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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

Case No. 08-888-EL-ORD

INITIAL COMMENTS OF  
CONSTELLATION NEWENERGY, INC.,  
DIRECT ENERGY SERVICES, LLC, AND  
INTEGRYS ENERGY SERVICES, INC.  
TO THE ADOPTION OF RULES FOR ALTERNATIVE AND  
RENEWABLE ENERGY TECHNOLOGIES AND RESOURCES

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I. Introduction

Now come Constellation NewEnergy, Inc., Direct Energy Services, LLC, and Integrys Energy Services, Inc. (hereinafter collectively referred to as the "Competitive Suppliers") and in response to the Commission's Entry of August 20, 2008 ("August 20th Entry") submit the following comments on the promulgated rules OAC 4901:40-01; OAC 4901:40-02; OAC 4901:40-03; OAC 4901:40-04; OAC 4901:40-05; OAC 4901:40-06; OAC 4901:40-07; OAC 4901:40-08, and OAC 4901:40-09. Each of the Competitive Suppliers is a certificated competitive retail electric service ("CRES") provider and is active in the Ohio energy market.

Competitive Suppliers strongly supported the adoption of renewable portfolio, energy efficiency, demand response and other sustainable energy policies such as those embodied in Senate Bill 221 (SB 221). We commend the Commission Staff for putting together a fairly workable set of proposed rules to implement the new law.

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While the Competitive Suppliers are supportive of such measures, there are some recommended changes to the proposed Rules regarding the Alternative Energy and Advanced Energy Portfolio Standards that are designed to accommodate the different nature of CRES providers, provide necessary additional detail to ensure compliance, as well as enhance the deployment of renewable resources and advanced energy projects in the State of Ohio.

The ability to truly meet the environmental goals espoused by SB 221 will require reliance upon the competitive marketplace. Without reliance upon a competitive market model, Ohio will not be able to achieve the broadest possible deployment of new renewable projects at the lowest possible cost. Without reliance upon a competitive market model, Ohioans will be forced to rely upon the electric utilities who have no incentives to reduce costs for developing cost-effective renewable resources.

Study-after-study has shown that competitive suppliers are leading the way in the development of renewable sources of electricity. By maintaining a competitive market model, while at the same time adopting various sustainable energy policies, Ohio can achieve:

- Advancements in reliability, conservation, renewable energy development, and the ability of customers to purchase green power products. With growing concerns regarding global warming there is a market for conscientious consumers who wish to use only renewable green energy for their business or home or to make purchases to offset their use of traditional sources of energy.
- A significantly better platform to promote demand response and energy efficiency than traditional cost-of-service regulation. Demand response refers to mechanisms that provide the tools and incentives for electricity customers to reduce their consumption at critical times or in response to market prices. In cases where consumers do not pay actual

market prices, they have little or no incentive to reduce consumption (or defer consumption to later periods) during times when production costs are significantly higher. Since costs may be substantially higher at these times, the potential for savings should not be overlooked.

Since these broader market structure issues are currently being debated before the Commission in rulemakings and in the electric security plan (“ESP”) proceedings, the Commission must not lose sight of how integrally linked the underlying market structure is to policies designed to advance renewable and alternative sources of electricity.

## **II. Comments on Selected Rule Amendments**

Competitive Suppliers offer the following comments and proposed revisions to the proposed rules. A complete set of the suggested changes to the proposed rules are attached hereto and made a part hereof as **Attachment A**.

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

Competitive Suppliers offer several revisions to a number of the definitions contained in the proposed rules. The revisions are designed to provide needed clarity and consistency to certain of the proposed rules by aligning the wording of the proposed rules with the statutory language in SB 221 or with other existing administrative rules, processes and procedures.

Two of the definition amendments are needed to ensure statutory compliance and /or are needed to be consistent with how other jurisdictions have addressed the same concept. Specifically, the Competitive Suppliers propose amendment to the concept of an in-state delivery requirement. In subsection (I) the Staff has proposed that the definition of “Deliverable into this state” to mean that the electricity originates from a facility within a state contiguous to Ohio. It may also include electricity originating from other locations, pending a demonstration by an

electric utility or electric services company that the electricity could be physically delivered to the state.

Given that facilities within Ohio are interconnected to either the PJM Interconnection (“PJM”) or the Midwest Independent System Operator (“MISO”) regional transmission organizations, this definition should be expanded to include electricity originating from a facility either located within the PJM or the MISO regions.

The Competitive Suppliers also request establishment of the term “Green Attribute” and its use when describing the benefits of renewable generation. Certain types of generation, including but not limited to biomass and landfill gas generation, produce environmental benefits in addition to offsetting some or all of the pollutants associated with conventional generation. The Center for Resource Solution (Green-e) and states such as California use the concept of “Green Attribute”<sup>1</sup> to capture these benefits. The Competitive Suppliers suggest using the term Green Attributes so that Ohio’s new alternative energy resources paradigm utilizes a common term in existing industry-practice. That way, consumers will benefit if Ohio’s program has sufficient specificity to be audited in a fashion that prevents double counting of benefits and thus helps ensure that Ohio consumers receive the full benefits associated with the purchase of renewable energy resources.

## **B. Proposed Amendment to Rule 4901:1-40-03 Requirements**

### **1. Adoption of a Baseline**

In subsection (B) the Staff has proposed that the baseline for compliance with the alternative energy resource requirements shall be determined using the following methodologies:

- (2) For electric services companies, the baseline shall be computed as an average from the three preceding calendar years of the total annual number of kilowatt

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<sup>1</sup> Green Attributes are also called as Environmental Attributes.

hours of electricity sold to any and all retail electric customers by the company in the state, based upon the kilowatt hour sales in the electric services company's most recent quarterly market monitoring reports or reporting forms.

The proposed language goes on to specify that for any electric services company that has not been continuously supplying Ohio retail electric customers during the preceding three calendar years, the baseline will be computed as an average of annual sales data for all calendar years during the preceding three years in which the electric services company was serving retail customers. Additionally, the proposed language states that an electric services company with no retail electric sales in the state during the preceding three calendar years shall be exempt from a baseline.

The proposed language puts those competitive suppliers that have been and are currently participating in Ohio's electric market at a significant disadvantage to other competitive suppliers who have recently entered the market or may do so in the future. It is imperative that a level playing field exists for all competitive electric suppliers in Ohio, which may be accomplished in part by establishing a comparable baseline for all competitive suppliers, regardless of their entry date into the market. Moreover, competitive suppliers that are currently participating in Ohio's electric market entered into contracts with customers prior to the imposition of renewable energy requirements, and therefore priced their contracts without consideration of the incremental costs associated with the purchase of renewable energy. Those existing contracts (either in their initial or renewal periods) should be grandfathered for purposes of establishing the baseline for renewable energy requirements.

## **2. Length of Planning Horizon**

In Subsection (C), Staff proposed that beginning in the year 2010, each electric utility and each electric services company shall annually submit to Staff a plan for compliance with future

annual advanced energy and renewable energy benchmarks, including solar, utilizing a fifteen-year planning horizon.

Competitive Suppliers understand the allure of a long-term plan for compliance with future annual advanced energy and renewable energy benchmarks through a planning horizon. However, fifteen years is not a practical requirement as applied to electric services companies. Although electric distribution utilities have a general sense of what the customer load for their service territory will be in the next decade by virtue of their standing as a monopoly provider of electricity, electric services companies do not. Electric services companies typically enter into shorter-term contracts with customers, and are unable to predict with any meaningful degree of certainty what their customer load will be beyond the following year.

The Competitive Suppliers suggest a revision be made to Subsection (C) of proposed Rule 4901:1-40-03 to apply the annual fifteen-year planning horizon requirement only to electric distribution utilities, and to apply a planning horizon for electric services companies of one year, which better reflects the business models of these providers.

### **3. Compliance Reports / Confidentiality**

In an effort to assist the Commission Staff in ensuring compliance with the proposed rules, Competitive Suppliers suggest that the Commission utilize the submission of compliance reports by electric utilities and electric services companies. It has been the experience of the Competitive Suppliers that most other jurisdiction have utilized such a report or filing to ensure compliance with renewable energy portfolio standards and similar benchmarks. Due to the likelihood that the Compliance Reports will contain competitively-sensitive information regarding the procurement and cost associated with meeting the benchmarks, the Compliance

Reports submitted by electric utilities and electric services companies should be afforded Confidential treatment pursuant to the PUCO's Rules and Regulations.

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

Proposed Rule 4901:1-40-04(C) indicates that certain new or existing mercantile customer-sited resources may be qualified resources for meeting electric utilities' annual renewable energy resource benchmarks or advanced energy resource benchmarks, as applicable, provided that it does not constitute double-counting for any other regulatory requirement and that the mercantile customer has committed the resource for integration into the electric utility's demand-response, energy efficiency, or peak demand reduction programs pursuant to rule 4901:1-39-06 of the Administrative Code.

The rule should be expanded to allow new or existing mercantile customers-sited resources count toward meeting electric service providers' annual renewable resource benchmarks or advanced energy resource benchmarks. There is no rationale that supports only allowing electric utilities and not electric services companies to count such mercantile customer-sited resources towards meeting the benchmarks. Such a rule would place electric services companies at a competitive and financial disadvantage to electric utilities.

Additionally, the proposed rules neglected to include the term "Biologically-derived Methane Gas" as a Qualified Resource.

**D. 4901:1-40-07 Cost Cap**

Electric services companies do not have a specific generation rate or set of rates. Rather, electric services companies enter into customer contracts, some of which may be for a fixed price for the contract term and thus do not include a separate generation component of a bill. Therefore it would be difficult, if not impossible, for electric services companies to comply with subsection (B), as currently written.

Recognizing the business model unique to electric services companies, other states utilize public information to determine whether an electric services company has exceeded the cost cap established for renewable energy. Recently, New Jersey proposed the use of data collected by the Energy Information Administration of the U.S. Department of Energy under Form EIA-826. The data collected pursuant to EIA-826 is a twelve-month Average Retail Price of Electricity to Ultimate Customers in All Sectors and is specified by State. Competitive Suppliers suggest that use of the EIA-826 data would be an appropriate basis for a determination of whether competitive suppliers have reached a cost cap in meeting the benchmarks since the prices paid by customers of CRES providers will likely vary on a customer-by-customer basis.

The costs that an electric service company incurs in meeting its renewable energy obligation is highly sensitive competitive information, as it can negatively affect its negotiations with renewable energy producers and reveal certain pricing-related information to its competitors in the Ohio energy market and other markets. Accordingly, it should be protected from disclosure for a period of three years in order to avoid competitive harm.

### **III. Conclusion**

The Competitive Suppliers thank the Commission for this opportunity to comment on the rules in Chapter 4901:40-01; Chapter 4901:40-02; Chapter 4901:40-03; Chapter 4901:40-04; Chapter 4901:40-05; Chapter 4901:40-06; Chapter 4901:40-07; Chapter 4901:40-08, and Chapter 4901:40-09 of the Ohio Administrative Code. The Competitive Suppliers request the Commission to adopt the rule changes described above.

Respectfully submitted,

Constellation NewEnergy, Inc.  
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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Comments was served upon the following persons this 9<sup>th</sup> day of September, 2008 via electronic mail or via U.S. first class mail, postage prepaid and will be served by electronic mail or via U.S. first class mail by the close of business on September 9, 2008, on all other parties not listed below who timely file Initial Comments in this case.



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## **ATTACHMENT A**

## New Chapter: 4901:1-40

## Chapter Title: Alternative Energy Portfolio Standard

Applicable Ohio Revised Code Sections: 4928.64 and 4928.65

## 4901:1-40-01 Definitions

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

## 4901:1-40-03 Requirements

## 4901:1-40-04 Qualified Resources

## 4901:1-40-05 Compliance Reviews

## 4901:1-40-06 Force Majeure

## 4901:1-40-07 Cost Cap

## 4901:1-40-08 Annual Compliance Payments

## 4901:1-40-09 Annual Report

## 4901:1-40-01 Definitions

- (A) "Advanced energy fund" has the meaning set forth in section 4928.61 of the Revised Code.
- (B) "Advanced energy resource" has the meaning set forth in division (A)(34) of section 4928.01 of the Revised Code.
- (C) "Alternative energy resource" has the meaning set forth in division (A)(1) of section 4928.64 of the Revised Code.
- (D) "Annual Report" shall mean the detailed accounting and other information that is required to be filed by Electric Utilities pursuant to Section 4905.14, Revised Code and is required to be filed by Electric Service Providers pursuant to Section 4928.06, Revised Code.
- (E) "Biologically-derived methane gas" means landfill methane gas, including but not limited to municipally owned landfills; or gas from the anaerobic digestion of organic materials, including animal waste, municipal wastewater, institutional and industrial organic waste, food waste, yard waste, and agricultural crops and residues.
- (F) "Biomass energy" means energy produced from organic material derived from plants or animals and available on a renewable basis, including but not limited to: agricultural crops, tree crops, crop by-products and residues; wood and paper manufacturing waste, including nontreated by-products of the wood manufacturing or pulping process, such as bark, wood chips, sawdust, and lignin in spent pulping liquors; forestry waste and residues; other vegetation waste, including landscape or right-of-way trimmings; algae; food waste; animal wastes

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and by-products (including fats, oils, greases and manure); biodegradable solid waste; and biologically-derived methane gas.

(G) "Clean coal technology" means a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes 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.

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(H) "Co-firing" means simultaneously using multiple fuels in the generation of electricity.

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(I) "Commission" means the public utilities commission of Ohio.

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(J) "Deliverable into this state" means that the electricity originates from a facility within a state contiguous to Ohio or the electricity originates from a facility either located within the PJM Interconnection regional transmission organization or the Midwest Independent System Operator regional transmission organization. It may also include electricity originating from other locations, pending a demonstration by an electric utility or electric services company that the electricity could be physically delivered to the state.

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(K) "Demand response" has the meaning set forth in rule 4901:1-39-01 of the Administrative Code.

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(L) "Demand-side management" has the meaning set forth in rule 4901:1-39-01 of the Administrative Code.

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(M) "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.

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(N) "Double-counting" means utilizing renewable energy, renewable energy credits, 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.

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(Q) "Electric distribution utility" has the meaning as set forth in division (A)(6) of section 4928.01 of the Revised Code.

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(P) "Electric generating facility" means a power plant or other facility where electricity is produced.

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(Q) "Electric services company" has the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.

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(R) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.

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(S) "Energy efficiency" has the meaning set forth in rule 4901:1-39-01 of the Administrative Code.

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(T) "Energy storage" means a facility or technology that permits the storage of energy for future use as electricity.

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(U) "Fuel cell" means a device that uses an electrochemical energy conversion process to produce electricity.

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(V) "Fully aggregated" means that the renewable energy credit shall retain all of its green attributes as defined herein.

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Deleted: , including those pertaining to air emissions, and that specific attributes are not separated from the renewable energy credit and sold individually.

(W) "Geothermal energy" means hot water or steam extracted from geothermal reservoirs in the earth's crust and used for electricity generation.

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(X) "Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the electric generation facility, and its displacement of conventional energy generation/production. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green

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Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from an electric generation facility, (ii) production tax credits associated with the construction or operation of the electric generation facility and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the electric generating facility for compliance with local, state, or federal operating and/or air quality permits.

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(Y) "Hydroelectric energy" means electricity generated by a hydroelectric facility.

(Z) "Hydroelectric facility" has the meaning set forth in division (A)(35) of section 4928.01 of the Revised Code.

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(AA) "Mercantile customer" has the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.

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(BB) "Midwest system operator" means Midwest Independent Transmission System Operator, Inc. or any successor organization.

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(CC) "Peak demand reduction" has the meaning set forth in rule 4901:1-39-01 of the Administrative Code.

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(DD) "PJM regional transmission organization" means "PJM Interconnection, LLC" or any successor organization.

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(EE) "Placed-in-service" means when a facility or technology becomes operational.

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(FF) "Renewable energy credit" means the fully aggregated attributes associated with one megawatt hour of electricity generated by a renewable energy resource.

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(GG) "Renewable energy resource" has the meaning set forth in division (A)(35) of section 4928.01 of the Revised Code.

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(HH) "Solar energy resources" means solar photovoltaic and/or solar thermal resources.

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(II) "Solar photovoltaic" means energy from devices which generate electricity directly from sunlight through the movement of electrons.

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(JJ) "Solar thermal" means the concentration of the sun's energy, typically through the use of lenses or mirrors, to drive a generator or engine.

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(KK) "Solid wastes" has the meaning set forth in section 3734.01 of the Revised Code.

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(LL) "Staff" means the commission staff or its authorized representative.

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(MM) "Standard service offer" means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.

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(NN) "Wind energy" means electricity generated from wind turbines, windmills, or other technology that converts wind into electricity.

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#### 4901:1-40-02 Purpose and scope

(A) This chapter addresses the implementation of the alternative energy portfolio standard, including the incorporation of renewable energy credits (RECs), as detailed in sections 4928.64 and 4928.65 of the Revised Code respectively. Parties affected by these alternative energy portfolio standard rules include all Ohio electric utilities and all electric services companies serving retail electric customers in Ohio. Any entities that do not serve Ohio retail electric customers shall not be required to comply with the terms of the alternative energy portfolio standard.

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

#### 4901:1-40-03 Requirements

(A) All electric utilities and affected electric services companies shall ensure that, by the end of the year 2024 and each year thereafter, at least twenty-five per cent of

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their retail electric sales in the state are supplied with electricity from alternative energy resources.

- (1) Up to half of the electricity supplied from alternative energy resources may be generated from advanced energy resources.
- (2) At least half of the electricity supplied from alternative energy resources shall be generated from renewable energy resources, including solar energy resources, in accordance with the following annual benchmarks:

By end of year:	Renewable Energy Resources	Solar Energy Resources
2009	0.25%	0.004%
2010	0.50%	0.01%
2011	1.0%	0.03%
2012	1.5%	0.06%
2013	2.0%	0.09%
2014	2.5%	0.12%
2015	3.5%	0.15%
2016	4.5%	0.18%
2017	5.5%	0.22%
2018	6.5%	0.26%
2019	7.5%	0.30%
2020	8.5%	0.34%
2021	9.5%	0.38%
2022	10.5%	0.42%
2023	11.5%	0.46%
2024 and each year thereafter	12.5%	0.50%

- (a) At least half of the renewable energy resources, including solar energy resources, shall be met through electricity generated by facilities located in this state.
- (b) To qualify towards a benchmark, any electricity from renewable energy resources, including solar energy resources, that originates from outside of the state must be shown to be deliverable into this state.
- (3) All costs incurred by an electric utility in complying with the requirements of the alternative energy portfolio standard shall be fully

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avoidable by any consumer that has exercised choice of electricity supplier.

- (B) The baseline for compliance with the alternative energy resource requirements shall be determined using the following methodologies:

- (1) For electric utilities, the baseline shall be computed as an average from the three preceding calendar years of the total annual number of kilowatt hours of electricity sold under its standard service offer to any and all retail electric customers whose electric load centers are served by that electric utility and are located within the electric utility's certified territory. The calculation of the baseline shall be based upon the average annual kilowatt hour sales reported in that electric utility's three most recent forecast reports or reporting forms.

- (2) For electric services companies, the baseline shall be computed as ~~the~~ total annual number of kilowatt hours of electricity sold to any and all retail electric consumers served by the company in the state, based upon the annual kilowatt hour sales in the electric services company's most recent Annual Report to the commission.

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- (a) An electric services company may exclude from its baseline calculation the number of kilowatt hours of electricity sold to retail customers pursuant to a contract entered into (or renewed) prior to the effective date of these rules, for the duration of the initial or renewal contract term. The commission may require that the electric services company submit documentation enabling the commission to determine the actual amount of electricity supplied under contracts that may be excluded under this limitation.

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- (b) For an electric services company with no retail electric sales in the state during the preceding calendar year, its baseline shall equal zero.

- (3) An electric utility or electric services company may propose a reduced baseline for commission consideration that reflects new economic growth in its service territory or service area. Any such proposal shall include at least a methodology for measuring economic activity, including objective measurement parameters and quantification methodologies.

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- (C) Beginning in the year 2010, each electric utility shall annually submit to staff a plan for compliance with future annual advanced energy and renewable energy

benchmarks, including solar, utilizing a fifteen-year planning horizon. This plan, to be submitted by April fifteenth of each year, shall include at least the following items:

- (1) Baseline for the current and future calendar years.
- (2) Supply portfolio projection, including both generation fleet and power purchases.
- (3) Current and projected renewable energy credit inventories.

(D) Beginning in the year 2010, each electric services company shall annually submit to staff a plan for compliance with future annual advanced energy and renewable energy benchmarks, including solar, utilizing a one-year planning horizon. This plan, to be submitted as part of the electric services company Annual Report, shall include at least the following items:

- (1) Baseline for the current and estimate for the next calendar year.
- (2) Supply portfolio projection, including both generation fleet and power purchases.
- (3) Current and projected renewable energy credit inventories.

(E) Compliance Report. Beginning in the year 2010, each electric utility and electric services company shall annually submit to staff a Report demonstrating compliance with the annual advanced energy and renewable energy benchmarks for the preceding calendar year. This Report shall be part of the Annual Report and shall include information demonstrating compliance with the Applicable Annual Renewable Energy Resource and Solar Energy Resource Benchmarks and shall include a description of the:

- (1) Qualified Resources or Technologies; and/or
- (2) Renewable Energy Certificates (RECs); and/or
- (3) Compliance Payments as outlined in 4901:1-40-08.

that are being used to satisfy the Benchmarks. If requested by an electric utility or electric service company, any information contained in the Compliance

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Reports shall be afforded the appropriate confidential treatment pursuant to the applicable provisions of the of Adm. Code.

- (F) The annual plan filing and Compliance Report for each electric utility and each electric services company referred to in subparts (C), (D), and (E) described above shall be afforded Confidential protection for the period of the plan or reporting, plus a period of three years, without the need for a Motion For Protective Order specified in Section 4901-1-24 of the Rules and Regulations of the PUCO. After the three year period, an electric utility or electric services company may extend the protective order per Section 4901-1-24.

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

- (A) The following resources or technologies, if they have a placed-in-service date of January 1, 1998, or after, are qualified resources for meeting the renewable energy resource benchmarks:

- (1) Solar photovoltaic or solar thermal energy.
- (2) Wind energy.
- (3) Hydroelectric energy.
- (4) Geothermal energy.
- (5) Solid waste energy.
- (6) Biomass energy. If co-firing an electric generating facility with a biomass energy resource, the proportion of fuel input attributable to the biomass energy resource shall dictate the proportion of electricity output from the facility that can be considered biomass energy.
- (7) Energy from a fuel cell for which the feedstock is a renewable resource.
- (8) Storage facility, if it complies with the following requirements:
  - (a) The electricity used to pump the resource into a storage reservoir must qualify as a renewable energy resource.
  - (b) The amount of energy that may qualify from a storage facility is the amount of electricity dispatched from the storage facility and shall

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exclude the amount of energy required to initially pump the resource into the storage reservoir.

- (9) Distributed generation system used by a customer to generate electricity from one of the resources or technologies listed above.
  - (10) Biologically-derived methane gas.
- (B) The following resources or technologies, if they have a placed-in-service date of January 1, 1998, or after, are qualified resources for meeting the advanced energy resource benchmarks:
- (1) Any modification to an electric generating facility that increases its generation output without increasing the facility's carbon dioxide emission rate (pounds of carbon dioxide per megawatt hour).
  - (2) Any distributed generation system, designed primarily to meet the energy needs of the customer's facility, that utilizes co-generation of electricity and thermal output simultaneously.
  - (3) Clean coal technology.
  - (4) Nuclear enhancements, including:
    - (a) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission or other later technology.
    - (b) Significant improvements to existing facilities.
  - (5) Energy from a fuel cell, regardless of feedstock.
  - (6) Advanced solid waste or construction and demolition debris conversion technology that results in measurable greenhouse gas emission reductions.
  - (7) Demand-side management and energy efficiency, above and beyond that used to comply with any other regulatory standard or programs.
- (C) The following new or existing mercantile customer-sited resources may be qualified resources for meeting electric utilities' or electric service companies' annual renewable energy resource benchmarks or advanced energy resource

benchmarks, as applicable, provided that it does not constitute double-counting for any other regulatory requirement and that the mercantile customer has committed the resource for integration into the electric utility's demand-response, energy efficiency, or peak demand reduction programs pursuant to rule 4901:1-39-06 of the Administrative Code.

- (1) Renewable energy resources from mercantile customers include the following:
  - (a) Electric generation equipment that uses a renewable energy resource and is owned or controlled by a mercantile customer.
  - (b) Any renewable energy resource of the mercantile customer that can be utilized effectively as part of an alternative energy resource plan of an electric utility or electric services company and would otherwise qualify as a renewable energy resource if it were utilized directly by an electric utility or electric services company.
- (2) Advanced energy resources from mercantile customers include the following:
  - (a) A resource that improves the relationship between real and reactive power.
  - (b) A mercantile customer-owned or controlled resource that makes efficient use of waste heat or other thermal capabilities.
  - (c) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics.
  - (d) Electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource.
  - (e) Any advanced energy resource of the mercantile customer that can be utilized effectively as part of an advanced energy resource plan of an electric utility and electric services company would otherwise qualify as an advanced energy resource if it were utilized directly by an electric utility or electric services company.
- (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.

- (1) To be eligible for use towards satisfying a benchmark, a REC must originate from a facility that meets the definition of a renewable energy resource, including solar energy resources.
  - (2) To use RECs as a means of achieving partial or complete compliance, an electric utility or electric services company must be a registered member in good standing of at least one of the following:
    - (a) The PJM generation attributes tracking system.
    - (b) The midwest renewable energy tracking system.
    - (c) Another credible tracking system subsequently approved for use by the commission.
  - (3) A REC may be used for compliance any time in the five calendar years following the date of its initial purchase or acquisition.
  - (4) Double-counting is prohibited.
  - (5) To be applied towards compliance, RECs shall remain fully aggregated.
- (E) An entity may seek certification of resources or technologies to ensure that the resources or technologies would count as a *qualified resource*.
- (1) Application for certification of a resource or technology consists of completing and filing application forms as prescribed by the commission or its staff.
  - (2) The commission may approve, suspend, or deny an application within sixty days 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.
  - (3) If the commission suspends the application, the applicant shall be notified of the reasons for such suspension and may be directed to furnish *additional information*. The commission may act to approve or deny a suspended application within ninety days of the date that the application was suspended.



- (4) Upon commission approval, the applicant shall receive notification of approval and a numbered certificate.
- (5) Certification of a resource or technology shall not predetermine compliance with annual benchmarks, and does not constitute any commission position regarding cost recovery.
- (F) At its discretion, the commission may classify any new technology or additional resource as an advanced energy resource or a renewable energy resource.

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**4901:1-40-05 Annual compliance reviews**

- (A) Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.
  - (1) Beginning in the year 2010, the staff shall conduct annual reviews of electric utility and electric services company compliance with the most recent applicable renewable energy and solar energy resource benchmark.
  - (2) Beginning in the year 2025, the staff shall conduct annual reviews of electric utility and electric services company compliance with the most recent applicable advanced energy resource benchmark.
- (B) The annual compliance reviews shall consider any undercompliance an electric utility or electric services company asserts is outside its control, including but not limited to the following:
  - (1) Weather-related causes.
  - (2) Equipment shortages for renewable energy resources.
  - (3) Resource shortages for renewable energy resources.
- (C) Staff shall file a report of its findings. The process and timeframes for any annual noncompliance reviews shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.

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**4901:1-40-06 Force majeure**

- (A) An electric utility or electric services company may seek a force majeure determination from the commission for all or part of a minimum renewable energy or solar energy benchmark.
- (1) A decision on a request for a force majeure determination will be rendered within ninety days of an electric utility or electric services company filing a request for such determination. The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.
- (a) At the time of requesting such a determination from the commission, an electric utility or electric services company shall demonstrate that it pursued all reasonable compliance options including, but not limited to, renewable energy credit (REC) solicitations, REC banking, and long-term contracts.
- (b) The request shall include an assessment of the availability of qualified in-state resources, as well as qualified resources within the PJM interconnection regional transmission organization and the midwest system operator.
- (2) If the commission determines that force majeure conditions exist, it may modify that compliance obligation of the electric utility or electric services company as it considers appropriate to accommodate the finding.
- (a) Such modification does not automatically reduce future year obligations.
- (b) The commission retains the right to increase a future year's compliance obligation by the amount of any undercompliance in a previous year that is attributed to a force majeure determination.

**4901:1-40-07 Cost cap**

- (A) An electric utility or electric services company may request a determination from the commission that its reasonably expected cost of compliance with an advanced energy resource benchmark would exceed its reasonably expected generation rate by three percent or more. The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.

- (1) The burden of proof for substantiating such a claim shall remain with the electric utility or electric services company.
- (2) An electric utility or electric services company shall pursue all reasonable compliance options prior to requesting such a determination from the commission.
- (3) In the case that the commission makes such a determination, the electric utility or electric services company may not be required to fully comply with that specific benchmark.

(B) An electric utility may request a determination from the commission that its reasonably expected cost of compliance with a renewable energy resource benchmark, including a solar energy resource benchmark, would exceed its reasonably expected generation rate by three per cent or more. The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.

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(1) The burden of proof for substantiating such a claim shall remain with the electric utility,

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(2) An electric utility shall pursue all reasonable compliance options prior to requesting such a determination from the commission.

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(3) In the case that the commission makes such a determination, the electric utility may not be required to fully comply with that specific benchmark.

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(C) An electric services company may request a determination from the commission that its reasonably expected cost of compliance with a renewable energy resource benchmark, including a solar energy resource benchmark, would exceed the twelve-month Average Retail Price of Electricity to Ultimate Customers in All Sectors as reported in the most recent EIA-826 price data for Ohio by three per cent or more. The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.

(1) The burden of proof for substantiating such a claim shall remain with the electric services company.

(2) An electric services company shall pursue all reasonable compliance options prior to requesting such a determination from the commission.

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(3) The data supporting the claim requesting such a determination shall be afforded Confidential protection for the period of the plan or reporting, plus a period of three years, without the need for a Motion For Protective Order specified in Section 4901-1-24 of the Rules and Regulations of the PUCO. After the expiration of the three year period, the electric services company may file to continue the order per Section 4901-1-24 on a going forward basis.

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(4) In the case that the commission makes such a determination, the electric services company may not be required to fully comply with that specific benchmark.

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(D) Calculations involving the three per cent 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 standard 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.

(E) 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.

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(F) If the commission makes a determination that a three percent provision is triggered, the electric utility or electric services company shall comply with each benchmark up to the point that the three per cent increment would be reached for each benchmark.

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(G) The commission retains the right to increase a future year's compliance obligation by the amount of any undercompliance in a previous year that is attributed to the three per cent cost cap provision.

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#### 4901:1-40-08 Compliance payments

(A) Any electric utility or electric services company that does not achieve an annual renewable energy resource benchmark, including a solar benchmark, shall remit a compliance payment based on the amount of noncompliance rounded up to the next megawatt hour (MWh), unless the commission has identified the existence of force majeure conditions or the commission has determined that the three per cent cost cap provision would be exceeded in the event of full compliance.

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- (1) The required payment for noncompliance with any solar energy resource benchmark shall be calculated by quantifying the level of noncompliance, rounded to the next MWh, and multiplying this figure by the per MWh amount in the table below.

Solar Energy Resources - Compliance Payment	
Year	Payment per MWh
2009	\$450
2010 and 2011	\$400
2012 and 2013	\$350
2014 and 2015	\$300
2016 and 2017	\$250
2018 and 2019	\$200
2020 and 2021	\$150
2022 and 2023	\$100
2024 and beyond	\$50

- (2) The required payment for noncompliance with any renewable energy resource benchmark, excluding solar, shall be calculated by quantifying the level of noncompliance, rounded to the next MWh, and multiplying this figure by an amount determined by the commission.
- (a) The per MWh payment for renewable energy resources for the year 2009 is forty-five dollars.
- (b) Beginning in the year 2010, the per MWh payment for renewable energy resources will be adjusted annually to reflect the annual change to the consumer price index as defined in section 101.27 of the Revised Code. Such adjustment shall be performed by staff no later than June first of each calendar year. This annual adjustment shall be calculated using the following formula:
- $$= ((CPI_{YR2} / CPI_{YR1}) * \text{current per MWh payment})$$
- (c) In no event shall the compliance payment for renewable energy resources be less than forty-five dollars per MWh.
- (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. The results of this

review shall be used to determine if changes to the solar or renewable energy compliance payments are warranted, as follows:

- (a) The commission may increase compliance payments if needed to ensure that electric utilities and electric services companies are not using the payments in lieu of acquiring or producing energy or RECs from qualified renewable resources, including solar.
  - (b) Any recommendation to reduce the compliance payments shall be presented to the general assembly.
- (B) Any compliance payment shall be submitted to the commission for deposit to the credit of the advanced energy fund. All compliance payments shall be delivered to the commission within thirty days of the imposition of any compliance payment requirement.
- (C) Compliance payments shall be subject to such collection and enforcement procedures as apply to the collection of a forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code.
- (D) Any electric utility or electric services company found to be liable for a compliance payment is prohibited from passing compliance payments on to consumers. In the event that a compliance payment is required, an electric utility or electric services company shall submit an attestation, signed by a company officer or designee, indicating that it will not seek to recover the specific compliance payment from consumers. Such attestation shall be submitted to staff within thirty days of the imposition of any compliance payment requirement.

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#### **4901:1-40-09 Annual Report**

- (A) Pursuant to division (D)(1) of section 4928.64 of the Revised Code, an annual report shall be submitted to the general assembly addressing at least the following topics:
- (1) The compliance status of electric utilities and electric services companies with respect to the advanced energy resource and renewable energy resource benchmarks.
  - (2) Suggested strategies for electric utility and electric services company compliance.

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- (3) Suggested strategies for encouraging the use of alternative energy resources in supplying this state's electricity needs in a manner that considers:
- (a) Available technology.
  - (b) Costs.
  - (c) Job creation.
  - (d) Economic impacts.
- (B) The report shall be submitted in accordance with section 101.68 of the Revised Code.
- (C) Prior to its submission to the general assembly, the report will be issued for public comment by interested persons for thirty 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, deputy director, or attorney examiner.