

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for)
Alternative and Renewable Energy)
Technology, Resources, and Climate)
Regulations, and Review of Chapters) Case No. 08-888-EL-ORD
4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of)
the Ohio Administrative Code, Pursuant)
to Amended Substitute Senate Bill No. 221.)

SIXTH ENTRY ON REHEARING

The Commission finds:

- (1) On July 31, 2008, Amended Substitute Senate Bill No. 221 (SB 221) of the 127th General Assembly (2008 Ohio Laws S221) was enacted to, among other things, substantially revise Chapter 4928 of the Revised Code, to address energy efficiency and alternative energy resources, renewable energy credits, clean coal technology, and environmental regulations. In accordance with this legislation, the Commission's staff proposed modifications to the current forecast rules contained in Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code (O.A.C), and the creation of three new O.A.C. chapters:

4901:1-39 Energy Efficiency and Demand
Reduction Benchmarks

4901:1-40 Alternative Energy Portfolio Standard

4901:1-41 Greenhouse Gas Reporting and Carbon
Dioxide Control Planning.

- (2) On August 20, 2008, the Commission issued an entry requesting comments from interested persons to assist in the review of proposed rules and changes. Over 60 separate parties and groups of organizations, including utilities, environmental and industrial advocates, equipment manufacturers, governmental entities, and various public interest groups filed comments or replies.

- (3) On April 15, 2009, the Commission issued its opinion and order (April 15th Order), adopting the three new chapters of the O.A.C. Chapter 4901:1-39, Energy Efficiency and Demand Reduction Benchmarks; Chapter 4901:1-40, Alternative Energy Portfolio Standard; and Chapter 4901:1-41, Greenhouse Gas Reporting and Carbon Dioxide Control Planning. The April 15th Order also modified relevant forecast rules contained in Chapters 4901:5-1, 4901:5-3, and 4901:5-5, O.A.C.
- (4) On May 15, 2009, applications for rehearing were filed pursuant to Section 4903.10, Revised Code, by 15 parties or groups. On June 10, 2009, the Commission issued an entry granting rehearing for further consideration of the matters specified. On June 17, 2009, the Commission issued a second entry on rehearing (June 17th Entry) addressing the substantive issues raised and modifying many of the rules adopted in the Commission's first order. On June 24, 2009, the Commission issued an entry correcting, *nunc pro tunc*, several errors in the June 17th Entry. On August 12, 2009, the Commission issued an entry granting rehearing for further consideration before issuing a fourth entry on rehearing on October 15, 2009 (October 15th Entry), which revised Rules 4901:1-39-01, 4901:1-39-04, 4901:1-39-05, 4901:1-39-08, 4901:1-40-01, 4901:1-40-04, and 4901:5-5-06, O.A.C.. On October 28, 2009, the Commission issued an entry (October 28th Entry) further modifying Rules 4901:1-39-05, 4901:1-39-08, and 4901:1-40-04, O.A.C., to address concerns raised during discussions with the parties and at proceedings of the Joint Committee on Agency Rule Review (JCARR).
- (5) On November 13, 2009, Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company (collectively, FirstEnergy), Duke Energy Ohio, Inc. (Duke), and the Ohio Consumer and Environmental Advocates (collectively, OCEA, comprised of the Ohio Consumers' Counsel, the Natural Resources Defense Council, Citizens Power, the Ohio Environmental Council, Environment Ohio, and Sierra Club), filed applications for rehearing of the October 15th and 28th Entries. On November 16, 2009, the Industrial Energy Users-Ohio (IEU) filed an application for rehearing or, in the alternative, request for clarification. Memorandum contra the applications for rehearing of Duke, FirstEnergy, and IEU were filed by OCEA; and memorandum contra the

applications for rehearing of OCEA were filed by FirstEnergy, American Municipal Power, Inc. (AMP), and The Ohio Manufacturers' Association (OMA) and the Ohio Hospital Association (OHA) on November 23, 2009.

- (6) To the extent that the matters considered herein are subject to codification as provisions of the O.A.C., the Commission has a statutory duty under Section 119.032, Revised Code, to review and modify any rules at least every five years.
- (7) The rules for new Chapters 4901:1-39, 4901:1-40 and 4901:1-41, O.A.C., as well as the relevant forecast rules, were duly filed, with a Section 119.032, Revised Code review date for the three new chapters of September 30, 2013. These new rules became effective on December 9, 2009. On that same date, the Commission issued a fifth entry (December 9th Entry) granting rehearing for further consideration.
- (8) Rehearing was granted by the December 9th Entry to, among other things, correct a clerical error in Rule 4901:1-39-05, O.A.C. in which subsections (I) repeats the same language contained in subsection (J). Subsection (I) should be amended to read as follows:

Banking surplus energy savings. To the extent that an electric utility's actual energy savings exceeds its energy efficiency benchmark for any year, the electric utility may apply such surplus energy savings to either its energy efficiency benchmarks for a subsequent year or toward meeting its advanced energy requirement, but not both. In order to exercise this option, the electric utility shall indicate in the annual portfolio status report for the year in which the surplus occurs whether the surplus will be directed to a subsequent year's energy efficiency benchmark or its advanced energy requirement.¹

¹ See, Case No. 08-888-EL-ORD April 15, 2009, Opinion and Order at 18, 24 in which the provision appears in the rules adopted as subsection (E) of Rule 4901:1-39-05, O.A.C. The provision was included without discussion or modification in rules attached to the June 17th Entry, as well as the October 15th Entry, but was inadvertently deleted in rules adopted by the October 28th Entry, which made unrelated modifications to the rule.

As Case No. 13-651-EL-ORD has already been initiated to begin the statutory review process for Chapter 4901:1-39, O.A.C., Staff is directed to correct subsection (I) of Rule 4901:1-39-05, O.A.C. as set forth above in that proceeding.

- (9) The December 9th Entry also granted rehearing to further consider the arguments regarding the identification of energy efficiency and demand response programs, and measurement of results, such as the use of the "as found" and benchmark comparison methods. As these issues are fully considered within the context of the Commission's order being issued concurrently in Case No. 10-834-EL-POR, they need not be addressed here.
- (10) It has now been more than three years since these rules became effective, and all of these rules are currently under review in Case Nos. 10-2912-GE-ORD, 12-3160-EL-ORD, 13-651-EL-ORD and 13-652-EL-ORD. Further, nothing precludes a party from raising issues previously addressed in this proceeding in a current or future rules proceeding. Accordingly, the applications for rehearing filed by FirstEnergy, Duke, OCEA, and IEU will be denied.

It is, therefore,

ORDERED, That the Commission's Staff take appropriate action to correct Rule 4901:1-39-05, O.A.C. in Case No. 13-651-EL-ORD as set forth above. It is, further,

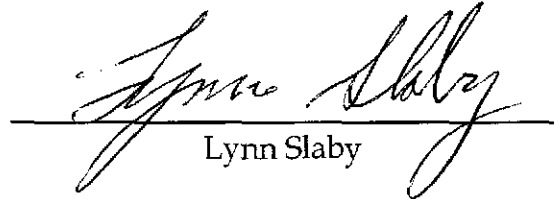
ORDERED, That the applications for rehearing filed by FirstEnergy, Duke, OCEA, and IEU be denied. It is, further,

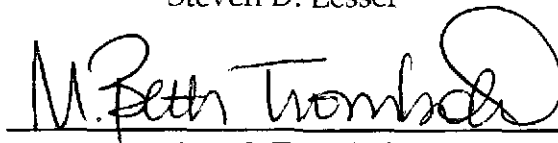
ORDERED, That notice or a copy of this Sixth Entry on Rehearing be served upon the electric-energy listserve and upon all parties of record in this docket.

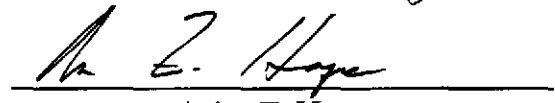
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby



M. Beth Trombold


Asim Z. Haque

RMB/vrm

Entered in the Journal

JUL 17 2013



Barcy F. McNeal
Secretary