(4)(c) (emphasis added).

Finally, the Commission may change the compliance payment, including submitting downward adjustments of the compliance payment to the General Assembly for legislative enactment.<sup>15</sup>

Together, these measures allow the Commission significant discretion without compromising the regulatory certainty that alternative and renewable energy developers and investors require.

Under proposed Rule 4901:1-40-02(B), however, the Commission could alter, delay or eliminate the standard at any future time, with no particular process or showings delineated. This significantly reduces regulatory risk for electric utilities and electric service companies, while creating no apparent limit on the regulatory risk faced by alternative and renewable energy developers seeking to do business with the electric utilities and electric service companies. Although contracted projects existing prior to a waiver would be protected, a significant risk premium could attend all future investment in renewable energy development in the state. Thus, while the waiver provision is presumably designed to protect ratepayers from unanticipated market conditions, ratepayers are clearly already directly protected, and open-ended ability to suspend or terminate compliance requirements may perversely have the unintended consequence of exposing ratepayers to higher costs.

This subject was much discussed in the legislature and the statute clearly identifies the allowed justifications for relief; the proposed rule clearly oversteps the statutory design.

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<sup>15</sup> Id. 4928.64(C)(5).



For these reasons, the final rules should omit proposed Rule 4901:1-40-02(B):

PROPOSED RULE CHANGE:

~~B) — The commission may waive any requirement of Chapter 4901:1-40 of the Administrative Code for good cause shown.~~

**Comments about New Rule 4901:1-40-03(B)(4)**

Since the renewable requirement is based on a percentage of retail sales, and RECs are typically created at generator busbar, the rule needs to specify how to account for electricity transmission and distribution losses.

PROPOSED RULE CHANGE:

(B)(4) FOR BOTH ELECTRIC UTILITIES AND ELECTRIC SERVICES COMPANIES, THE TOTAL NUMBER OF RECS NEEDED FOR COMPLIANCE WILL BE CALCULATED AT THE GENERATOR BUSBAR AND WILL BE ADJUSTED UPWARD TO TAKE INTO ACCOUNT ELECTRIC TRANSMISSION AND DISTRIBUTION LOSSES.

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

**Comments about 4901:1-40-04(B)**

Proposed rule 4901:1-40-04(B) sets out the list of technologies that qualify as “advanced energy,” and are thus eligible for the advanced tier of the alternative energy portfolio standard. Among these resources are both “any modification to a ... facility ... that increases its generation output without increasing [its] carbon dioxide emission rate” and “nuclear enhancements,” which include “[s]ignificant improvements [at] existing facilities.”

Obviously the General Assembly intended to credit certain classes of upgrades at existing facilities toward the advanced energy benchmark. But the rules should clarify that credit toward the advanced energy benchmark for such capacity additions and

efficiency improvements does not render an entire existing generating facility an “advanced energy resource.”

Otherwise it could be interpreted, for example, that a 5 MW capacity addition to an existing 500 MW electric generating facility could arguably qualify the *entire facility* for meeting the advanced energy benchmark. This would be an absurd outcome that would be inconsistent with the legislative intent of promoting true advanced energy development in the state of Ohio. As another example, a 500 MW coal plant could be reclassified as an “advanced energy resource” if its annual carbon dioxide emission rate were to be decreased slightly due to a minor modification. While the alternative energy portfolio standard clearly recognizes that such minor (but prudent) upgrades to existing facilities may be credited toward the standard, the Commission should clarify that it is the incremental gain in output or benefit associated with the modification that is credited toward the advanced energy benchmark.

For reference, OCEA notes that the federal Environmental Policy Act of 2005 defines “incremental” for the purposes of hydropower. That definition is as follows:

(B) DETERMINATION OF INCREMENTAL  
HYDROPOWER PRODUCTION

- (i) IN GENERAL- For purposes of subparagraph (A), incremental hydropower production for any taxable year shall be equal to the percentage of average annual hydropower production at the facility attributable to the efficiency improvements or additions of capacity placed in service after the date of the enactment of this paragraph, determined by using the same water flow information used to determine an historic average annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Federal Energy Regulatory Commission.

- (ii) **OPERATIONAL CHANGES DISREGARDED-**  
For purposes of clause (i), the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

In order to achieve this goal, OCEA recommends the following changes to proposed rule 4901:1-40-04(B)(1):

**PROPOSED RULE CHANGE:**

- (1) Any modification to an electric generating facility that increases its generation output ~~without increasing~~ **WHILE REDUCING** the facility's TOTAL ANNUAL carbon dioxide emissions.
  - (a) **THE FACILITY'S INITIAL BASELINE SHALL BE CALCULATED BY DETERMINING ITS AVERAGE ANNUAL EMISSIONS FOR THE LAST THREE YEARS PRIOR TO THE MODIFICATION TO AN ELECTRIC GENERATING FACILITY THAT INCREASES ITS CAPACITY**
  - (b) **ONLY GENERATION FROM THE INCREMENTAL CAPACITY RESULTING FROM THE MODIFICATION TO AN ELECTRIC GENERATING FACILITY THAT INCREASES ITS GENERATION OUTPUT SHALL QUALIFY FOR MEETING THE ADVANCED ENERGY RESOURCE BENCHMARKS.**

**Comments about 4901:1-40-04(B)(4)**

**PROPOSED RULE CHANGE:**

**ONLY GENERATION FROM THE INCREMENTAL CAPACITY ADDED FROM SIGNIFICANT IMPROVEMENTS TO EXISTING FACILITIES SHALL QUALIFY FOR MEETING THE ADVANCED ENERGY RESOURCE BENCHMARKS.**

### **Comments about 4901:1-40-04(D)(3)**

Renewable energy credits, or “RECs”, are the currency of the AEPS. By statute, these tradable instruments represent one megawatt of electricity,<sup>16</sup> and the utilities must acquire enough RECs to demonstrate compliance with a renewable benchmark in a given year.

Because of their value to the utility in meeting the requirements of the AEPS, each REC has significant cash value to renewable energy developers – realized upon sale of the REC to a utility. This revenue is, of course, critical to the financing of renewable energy projects.

Equally critical, the producers of renewable energy must be able to predict the value of a REC with some certainty so they can price out projects several years into the future. In order for the developers to obtain this certainty about the value of the REC, the basic rules of the REC marketplace must be transparent and fixed at the outset. One such rule is the length of time a REC is valid. Knowing this variable enables renewable energy generators to calculate the approximate volume of RECs the utilities still need to acquire to meet a given benchmark.

The General Assembly provided some guidance about the life of a REC, stating that a utility may utilize a REC “in any of the five calendar years following the date of its purchase or acquisition.”<sup>17</sup>

The proposed rule merely reiterates the statutory language. However, in order to bring needed transparency and clarity to the REC market, the Commission should clarify that a REC is first “purchased or acquired” *upon the generation of the renewable energy*,

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<sup>16</sup> R.C. 4928.65.

<sup>17</sup> R.C. 4828.65.

since this is when the REC is “first acquired” by the owner of the generating system, or first purchased under a power purchase agreement. This begins the commencement of the five-year clock immediately and will allow market actors to easily calculate the expiration date of a REC.

In the absence of this clarification, a producer could generate renewable energy in 2010, sell the REC in 2013 (arguably the date it is “first purchased” by the utility) and the utility might utilize it five years later, in 2018. Market participants may not know this first date of purchase, and therefore not be able to analyze the state of the REC market and thus be unable to price their products appropriately. In order to eliminate this confusion, OCEA proposes the following language:

**PROPOSED RULE CHANGE:**

- (D)(3) A REC may be used for compliance any time in the five calendar years following the date of its initial purchase or acquisition. FOR PURPOSES OF THIS RULE, A REC IS “ACQUIRED” BY ITS OWNER IMMEDIATELY UPON THE GENERATION OF THE RENEWABLE ENERGY AND THEREFORE EXPIRES 5 YEARS FROM THAT DATE.

**Comments about Rule 4901:1-40-04(D)**

Compliance with the renewable requirement should be demonstrated through a retirement of RECs, whereas the rules in this section distinguish between renewable electricity and RECs.

**PROPOSED RULE CHANGE:**

- (D) An electric utility or electric services company may also use renewable energy credits (REC) to satisfy all or part of a renewable energy resource benchmark, including a solar energy resource benchmark. COMPLIANCE SHALL BE DEMONSTRATED THROUGH THE RETIREMENT OF RECS.

### **Comments about 4901:1-40-04(E) and (F)**

The General Assembly authorized the Commission to classify new technologies as advanced or renewable energy resources under R.C. 4928.64(A)(2). Proposed rule 4901:1-40-04(E) sets forth the procedure by which individuals can make application to the Commission for such a determination. The process does not appear to require any notice, a hearing, or third party input. Further, if the Commission does not act within 60 days, the application is simply deemed approved.

Classifying new technologies or additional resources as an advanced energy resource or renewable energy resource should be a rigorous process and allow for sufficient public input. Entities investing to meet Ohio's alternative energy requirements must have confidence that resource eligibility requirements and the rules governing those requirements will be certain and consistent. Transparency regarding the addition of eligible resources will reduce the risks to investors, thereby, optimizing Ohio's alternative energy markets. Moreover, there will undoubtedly be a limited number of legitimate certifications required and thus a participation process will not be unduly burdensome to the Commission.

In order to strengthen the process and increase transparency, OCEA recommends the following modifications:

#### **PROPOSED RULE CHANGE:**

(E)(2) ~~The commission may approve, suspend or deny an application within sixty day of it being filed. If the commission does not act within sixty days, the application is deemed automatically approved on the sixty first day after the filing date.~~THE COMMISSION SHALL SET A PUBLIC HEARING FOR CONSIDERATION OF THE RESOURCE OR TECHNOLOGY CERTIFICATION

APPLICATION WITHIN THIRTY DAYS OF RECEIVING THE APPLICATION.

- (3) THE COMMISSION SHALL ALLOW FIFTEEN DAYS FOR PUBLIC COMMENT AND FIFTEEN DAYS FOR REPLY COMMENTS FOLLOWING THE PUBLIC HEARING.
- (4) THE COMMISSION SHALL CONSIDER ALL PUBLIC COMMENTS AND REPLY COMMENTS IN MAKING ITS DETERMINATION.
- (5) THE COMMISSION MAY APPROVE, SUSPEND, OR DENY AN APPLICATION WITHIN SIXTY DAYS OF THE END OF THE REPLY PUBLIC COMMENT PERIOD.

In addition, 4901:1-40-04(E)(3) through (5), as proposed by the PUCO staff, would be renumbered as 4901:1-40-04(E)(6) through (8), respectively.

OCEA also urges that in making these determinations, the Commission apply a commonly accepted definition of “renewable” and fully consider the attributes of a given technology. OCEA proposes an additional section be inserted before Rule 4901:1-40-04(F). The new rule 4901:1-40-04(F) should state:

PROPOSED RULE CHANGE:

- (F) IN MAKING THE DETERMINATION THAT ANY NEW TECHNOLOGY OR ADDITIONAL RESOURCE IS A RENEWABLE ENERGY RESOURCE, THE COMMISSION SHALL CONSIDER THAT RENEWABLE ENERGY IS COMMONLY DEFINED AS DERIVED FROM SOURCES THAT ARE NATURALLY REPLENISHED AS SOON AS THEY ARE CONSUMED OR OTHERWISE REPLENISHED IN A RELATIVELY SHORT PERIOD OF TIME. IN ADDITION, IN MAKING THE DETERMINATION THAT ANY NEW TECHNOLOGY IS A RENEWABLE RESOURCE, THE COMMISSION SHALL CONSIDER THE IMPACT THE NEW TECHNOLOGY MAY HAVE UPON AIR QUALITY, INCLUDING CARBON DIOXIDE AND OTHER GREENHOUSE GAS EMISSIONS, WATER QUALITY, AND WATER QUANTITY.

The modification of subsection (E)(2) and the insertion of a new (F) necessarily impacts proposed Rule 4901:1-40-04(F), which would become (G). Currently proposed paragraph (F) provides the Commission with the discretionary power to, *sua sponte*, classify new technologies as advanced or renewable energy resources. So as to mirror the transparency and public comment provisions added to subsection (E)(2), this subsection should be modified as follows:

- (G) At its discretion, the commission may classify additional resources as an advanced energy resource or a renewable energy resource AFTER NOTICE, HEARING, AND AN OPPORTUNITY FOR INTERESTED PERSONS TO SUBMIT COMMENTS IN THE SAME PROCESS DESCRIBED IN SUBSECTION (E).

#### **4901:1-40-06 Force Majeure**

##### **Comments about 4901:1-40-06(A)**

S.B. 221 creates a *force majeure* provision that gives the Commission discretion in some cases to waive all, or part, of a utility's compliance with the renewable energy benchmarks established as part of the State's AEPS.<sup>18</sup> The statute first identifies the procedure by which a utility may request the Commission review its compliance with the renewable energy benchmarks. The statute also sets forth the standard by which the Commission determines whether a utility must comply with those benchmarks – namely whether “renewable energy resources are reasonably available in the marketplace in sufficient quantities for the utility to comply with the benchmark.”

Although the *force majeure* provision in proposed Rule 4901:1-40-06(A) tracks the language of the statute with respect to process, it fails to outline or clarify the standard utilized in determining whether an event qualifies as *force majeure*. Instead of

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<sup>18</sup> See R.C. 4928.64(C)(4)(b).



giving the Commission unbridled discretion to invoke *force majeure*, the rule should contain the same standard as the statute: whether “renewable energy resources are reasonably available in the marketplace in sufficient quantities for the utility to comply with the benchmark.”

In addition, the rule should clarify that *force majeure* is only appropriate where compliance has been made impossible by events *outside the utility’s control*. That is the essence of *force majeure*, and would preclude excusing a utility’s failure to comply with a benchmark for inadequate planning or mere speculation about future equipment shortages.

Rather, unlike the cost cap test discussed below, the *force majeure* analysis is *backward-looking*. To support a *force majeure* contention, the utility must prove that an event beyond their control has occurred which has made renewable energy resources and RECs not reasonably available such that compliance is excusable.

Forward-looking concerns about *future* marketplace conditions and prices may be perfectly legitimate. However, those concerns will always be reflected in the price of obtaining renewable energy generation, so are appropriately addressed by the cost cap provisions, not *force majeure*.

OCEA proposes the following language as consistent with the provisions of R.C. 4928.64(C)(4)(b):

**PROPOSED RULE CHANGE:**

- (A)(2) If the commission determines that AN EVENT HAS OCCURRED THAT WAS BEYOND THE CONTROL OF THE UTILITY OR COMPANY AND NOT REASONABLY FORESEEABLE, AND THAT EVENT CAUSED ~~force majeure conditions exist~~ RENEWABLE ENERGY RESOURCES TO NOT BE REASONABLY AVAILABLE IN THE MARKETPLACE IN

SUFFICIENT QUANTITIES FOR THE UTILITY OR COMPANY TO COMPLY WITH THE SUBJECT MINIMUM BENCHMARK, it may modify that compliance obligation of the electric utility or electric services company as it considers appropriate to accommodate the finding.

#### **4901:1-40-07 Cost Cap**

##### **Comments about 4901:1-40-07(C)**

While S.B. 221 set forth an annual schedule of renewable energy benchmarks for utilities to meet between 2009 and 2025, it also contains a mechanism to protect ratepayers from potential price spikes: the so-called “3% cost cap.”

To implement this cost cap provision appropriately, the Commission must balance its responsibility to reduce ratepayer impacts with the need to provide enough certainty to support investment on the part of renewable energy developers, who will be required to invest several billion dollars in Ohio in the form of facilities, equipment commitments, and financing for demand that may be years into the future.

If properly implemented, the cost cap provision should not materially impact or reduce the amount of renewable energy developed under the alternative energy portfolio standard. Nor should it undermine a predictable investment climate which will motivate renewable energy investments at competitive costs. The cost cap should also be understood as one layer of cost control to be integrated on top of the preferred and most basic cost control mechanism of the statute, the renewable energy compliance payment (“RECP”).<sup>19</sup> In general, the cost cap should be expected to be *less restrictive* on price than the more specific RECP if the RECP is to have any worthwhile function, and the

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<sup>19</sup> See R.C. 4928.64(C)(2).

principles of statutory construction would indicate that the RECP was included for a reason and is therefore expected to function.

The proposed rule relative to the statutory three percent cost cap appears to set out a workable process in the event a utility asserts the cost cap is triggered: the utility invokes the cap, and then has the duty to demonstrate that even though it pursued all reasonable compliance options, it simply could not meet a given year's benchmark without exceeding the cap. The Commission decides whether the cap is triggered, and if it is, has discretion in altering the benchmark.

However, the proposed rule must be strengthened to provide a reasonable degree of certainty with respect to how the Commission will calculate the cost cap by specifying that the proposed formula "shall" be utilized rather than "may" be used. The current optional language introduces an element of risk that could discourage investment by reducing certainty in a critical fashion.

Proposed rule 4901:1-40-07(C) states that "[c]alculations involving the cost cap *may* consist of comparing the projected generation rate of an electric utility or electric services company, exclusive of any reasonable costs associated with satisfying an alternative energy portfolio requirement, to the projected generation rate of an electric utility or electric services company including any reasonable costs of satisfying an alternative energy portfolio standard requirements." (Emphasis added.)

OCEA asserts that the substantive test laid out by the proposed rule – comparing generation rates with and without the alternative energy portfolio standard – is a straightforward implementation of the statutory provision and appears to offer a clear test for the application of the cap.

*This test, however, appears wholly optional.* The proposed rule leaves open the possibility that while this reasonably understandable calculation *might* be used to determine whether the cost cap is triggered, some other unknown, undescribed, potentially much more onerous and restrictive test might be employed in its stead to trigger the cost cap at any given moment, throwing out benchmarks and instantly devaluing the REC market.

Therefore, to fix this problem and establish and maintain a stable environment in which investors and developers of renewable energy projects can function, the cost cap test laid out in this proposed rule should be the mandatory and exclusive test for calculating the cost cap, so all parties including renewable energy developers, utilities, and consumers, know at the outset how this cost cap will be calculated. Paragraph (C) of proposed Rule 4901:1-40-07 should be amended to state:

**PROPOSED RULE CHANGE:**

- (C) Calculations involving the cost cap ~~may~~ **SHALL** consist of comparing the projected generation rate of an electric utility or electric services company, exclusive of any reasonable costs associated with satisfying an alternative energy portfolio requirements, to the projected generation rate of an electric utility or electric services company including any reasonable costs of satisfying an alternative energy portfolio standard requirements.

**Comments about 4901:1-40-07(D)**

In implementing the statutory cost cap, the Commission is required to compare renewable energy generation to conventional energy generation [See the statement of the calculation as set out in (C) above]. In order to ensure a fair “apples-to apples” comparison, the Commission must consider the full cost of generating conventional

energy (i.e., coal-fired power plants), just as the Commission considers the full cost of renewable energy generation.

However, proposed rule 4901:1-40-07(D) states:

- (D) [a]ny costs included in a commission-approved unavoidable surcharge for construction expenditures or environmental expenditures of generation resources may be excluded from consideration as a cost of compliance under the terms of the alternative energy portfolio standard.

This provision seems to suggest that if the Commission approves an unavoidable, non-bypassable surcharge to pay for costs associated with environmental upgrades to existing coal plants (such as scrubbers or carbon sequestration), those costs would be *simply ignored* when determining the cost of conventional energy generation.

This would of course have the effect of artificially masking the actual cost of generating conventional energy – concealing the billions of dollars that may be required to clean coal or capture and sequester carbon underground. By comparison, the cost of generating renewable energy would seem artificially and unfairly much more costly, causing the 3% cost cap to be prematurely triggered.

Furthermore, under this definition, new generating plants costing billions of dollars which are constructed and whose costs are subject to the non-bypassable charge would not be counted as well. This creates an unfair counting mechanism in which some plants get specialized treatment. New coal or nuclear plants are like to be more costly than renewable generation on a stand alone basis. For purposes of performing the calculation, it is only fair that they be counted.

There is no statutory basis for discounting the actual costs conventional energy in this manner, ignoring environmental and construction costs. Therefore, this section should be deleted in its entirety as follows:

PROPOSED RULE CHANGE:

~~(D) — Any costs included in a commission approved unavoidable surcharge for construction expenditures or environmental expenditures of generation resources may be excluded from consideration as a cost of compliance under the terms of the alternative energy portfolio standard.~~

**Comments about 4901:1-40-07(D)**

As has been discussed, the cost cap formula described in the rule essentially requires the Commission to compare a utility's generation rate inclusive of the AEPS versus the generation rate exclusive of the AEPS. If the AEPS increases rates beyond the statutory threshold of 3%, the cost cap is triggered and the Commission is empowered to modify a benchmark to protect ratepayers. The proposed rule requires utilities to "pursue all reasonable compliance options" prior to requesting relief under the cap.

Implicit in the requirement that a utility pursue all reasonable compliance options is a requirement that the utility procure renewable energy through competitive selection to ensure the least cost. OCEA recommends that in order to ensure the cost cap is not invoked inappropriately or prematurely, the Commission should explicitly require that utilities maintain a procurement process with complete public transparency. In support of transparency, the Commission should require utilities to obtain renewable energy at the most competitive prices the marketplace can offer through a competitive request for proposal ("RFP") process. By adopting this requirement, the Commission will avoid utilities overspending on renewable energy generation and inappropriately encroaching on the cost cap. Transparency and the RFP requirement protects ratepayers, in furtherance of the policy aims of the cost cap.

OCEA recognizes that utilities may decide to develop and construct their own renewable energy projects, rather than procuring energy contracts and do not object

where cost effective. Consistent with an RFP requirement, if a utility desires to consider “self-build,” the utility should utilize a third party bid administrator to evaluate the proposals, and then can submit a bid if it so chooses. Alternatively, the Commission could evaluate bids. In either case, all renewable energy developers (utilities included) compete on a level playing field to provide least cost renewable energy.

Therefore, OCEA proposes the following new rule:

**PROPOSED RULE CHANGE:**

- (G) BEFORE BUILDING OR ACQUIRING ANY RENEWABLE ENERGY RESOURCES OR ACQUIRING RENEWABLE ENERGY CREDITS, A UTILITY OR ELECTRIC SERVICES COMPANY SHALL ENGAGE IN AN OPEN COMPETITIVE BIDDING PROCESS. THE PROCESS SHALL INCLUDE ISSUING REQUESTS FOR PROPOSAL (RFPs) DESIGNED TO SECURE RENEWABLE ENERGY RESOURCES AT THE LOWEST COST TO CONSUMERS. THIS SHALL NOT PREVENT A UTILITY OR ELECTRIC SERVICES COMPANY FROM SUBMITTING A COMPETITIVE BID IN RESPONSE TO ITS OWN RFP TO PROVIDE RENEWABLE ENERGY RESOURCES. HOWEVER, IF A UTILITY OR ELECTRIC SERVICE COMPANY SUBMITS A BID ON ITS OWN RFP, THE BIDS SHALL BE EVALUATED AND AWARDED BY THE COMMISSION OR AN INDEPENDENT THIRD PARTY APPOINTED BY THE COMMISSION.

**4901:1-40-08 Compliance Payments**

**Comments about 4901:1-40-08(A)**

Proposed Rule 4901:1-40-08(A)(3) requires the Commission staff to conduct a review on at least an annual basis to assess the renewable energy marketplace relative to compliance payments. Such a review may of course look both backward at any events that might be considered to be *force majeure*, as well as forward to not merely provide a snapshot of the current marketplace but also judge the large amounts of growth and

increased production seen in the renewable energy sector. Like Rule 4901:1-40-09 requiring an annual report regarding compliance with the AEPS, this rule should also allow for notice and third party comment before the report on the renewable energy marketplace. OCEA recommends revising the proposed rule as follows:

**PROPOSED RULE CHANGE:**

- (A)(3) At least annually, the staff shall conduct a review of the renewable energy resource market, including solar, both within this state and within the regional transmission systems active in the state. **PRIOR TO FINALIZING ITS REPORT, THE REPORT SHALL BE ISSUED FOR PUBLIC COMMENT BY INTERESTED PERSONS FOR 30 DAYS UNLESS OTHERWISE ORDERED BY THE COMMISSION. THE PROCESS AND TIMEFRAMES FOR SOLICITING PUBLIC COMMENT SHALL BE SET BY ENTRY OF THE COMMISSION, THE LEGAL DIRECTOR, THE DEPUTY DIRECTOR, OR ATTORNEY EXAMINER.** The results of this review shall be used to determine if changes to the solar or renewable energy compliance payments are warranted, as follows:

**C. Renewable Energy Credits, Small Customer-Sited Installations**

While not directly addressed in the proposed rules, S.B. 221 gives the Commission broad authority and specific direction to consider a wide range of regulatory tools to promote renewable distributed generation. Specifically, S.B. 221 requires the Commission to adopt rules which “shall allow customer-sited projects or actions the broadest opportunities to be eligible for obtaining renewable energy credits.”<sup>20</sup> In addition, the Commission can implement the following state policies:

- (D) Encourage innovation and market access for cost-effective supply and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure;

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<sup>20</sup> R.C. 4928.65.



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- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

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- (J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

- (K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

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- (M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses.<sup>21</sup>

S.B. 221 clearly contemplates a market where customers invest in qualifying renewable energy systems designed primarily to serve on-site load, and sell the associated RECs to the utility for the additional revenue necessary to make the investment feasible.

Experience in other states has shown that a market for smaller customer-sited, customer owned renewable energy systems, especially residential solar installations, can benefit from having fixed, long-term offers for RECs. There are several advantages. First, a fixed incentive provides the necessary financial certainty about system economics in order to make a sale. Second, smaller installers may not have the financial or organizational resources to effectively participate in a floating REC-trading market.

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<sup>21</sup> R.C. 4928.02.

Finally, fixed REC contracts reduce the administrative burden on utilities and regulators considerably.

In order to give customer-sited projects the “broadest opportunities” to sell RECs, the Commission should create a relatively fixed, public price for RECs in the case of low- or no – fuel cost renewables such as solar and wind. The efficiencies of capturing market dynamics with a more fluid commodity are simply non-existent when the economics of the deal are effectively set on “Day One,” when the project finance is completed.

This is done in other states where the regulator develops “standard offer REC contracts” to certain customer classes with highly standardized, long-term contracts and transparent pricing. This is accomplished through a long-term planning process or through an annual review of utilities’ renewable standard implementation plans.

For example, has a process by which residential installations are offered an up-front incentive based on the capacity of the system, in exchange for the RECs from the expected production of the system. Larger solar systems are offered a choice of 10, 15, and 20 year REC contracts. In Colorado, a periodic RFP process for larger renewable systems generates a standard offer price that is then made available to smaller systems on a standard offer basis until the next RFP. Utilities in New Mexico, responding to a distributed generation solar requirement in the states’ renewable portfolio standard, offer a fixed 20-year REC contract.

OCEA recommends that the PUCO direct electric utilities and electric service companies to develop standard offers for smaller customer-owned, customer-sited renewable energy systems. The standard-offer programs should be designed to facilitate an efficient market for customer-sited, customer-owned renewables, and exert downward

pressure on prices, and to minimize any inherent transactional advantage of developer size. The programs should be overseen by the Commission with annual input from stakeholders.

There are significant policy issues at stake in selecting a methodology for setting a standard REC offer and determining under what conditions it is offered (size of system, size of market, etc). The Commission might consider a workshop on the matter for residential system installers. Alternatively, OCEA offers the following potential language to be added to the proposed rules:

**PROPOSED RULE CHANGE:**

**4901:1-40-10 RECs FOR SMALL CUSTOMER-SITED INSTALLATIONS**

- (A) NOT LESS THAN ONCE PER YEAR EVERY ELECTRIC UTILITY COMPANY SHALL REQUEST PROPOSALS FOR ENERGY AND/OR RENEWABLE ENERGY CREDITS FROM SOLAR AND WIND INSTALLATIONS LARGER THAN 100 KW IN CAPACITY.
- (B) SUBSEQUENT TO SUCH RFP AND AT A PRICE DETERMINED BY SAME, EVERY ELECTRIC UTILITY COMPANY SHALL OFFER A STANDARD OFFER LONG-TERM CONTRACT FOR THE PURCHASE OF RENEWABLE ENERGY CREDITS FROM ANY NET-METERED AND SMALL CUSTOMER INSTALLATION LESS THAN 100 KW IN CAPACITY.
- (C) THE CONTRACT SHALL BE FILED AS A TARIFF AND APPROVED BY THE COMMISSION. THE ELECTRIC UTILITY COMPANY SHALL BE OBLIGATED TO PROVIDE A COPY OF THE STANDARD CONTRACT TO CUSTOMERS WHO CONTACT THE COMPANY REGARDING THEIR RENEWABLE ENERGY INSTALLATION.

#### **IV. GREENHOUSE GAS REPORTING AND CARBON DIOXIDE CONTROL PLANNING – CHAPTER 4901:1-41**

##### **A. General Comments**

The short length of the draft rule (which mirrors the short length of the new chapter in the Statute) precludes a precise definition of the terms used or the necessary explanation of the process. In addition, certain terms are defined by referring to particular sections of Ohio Revised Code when they could be repeated in these regulations for clarity and consistency of interpretation.

##### **4901:1-41-01 – Definitions**

##### **Proposed Definition of (A) – Carbon dioxide Control Planning**

The definition, and the term, “carbon dioxide control planning” is both broad and vague. Requiring a facility to measure carbon dioxide emissions is straightforward. Continuous emissions monitors (“CEMS”) have been required for electric generating units larger than 25 MW since the 1990 Clean Air Act Amendments. Developing control options for a facility and on a system-wide scale are two entirely separate and distinct exercises. No direct means of controlling CO<sub>2</sub> at the facility level currently exists. Carbon capture and storage technology is being researched, but it is not currently commercialized.

In addition, the reference to a “system-wide” scale is not clear. “System-wide” could refer to a variety of things, including the assets under the ownership or control of the generating unit and its parent company, the Ohio electric system. Moreover, on a system-wide basis, there are many cost-effective measures to reduce carbon dioxide, such as energy efficiency, combined heat and power and renewable energy generation. To address these concerns OCEA proposes the following language:

PROPOSED RULE CHANGE:

“Carbon dioxide control planning” means the establishment and implementation of a structured, verifiable process including goals, policies, and procedures, to measure carbon dioxide AND OTHER GREENHOUSE GAS emissions and control options on both a facility WHEN THE TECHNOLOGY BECOMES COMMERCIALY AVAILABLE, and a system-wide scale, INCLUDING ALTERNATIVES TO EMMITING GENERATION INCLUDING RENEWABLE ENERGY, COGENERATION, AND ENERGY EFFICIENCY, over five, ten and twenty-year periods. IT SHOULD ALSO BE FILED AS PART OF THE UTILITY’S LONG TERM FORECAST REQUIREMENTS.

**Proposed new definition for -- SYSTEM-WIDE SCALE**

“SYSTEM-WIDE SCALE” MEANS ALL THE ASSETS UNDER THE OWNERSHIP OR CONTROL OF THE GENERATING UNIT AND ITS PARENT COMPANY OPERATING ON THE OHIO ELECTRICITY SYSTEM.

**Proposed Definition of (D) – Electric Generating Facility**

The definition of “electric generating facility” should be more specific. The definition should either refer to a particular Ohio or Federal definition, or to related rules, such as those implemented by PJM. The proposed definition of “electric generating plant and associated facilities” does not provide clarity. Typical Federal definitions of an electric generating facility have a *de minimis* requirement of 15 or 25 MW, while PJM dispatches facilities that are 1 MW or larger. This is important in order to exclude residential customer net-metered facilities.

PROPOSED RULE CHANGE:

- (A) “Electric generating facility” means an electric generating plant GREATER THAN ONE MEGAWATT and associated facilities capable of producing electricity.

### **Proposed Definition of (E) – Greenhouse Gas**

The definition of “Greenhouse Gas” needs to be clarified. OCEA recommends adding a sentence or phrase to recognize current and future science on greenhouse gases. For example, the current definition would preclude soot. In a paper by James Hansen, et al, Mr. Hansen describes the climate forcing potential of soot.<sup>22</sup> Soot is also referred to as fine particulate and regulated by state air quality agencies. Some states have included soot as one of the pollutants to be reduced with implementation of greenhouse gas emissions reduction plans. OCEA proposes the following language:

#### **PROPOSED RULE CHANGE:**

“Greenhouse gas” means ~~the emissions of~~ carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, ~~and/or~~ sulphur hexafluoride. THIS LIST IS NOT EXHAUSTIVE AND MAY BE EXTENDED, IN RECOGNITION OF THE CURRENT AND FUTURE SCIENCE OF GREENHOUSE GASES.

### **Proposed Definition of (F) – Person**

The definition of “Person” refers to two separate sections of Ohio Revised Code. For clarity and consistency, the specific language from the code should be included.

#### **PROPOSED RULE CHANGE:**

“Person” MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ASSOCIATION, ESTATE, TRUST, OR PARTNERSHIP OR ANY OFFICER, BOARD, COMMISSION, DEPARTMENT, DIVISION, OR BUREAU OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE, OR ANY OTHER ENTITY AS ~~has the meaning~~ set forth in sections 4906.01 and 4935.04 of the Revised Code.

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<sup>22</sup> James Hansen and Larissa Nasarenko, “Soot Climate Forcing via Snow and Ice Albedos,” Proceedings of the National Academy of Sciences, December 2003. Accessed via <http://www.pnas.org/content/101/2/423>

### **Proposed New Definition – Environmental Control Plan**

- (G) “ENVIRONMENTAL CONTROL PLAN” MEANS THE ESTABLISHMENT AND IMPLEMENTATION OF A STRUCTURED, VERIFIABLE PROCESS INCLUDING GOALS, POLICIES, AND PROCEDURES, TO MEASURE, MONITOR, AND CONTROL ENVIRONMENTAL POLLUTION ON BOTH A FACILITY OR WHEN A TECHNOLOGY BECOMES COMMERCIALY AVAILABLE, AND A SYSTEM-WIDE SCALE, INCLUDING ALTERNATIVES TO EMMITING GENERATION INCLUDING RENEWABLE ENERGY, COGENERATION, AND ENERGY EFFICIENCY, OVER FIVE, TEN AND TWENTY-YEAR PERIODS. IT SHOULD ALSO BE FILED AS PART OF THE UTILITY’S LONG TERM FORECAST REQUIREMENTS.

### **4901:1-41-02 Purpose and Scope**

#### **Comments about 4901:1-41-02(A)**

Section A refers to “the climate registry.” Ohio is part of this group. In addition, the protocols used by The Climate Registry may be revised from time to time. To anticipate this and to allow for Ohio to maintain precision and currency with the latest protocols OCEA recommends adding the phrase “as may be revised from time to time and which are incorporated by reference herein.”

OCEA also requests that the phrase “or as otherwise directed by the commission” be deleted. Allowing discretion outside of the scope of the rules compromises the integrity of the rule making process and permits inconsistency in compliance with the provision.

#### **PROPOSED RULE CHANGE:**

- (A) Any person which owns or operates an electric generating facility THAT EMITS GREENHOUSE GASES within Ohio shall become a participating member in the climate registry AS MAY BE REVISED FROM TIME TO TIME AND WHICH ARE INCORPORATED BY REFERENCE

HEREIN, for at least scope 1 (direct) greenhouse gas emissions, and shall report greenhouse gas emissions according to the protocols approved by the climate registry, ~~or as otherwise directed by the commission.~~

**Comments about 4901:1-41-02(B)**

The requirements in section B referring to “carbon dioxide control planning” and “environmental control plan” are not clear. OCEA proposed definitions about to make these two terms clear. Revisions to these terms may result in section B needing additional revisions to include the changes made to the two terms.

**PROPOSED RULE CHANGE:**

- (B) Any person which owns or operates an GREENHOUSE GAS EMITTING electric generating facility within Ohio shall file with the commission by April fifteenth of each calendar year an environmental control plan, including carbon dioxide control planning. IN THE CASE OF AN ELECTRIC UTILITY, THE CARBON DIOXIDE CONTROL PLANNING WILL ALSO BE PART OF THEIR INTEGRATED RESOURCE PLAN FILING BEFORE THE COMMISSION. A copy of ~~such~~ THE ENVIRONMENTAL CONTROL plan shall be provided to the director of the Ohio environmental protection agency, or his designee.

**Comments about 4901:1-41-02(C)**

Section (C) regarding the “environmental control plan” appears to be open to multiple interpretations. “Environmental control plan” has been defined by OCEA in 4901:1-41-01 and is linked to system wide energy efficiency, renewables, CHP, and to the utility’s long term forecast proceeding.

OCEA recommends separating the concepts raised in Section C. For example, “Most current scientific and engineering design capability” and “parameters of economically feasible best technology” are broad and can have several possible



meanings. The section is based upon the Clean Air Act requirements for “best available control technology” and should say this.

Carbon dioxide is now a regulated pollutant under the Clean Air Act, per the U.S. Supreme Court, and using the specific definition from the Clean Air Act would be consistent with the Act. Also, other greenhouse gases should be included. The statute includes several gases, not just carbon dioxide.

Finally, there appears to be no public review or comment opportunities. In addition, it is not clear who has the authority to act on it (although OCEA expects when federal greenhouse gas regulations are enacted, the Ohio EPA along with the federal EPA will have the authority.

#### PROPOSED RULE CHANGE:

The environmental control plan shall include all relevant technical information on the current conditions, goals, and potential actions based upon the most current scientific and engineering design capability of any facility that has been designed to have the capability to control the emissions of criteria pollutants and greenhouse gases ~~carbon dioxide~~ within the parameters of ~~economically feasible~~ BEST AVAILABLE CONTROL technology.

## **V. LONG-TERM FORECAST REPORTS – CHAPTER 4901:5-1**

### **A. Introduction**

OCEA commends the Staff for recommending revisions to the long term forecast rules and recommending an annual integrated resource planning requirement on electric utilities operating in the state. As highlighted in OCEA’s comments on the first set of rules, it follows logically that the Electric Security Plan (“ESP”) or Market Rate Option (“MRO”) are the ratemaking tool for electric generation and that the Long Term Forecast review is the proper planning venue for integrated resource planning. OCEA

recommends that a comprehensive integrated resource plan be filed by all Ohio electric utilities every year. Moreover, utility cost recovery for new generation sources or for long term power purchase contracts identified by electric utilities in their ESP plans should not be approved<sup>23</sup> pending a demonstration that each of the sources included are least cost and least risk resources as determined in the formal long term forecast and integrated resource planning process described in the following sections.

#### **4901:5-1-01 Definitions**

##### **Comments about Proposed Definition of (I) – Substantial Change**

OCEA’s proposed addition to this definition clarifies that if the utility contemplates a generating facility addition in its long term forecast, this signifies a “substantial change.” This addition should be carried over in all sections where a definition of substantial change is used.

##### **PROPOSED RULE CHANGE:**

(I) “Substantial change” includes, but is not limited to:

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- (2) The addition of a generating facility or facilities in an electric utility’s supply plans with the intention of filing an application under the provisions of division (B)(2)(b) or (B)(2)(c) of section 4928.143 of the Revised Code OR THE PROJECTED ADDITION OF A GENERATING FACILITY OR FACILITIES DURING THE FORECAST PERIOD.

#### **4901:5-1-02 Purpose and Scope**

It is not clear from the proposed language whether this chapter and the obligation to file a long term forecast report is applicable to utilities that do not own a “major utility

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<sup>23</sup> Except for those resources required to meet the Advanced Energy provisions of S.B. 221.

facility” within this State. This rule and obligation should be imposed on all electric utilities who are obligated to provide Standard Service Offers (“SSO”) to its customers pursuant to Sections 4928.141 through 143.

**PROPOSED RULE CHANGE:**

- (B) The provisions of this chapter shall apply to each person owning or operating a major utility facility within this state, or PROVIDING A STANDARD SERVICE OFFER TO ITS CUSTOMERS furnishing gas, natural gas, or electricity directly to more than fifteen thousand customers within this state.

**4901:5-1-03 Long-term Forecast Reports Requirements.**

The obligation to conduct long term procurement planning for SSO, whether provided via an ESP or an MRO, should be mandatory.

**PROPOSED RULE CHANGE:**

- (C)(3) An electric utility ~~may~~ SHALL include a resource plan as set forth in rule 4901:5-5-05 with any long-term forecast report filing.

**VI. 4901:5-3 FILING AND FEES FOR LONG-TERM FORECAST REPORTS**

**4901:5-3-01 Definitions**

**Proposed Definition of (E) – Substantial Change**

As stated above, in OCEA’s comments about proposed rule 4901:5-1-01(I), OCEA proposes additional language to this definition to clarify that if the utility contemplates a generating facility addition in its long term forecast, this signifies a “substantial change.”

**PROPOSED RULE CHANGE:**

- (I) “Substantial change” includes, but is not limited to:

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- (2) The addition of a generating facility or facilities in an electric utility's supply plans with the intention of filing an application under the provisions of division (B)(2)(b) and/or (B)(2)(c) of section 4928.01 of the Revised Code OR THE PROJECTED ADDITION OF A GENERATING FACILITY OR FACILITIES DURING THE FORECAST PERIOD.

## **VII. 4901:5-5 ELECTRIC UTILITY FORECAST REPORT FILING REQUIREMENTS**

### **4901:5-5-01 Definitions**

#### **Proposed Definition of (F) – Demand-side Management**

This definition should refer to programs delivered by or sponsored by the utility and paid for through customer rates. The proposed definition could be read to include the impact of customer initiated programs, the impact of which may be discussed and evaluated by the utility, but which have a different purpose or impact compared to those over which the utility has control.

#### **PROPOSED RULE CHANGE:**

- (F) “Demand-side management” means those programs or activities DELIVERED BY OR SPONSORED BY A UTILITY that are designed to modify the magnitude and/or patterns of electricity consumption in a utility's service area by means of equipment installed or actions taken on the customer premises PAID FOR THROUGH CUSTOMER RATES.

#### **Proposed Definition of (H) – Energy-Price Relationship**

This is a new term and OCEA respectfully suggests that this term may be difficult to identify in the manner proposed by this definition. There are many variables that impact a customer's usage of electricity, of which price is certainly one. However, to identify the impact of price on usage would be difficult in light of weather, the economy, appliance penetration, customer initiated DSM and utility initiated DSM. OCEA is

unaware of any means by which the specific linkage that the proposed rule seeks to obtain from the utility can be validly identified.

**PROPOSED RULE CHANGE:**

- (H) ~~“Energy price relationships” mean the calculated or observed effect on peak load, load shape, or energy consumption resulting from changes in the retail price of electricity or other fuels. It consists of both energy conservation effects which reduce customer energy use directly and effects which cause customers to switch to or from utility provided electricity.~~

**Proposed Definition of (L) – Integrated Resource Plan**

An accounting for future risk and uncertainty is a crucial element that should be included in the definition of an Integrated Resource Plan (“IRP”). This definition should also be modified to make it clear that it reflects the obligation to provide Standard Service Offer under either an ESP or MRO and that it also reflects the statutory obligation set forth in Section 4928.02 (A) to provide “adequate, reliable, safe, sufficient, nondiscriminatory and reasonably priced retail electric service.” Finally, OCEA proposes that the term “appropriate consideration” be changed to “consideration of cost effective” generation and demand side options to assure the statutory objective.

**PROPOSED RULE CHANGE:**

- (L) “Integrated resource plan” means the plan **PROPOSED BY THE ELECTRIC UTILITY** ~~or program, established by a person subject to the requirements of this chapter,~~ to furnish RETAIL electric energy services **THAT WILL ASSURE ADEQUATE, RELIABLE, SAFE, SUFFICIENT, NONDISCRIMINATORY AND LEAST-COST, LEAST RISK SERVICE OVER THE TERM OF THE PLAN. THE PLAN SHALL REFLECT A FULL AND FAIR CONSIDERATION OF COST EFFECTIVE DEMAND SIDE AND SUPPLY SIDE OPTIONS, AND SHALL INCLUDE BUT NOT BE LIMITED TO CONSIDERATION OF RESOURCES, CONTRACTS, AND FACILITIES THAT, TAKEN TOGETHER, WILL**

MEET THE UTILITY’S PROJECTED DEMAND AND ENERGY REQUIREMENTS IN THE MOST COST-EFFECTIVE MANNER POSSIBLE OVER THE TERM OF THE INTEGRATED RESOURCE PLAN. THE UTILITY’S PLAN AND REPORT SHALL PROPOSE A PORTFOLIO OF DEMAND AND SUPPLY-SIDE RESOURCES THAT BEST MEET THE IDENTIFIED OBJECTIVES WHILE BALANCING THE OUTCOME OF EXPECTED IMPACTS AND RISKS FOR CUSTOMERS OVER THE TERM OF THE PLAN in a cost-effective and reasonable manner AND THAT ACCOUNTS FOR FUTURE RISKS AND PROJECTED COSTS., ~~consistent with the provision of adequate and reliable service, which gives appropriate consideration to supply and demand side resources and transmission or distribution investments for meeting the person’s projected demand and energy requirements.~~

#### **Proposed Definition of (U) – Supply-side Resources**

OCEA requests that the definition of “supply-side resource” incorporate more specificity. As written, an energy efficiency demand side resource would qualify whereas this item should be limited to the supply side.

#### **PROPOSED RULE CHANGE:**

- (U) “Supply-side resources” mean those resources SUCH AS UTILITY AND INDEPENDENT GENERATION AND POWER PURCHASES that directly increase the amount of electricity available for consumption in a utility’s certified territory.

#### **Proposed Definition of (V) – System Capability**

OCEA’s proposed language accounts for firm sales that when netted against purchases should be a better representation of system capability.

- (V) “System capability” means the installed capability of all generating units on the utility system plus THE NET OF firm purchases AND SALES.

#### **4901:5-5-02 Forecast Report Requirements for Electric Utilities and Transmission Owners**

The Commission's regulations should set forth the objectives of any utility resource plan and specifically reference the state's policy objectives in R.C. Section 4928.02. The obligations and policies apply whether a utility seeks to provide retail electric service by means of an ESP or MRO. In addition, the resource plan should define and assess costs and benefits for its preferred portfolio as they appear in the market, including known and identifiable social and environmental costs.

To achieve these outcomes, OCEA recommends the following changes to proposed Rule 4901:5-5-02:

#### **PROPOSED RULE CHANGE:**

Insert an new subsection, (A)(4) as follows:

- (4) A SUMMARY OF THE COSTS AND BENEFITS  
OF THE UTILITY'S PROPOSED PLAN  
INCLUDING KNOWN AND IDENTIFIABLE  
SOCIAL AND ENVIRONMENTAL COSTS.

#### **4901:5-5-04 Energy and Demand Forecasts for Electric Utilities.**

##### **Comments about Rule 4901:5-5-4(A)**

The proposed rule also appears to assume that there is a single energy and demand forecast. This is not the case. The proposed rule should require that the report and the resource plan identify a range of demand forecasts and the assumptions for econometric and/or end use variables that would be considered in the range of outcomes that complement the long term forecasts of demand and consumption during the term of the plan.

To achieve this outcome, OCEA recommends the following new subsection be inserted in 4901:5-5-4(A) as (3) with the subsequent section renumbered as (4):

PROPOSED RULE CHANGE:

- (3) THE REPORTING PERSON SHALL ALSO PROVIDE A RANGE OF DEMAND FORECASTS REFLECTED A HIGH-USED AND LOW-USE FORECAST IN ADDITION TO THE BASE CASE FORECAST.

- ~~(3)~~(4) The reporting person shall upon request, supply the commission with additional data and maps of distribution lines and facilities.

**Comments about Rule 4901:5-5-4(C)(2) and (C)(4)**

Geographically targeted DSM and DG have been shown to provide distribution infrastructure relief during peak demand periods by reducing stresses on the system and can postpone the need for distribution upgrades.

PROPOSED RULE CHANGE:

- (2) Analysis and consideration of proposed solutions to problems identified in paragraph (C)(1) of this rule, INCLUDING THE BENEFITS OF GEOGRAPHICALLY TARGETED DEMAND SIDE MANAGEMENT AND DISTRIBUTED GENERATION.

\*\*\*

- (4) Analysis and consideration of any studies regarding distribution system improvement, including any studies of the potential for reducing line losses, thermal loading and low voltage or any other problems. SUCH STUDIES SHOULD INVESTIGATE THE BENEFITS OF GEOGRAPHICALLY TARGETED DEMAND SIDE MANAGEMENT AND DISTRIBUTED GENERATION.

**4901:5-5-05 Resource Plans for Electric Distribution Utilities**

This is a crucial provision of the proposed rule. Unfortunately, the mandatory nature of the preparation of a resource plan is not clear. The proposed rule states that the “following shall also be considered....” Rather, the proposed rule should specifically



require that the electric utility file the updated version of its resource plan with the long term forecast report.

More importantly, the proposed rule only requires the submission of a resource plan if the utility is filing an application under R.C. 4928.143 (ESP) and with regard to new or existing generation facility owned by the utility for which rate recovery is sought. On the contrary, all electric utilities that are required to file a proposal to provide SSO to its customers should be required to prepare and submit a resource plan to provide either ESP or MRO service. Resource plans for those utilities that do not currently own generation service will focus on purchasing generation supply in the wholesale market, but those purchases should be coordinated with and analyzed in concert with demand side management and demand response resources and services.

**PROPOSED RULE CHANGE:**

- (A) When filing the long-term forecast report, the following shall ~~also~~ be considered:

\*\*\*

- (3) An electric utility ~~may~~ **SHALL** include a resource plan as set forth UNDER rule 4901:5-5-05 with any long-term forecasting report filing **AND ANY PLAN FILED UNDER R.C. 4928.142 OR 4928.143 SHALL REFLECT THE COMPONENTS OF THE RESOURCE PLAN.**

**Comments about Rule 4901:5-5-05(B) thru (E)**

The purpose served by the list of “special subject areas” as part of the forecast filing and integrated resource plan in Division B of this section is not clear. Any properly designed integrated resource plan must include an analysis of these issues and options. The lack of any reference to “cost effectiveness” in this list is disturbing and if

there is a necessity to list the obvious components of any integrated resource plan, OCEA requests that the list reflect the statutory descriptions or references to each of these items, as well as the state policies embodied in R.C. 4928.02 that apply to the obligation to provide cost effective technological investments and DSM programs designed to comply with state targets and the design of a long-term lowest cost portfolio to provide Standard Service. This will also require a quantitative analysis of the utility integrated resource plan.

OCEA proposes to add the language “and filed under seal” to section (B)(1)(c) of this provision to add more transparency to the process. If the language is at least filed under seal, the parties will be made aware of the information. In addition, utilities should only procure those additional resources that are the least cost and least risk so OCEA has proposed language to section (D)(1). Finally, OCEA’s proposed language to section (D)(1)(c) requires the utilities to include additional information that will be useful for parties to know about the planning environment.

The purpose served by the list of “special subject areas” as part of the forecast filing and integrated resource plan in Division B of this section is not clear. Any properly designed integrated resource plan must include an analysis of these issues and options. The lack of any reference to “cost effectiveness” in this list is disturbing and if there is a necessity to list the obvious components of any integrated resource plan, OCEA suggests that the list reflect the statutory descriptions or references to each of these items, as well as the state policies that apply to the obligation to provide cost effective technological investments and DSM programs designed to comply with state targets and the design of a long term lowest cost portfolio to provide Standard Service.

For example, any “anticipated technological changes” and “alternative energy resources” must consider their impact on “at risk” populations and take their needs specifically into account pursuant to the state policy stated in R.C. 4928.02(L). This specific obligation should be referenced in this the list provided in this Division.

OCEA supports the overall intent and proposed approach reflected in Division E concerning the “resource plan.” Our comments are intended to reflect some additional reforms for the Commission’s consideration:

- Overall, the rule should require that the plan reflect and identify **“all reasonably useful and cost effective supply and demand resources that may be available to the utility or its customers.”**
- The plan should be required to identify the state policies in R.C. 4928.02 and describe how the resource plan reflects those goals and objectives. From the perspective of residential customers, many of whom are faced with extreme difficulty in affording essential electricity service, OCEA recommends that the plan particularly focus on the obligation to provide “reasonably” priced retail service.
- Finally, OCEA recommends that the resource plan reflect an obligation by the utility to conduct a stakeholder review and input process in the preparation of its resource plan. Such a process would allow interested members of the public to understand more fully the utility’s resource plan assumptions, the modeling and risk analysis that should be reflected in the plan, and the utility’s preferred portfolio to meet its needs over the 10-year planning process. Proposed rule 4901:5-5-05(E)(3) properly reflects this consideration.

#### PROPOSED RULE CHANGES:

- (B)(1) The integrated resource plan shall contain a narrative discussion and QUANTITATIVE analysis of:

\*\*\*

- (c) Research, development and demonstration efforts made in paragraph (A)(1)(a) of this rule, or otherwise, including

expenditure information and description of specific investigations (~~no~~ proprietary information should be included AND FILED UNDER SEAL) and the nature and timing of anticipated results of these investigations; and

\*\*\*

(e) A DEMONSTRATION THAT THE PLAN COMPLIES WITH STATE POLICY UNDER SECTION 4928.02 OF THE REVISED CODE.

Division D must focus on the state policy that either an ESP or MRO “need[s] to assure reasonably priced electric service to retail customers”

PROPOSED RULE CHANGE:

(D) Need TO ASSURE REASONABLE PRICED ELECTRIC SERVICE TO RETAIL CUSTOMERS.~~for additional electricity resource options~~

(1) The reporting utility shall describe the procedure followed in determining the need for additional electricity resource options THAT ~~ARE LEAST~~ HAVE THE LOWEST PRESENT VALUE LIFE-CYCLE COST, INCLUDING ENVIRONMENTAL AND ECONOMIC COSTS, AND LEAST RISK. All major factors shall be discussed AND QUANTIFIED, including but not limited to:

\*\*\*

(c) GROSS AND NET Unit size, CAPACITY FACTORS, HEAT RATES (FILED UNDER SEAL) and availability of existing and planned units.

\*\*\*

(e) Electricity resource option uncertainty with respect to cost, availability, COMMERCIAL IN-SERVICE DATES, and performance.

OCEA also proposes additional language to proposed rule 4901:5-5-05(D)(1)(h) because it is likely that utilities will undertake investments in smart metering and

implement voluntary time differentiated pricing in the near future, the impacts of those pricing programs should be reflected in the shape of the utilities demand curve.

**PROPOSED RULE CHANGE:**

- (h) Price responsive demand and price elasticity, INCLUDING BUT NOT LIMITED TO THE VALUE OF LOSS LOAD ASSESSMENTS DUE TO THE VOLUNTARY IMPLEMENTATION OF TIME DIFFERENTIATED PRICING.

OCEA proposes four additional items to the existing information requirements found in proposed rule 4901:5-5-05(D)(1) that should be addressed individually as they can be major electricity cost drivers.

**PROPOSED RULE CHANGES:**

- (k) PROJECTED FUEL COSTS
- (l) PROJECTED COST FOR ENVIRONMENTAL COMPLIANCE
- (m) PROJECTED COST FOR WASTE DISPOSAL
- (n) ANY REPOWERING PROJECTS

**Comments to 4901:5-5-05(E) - INTEGRATED Resource Plan.**

**PROPOSED RULE CHANGE:**

- (1) This paragraph shall include the utility's projected mix of ALL REASONABLY USEFUL AND COST EFFECTIVE SUPPLY AND DEMAND SIDE resource options THAT ARE AVAILABLE TO THE UTILITY OR ITS CUSTOMERS to meet the base case projection of peak demand and total energy requirements. THE PROJECTION SHALL COMPLY WITH STATE POLICY INCLUDED IN SECTION 4928.02 OF THE REVISED CODE.

The price volatility of fuel supplies is important information to capture.

**PROPOSED RULE CHANGES:**

- (2)(b) A discussion of the future adequacy of fuel supplies in both the short term and long term. Additionally, the reporting utility shall provide, for the forecast period, a description of its overall fuel procurement policies and procedures. A description of the system's fuel requirements, the system's geographic source of fuel supply, THE PRICE VOLATILITY OF THAT SUPPLY and the percentage of fuel supply under contract OR OPTION shall be included.
- (3) The utility shall demonstrate the cost-effectiveness of the plan through a comparison over the ten-year forecast horizon of the revenue requirement and rate impacts of the selected plan and alternative plans evaluated pursuant to section 4928.143 of the Revised Code. THE UTILITY MUST INCLUDE A COMPARISON TO AT LEAST ONE ALTERNATIVE PLAN IN WHICH ALL COST-EFFECTIVE ENERGY EFFICIENCY POTENTIAL IDENTIFIED IN A MARKET POTENTIAL STUDY FOR THE UTILITY'S SERVICE TERRITORY IS CAPTURED. The selection of the plan shall demonstrate adequate consideration of the risks, reliability, and uncertainties associated with the person's selected plan and alternative plans, and of other factors the utility deems appropriate.
- (4)(d) DEMONSTRATION THAT THE PLAN IS LEAST COST AND LEAST RISK OVER THE SHORT AND LONG TERM PLANNING HORIZON.
- (5) The reporting utility shall provide information sufficient for the commission to determine the reasonableness of the integrated resource plan. In determining the reasonableness of an integrated resource plan the commission will consider:
  - (a) The adequacy, reliability and cost-effectiveness of the plan IN BOTH THE SHORT AND LONG RUN AND DEMONSTRATE LEAST COST AND RISK MITIGATION PRINCIPLES.

The proposed methodology should consider non-utility generation on both sides of the meter AND should define a minimum standard for cost-effectiveness testing on the demand side. OCEA recommends a change to proposed rule 4901:5-5-05(E)(5)(b).

PROPOSED RULE CHANGE:

- (b) Whether the methodology used to develop the plan evaluates demand-side management programs and non-utility generation ON BOTH SIDES OF THE METER in a manner consistent with utility generation and other electricity resource options. AT A MINIMUM, THE TOTAL RESOURCE COST TEST AS DEFINED IN THE 2002 VERSION OF THE CALIFORNIA STANDARD PRACTICE MANUAL: ECONOMIC ANALYSIS OF DEMAND-SIDE PROGRAMS AND PROJECTS SHOULD BE USED TO DETERMINE THE COST-EFFECTIVENESS OF DEMAND-SIDE MANAGEMENT PROGRAMS.

This text adds some specificity to lost investment opportunities part of the language.

PROPOSED RULE CHANGE:

- (E)(5)(b)(vi) Other strategic considerations including flexibility, diversity, the size and lead time of commitments, and lost opportunities for investment INCLUDING BUT NOT LIMITED TO EXPIRING TAX CREDITS OR OTHER FINANCIAL INCENTIVES.

PROPOSED RULE CHANGE:

- (E)(6) THE PUBLIC WILL HAVE AN OPPORTUNITY TO REVIEW AND COMMENT BEFORE THE COMMISSION DECIDES ON ANY PLAN. THE COMMISSION MAY THEN REJECT A PLAN FOR FAILURE TO MEET THE CRITERIA.

## **VIII. GAS AND NATURAL GAS FORECAST REPORTS -- CHAPTER 4901:5-7**

### **4901:5-7-02 Gas and Natural Gas Demand Forecasts for Gas Distribution Companies Serving More Than One Hundred Thousand Customers**

#### **Comments about Rule 4901:5-7-02(B)**

OCEA's proposes the addition of provision (B)(3)(e) to this requirement. This new section requires the utility to show how energy efficiency resources are being optimized in the utility's resource procurement plan.

#### **PROPOSED RULE CHANGE:**

- (B) Special subject areas.
  - (3) Energy conservation:
    - (e) ANALYSIS DESCRIBING HOW THE PROCUREMENT OF ENERGY EFFICIENCY RESOURCES BY THE UTILITY ARE ECONOMICALLY OPTIMIZED RELATIVE TO SUPPLY SIDE OPTIONS IN THE OVERALL RESOURCE PROCUREMENT PLAN.

## **IX. CONCLUSION**

OCEA appreciates the opportunity to submit comments regarding rules proposed in an Entry dated August 20, 2008. OCEA requests that the Commission carefully consider these comments and the comments of other interested parties in an effort to best implement the provisions contained in S.B. 221.



Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that, on this 9th day of September 2008, the foregoing Comments by the Ohio Consumer and Environmental Advocates have been served via First Class Mail, postage prepaid, to the following persons who previously submitted comments in response to the Public Utility Commission of Ohio's requests for comments on the adoption of proposed rules regarding the implementation of S.B. 221.

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