

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of its Rules for Energy Efficiency Programs)
Contained in Chapter 4901:1-39 of the Ohio) Case No. 13-651-EL-ORD
Administrative Code.)
)

In the Matter of the Commission's Review)
of its Rules for the Alternative Energy)
Portfolio Standard Contained in Chapter) Case No. 13-652-EL-ORD
4901:1-40 of the Ohio Administrative Code.)
)

In the Matter of the Amendment of Ohio)
Administrative Code Chapter 4901:1-40,) Case No. 12-2156-EL-ORD
regarding the Alternative Energy Portfolio)
Standard, to Implement Am. Sub. S.B. 315.)

ENTRY

The Commission finds:

- (1) R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The Commission has established these dockets in order to conduct an evaluation of Ohio Adm.Code Chapters 4901:1-39 and 4901:1-40. Ohio Adm.Code Chapter 4901:1-39 contains rules for energy efficiency programs (EE Rules) and Ohio Adm.Code Chapter 4901:1-40 contains the alternative energy portfolio standard (AEPS Rules).
- (2) R.C. 119.032(C) requires that the Commission determine:
 - (a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
 - (b) Whether the rules need amendment or rescission to give more flexibility at the local level;

- (c) Whether the rules need amendment to eliminate unnecessary paperwork; and
 - (d) Whether the rules duplicate, overlap with, or conflict with other rules.
- (3) Furthermore, on June 11, 2012, the governor of the state of Ohio signed into law Am. Sub. S.B. 315 (S.B. 315), which became effective on September 10, 2012. S.B. 315, *inter alia*, amended provisions contained in R.C. 4928, which governs the rules and regulations promulgated by the Commission contained in Ohio Adm.Code Chapters 4901:1-39 and 4901:1-40. In order to provide for a comprehensive review of the rules, the Commission finds it appropriate that both the Commission's five-year review of the rules and possible revisions to rules resulting from the enactment of S.B. 315 be considered at this time.
- (4) In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative, unintended consequences, or unnecessarily impede business growth.
- (5) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules that adversely affect businesses. If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the business impact analysis.
- (6) An agency must demonstrate that it has included stakeholders in the development of the rules, that it has evaluated the

impact of the rules on businesses, and that the purpose of the rules is important enough to justify the impact. The agency must seek to eliminate excessive or duplicative rules that stand in the way of job creation

- (7) Case No. 12-2156-EL-ORD was initiated on April 22, 2012, by an entry scheduling a workshop, held on August 16, 2012, to elicit stakeholder input on any revisions necessary to the AEPS Rules to implement SB 315, which became effective on September 10, 2012.
- (8) Case Nos. 13-651-EL-ORD and 13-652-EL-ORD were initiated on April 22, 2013, by an entry scheduling a workshop to elicit stakeholder input for the R.C. 119.032 reviews of the EE Rules and the AEPS Rules. The April 23, 2013 workshop was duly held to elicit stakeholder feedback on the review of these rules.
- (9) Notice of both workshops was served upon all Ohio electric distribution utilities and certified competitive retail electric service providers, as well as various industry stakeholders via the Commission's electric-energy email list-serve. Staff has considered stakeholder comments from both workshops in proposing the attached revisions to both Chapters for formal stakeholder comment and the Commission's consideration. For the Commission's administrative convenience, proposed changes to the AEPS Rules will be consolidated into a single docket, and Case No. 12-2156-EL-ORD will now be closed.
- (10) With respect to the EE Rules, Staff is proposing changes to incorporate the Mercantile Customer (EEC) Pilot Program as directed by the Commission's July 17, 2013 Finding and Order in Case No. 10-0834-EL-POR, as well as changes to accommodate combined heat and power (CHP) and waste energy recovery (WER) systems under SB 315. In addition, Staff has proposed changes to reporting times and procedures to minimize the expense for all stakeholders in the administrative review process for each electric utility's energy efficiency and peak demand reduction (EEDR) portfolios to meet the requirements of R.C. 4928.66. Staff proposes to move from a pre-approval process for portfolio plans to a post-approval scenario that would allow utilities the flexibility to make changes in accordance with technologies and market conditions. Staff has also included a new process for updating

the EEDR technical reference manual and application templates for CHP and WER systems.

- (11) With respect to the AEPS Rules, Staff is proposing changes to accommodate legislative changes to include CHP and WER systems under SB 315. In addition, Staff has proposed changes as a result of experiences from the first few years of the program's implementation.
- (12) Staff has also provided the following topics for consideration:
 - (a) R.C. 4928.64(D)(1)(b) requires the Commission to include in its annual reports to the general assembly the average annual cost of renewable energy credits purchased by utilities and companies for the year covered in the report. To satisfy this requirement on a going-forward basis, Staff is considering different options for compiling the cost data. Options currently under consideration include modifying Ohio Adm.Code 4901:1-40-05 to include the cost information as part of the annual compliance status reports or coordinating with the recognized attribute tracking systems to initiate a cost disclosure requirement. Staff is soliciting comments on these two options, as well as any other options for collecting this cost information in the future.
 - (b) Ohio Adm.Code 4901:1-40-03(B)(2) addresses the baseline calculation methodology for electric services companies. Staff is proposing to modify the existing language in (2) with the intent of identifying the most accurate and timely source for the sales data in order to streamline the review process. Staff welcomes suggestions regarding the most appropriate documentation source to incorporate within the rule.
 - (c) Staff has proposed language in Ohio Adm.Code 4901:1-40-05(A) that would address confidentiality as pertains to the contents of the annual compliance status reports. Staff believes this language will increase program transparency

and improve administrative efficiency, particularly in light of Staff's proposal to remove the filing of projected data.

- (d) For greater clarity and tracking efficiency, Staff has proposed to modify Ohio Adm.Code 4901:1-40-04(D)(4) to indicate a renewable energy credit life of five calendar years following the date of its creation by the applicable attribute tracking system. Staff is soliciting feedback as to if such a change would warrant any consideration of grandfathering.
 - (e) Staff has proposed a revision to Ohio Adm.Code 4901:1-40-04(B) in order to include certain "new, retrofitted, refueled or repowered generating facilities" per S.B. 315. Staff welcomes comments on what placed in-service date should be applied specifically to these facilities.
 - (f) Staff welcomes suggestions as it considers adding a definition for "new economic growth" in terms of Ohio Adm.Code 4901:1-40-03(B)(3). In this context, what should constitute "economic growth" and for what duration should it be considered "new?"
 - (g) Staff welcomes comments relating to the timing of the availability of TRM updates in order for the utilities to have the ability to include those updates in their plans on a timely basis.
 - (h) Staff is soliciting feedback on the attached Combined Heat and Power and Waste Energy Recovery application templates.
- (13) Staff's proposed rule changes and the corresponding business impact analysis documents attached to this entry will be posted at: www.puco.ohio.gov/puco/rules. Any person wishing to receive paper copies of these documents should contact the Commission's Docketing Division to be sent a paper copy.

- (14) Any person wishing to file comments regarding the review of these rules or the corresponding business impact analysis should do so by February 28, 2014. Any reply comments should be filed by March 14, 2014.

It is, therefore,

ORDERED, That all comments on the rules to be reviewed, Staff's proposed rule changes, and the corresponding business impact analysis be filed by February 28, 2014, and any reply comments by March 14, 2014. It is, further,

ORDERED, That a notice or copy of this entry without the attached rules or business impact analysis be served upon all investor-owned electric utilities and certified competitive retail electric service providers in the state of Ohio, and the electric-energy list-serve, and any persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

M. Beth Trombold

Lynn Slaby

Asim Z. Haque

RMB/BAM/dah

Entered in the Journal

JAN 29 2014

Barcy F. McNeal

Barcy F. McNeal
Secretary

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“Rescind”

~~4901:1-39-01~~ Definitions.

- ~~(A) "Achievable potential" means the reduction in energy usage or peak demand that would likely result from the expected adoption by homes and businesses of the most efficient, cost-effective measures, given effective program design, taking into account remaining barriers to customer adoption of those measures. Barriers may include market, financial, political, regulatory, or attitudinal barriers, or the lack of commercially available product. "Achievable potential" is a subset of "economic potential."~~
- ~~(B) "Anticipated savings" means the reduction in energy usage or peak demand that will accrue from contractual commitments for program participation made in the reporting period, which measures in such programs are scheduled for installation in the subsequent reporting periods.~~
- ~~(C) "Capital stock" means all devices, equipment, and processes that use or convert energy.~~
- ~~(D) "Coincident peak demand savings" means the demand savings for energy efficiency measures that are expected to occur during the summer on peak period which is defined as June through August on weekdays between three p.m. and six p.m.~~
- ~~(E) "Commission" means the public utilities commission of Ohio.~~
- ~~(F) "Cost effective" means the measure, program, or portfolio being evaluated that satisfies the total resource cost test.~~
- ~~(G) "Demand response" means a change in customer behavior or a change in customer-owned or operated assets that affects the demand for electricity as a result of price signals or other incentives.~~
- ~~(H) "Economic potential" means the reduction in energy usage or peak demand that would result if all homes and businesses adopted the most efficient and cost-effective measures. Economic potential is a subset of the "technical potential."~~
- ~~(I) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.~~
- ~~(J) "Energy baseline" means the average total kilowatt-hours of distribution service sold to retail customers of the electric utility in the preceding three calendar years~~

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~~as reported in the electric utility's most recent long term forecast report, pursuant to division (A)(2)(a) of section 4928.66 of the Revised Code. The total kilowatt-hours sold shall equal the total kilowatt-hours delivered by the electric utility.~~

~~(K) "Energy benchmark" means the annual level of energy savings that an electric utility must achieve as provided in division (A)(1)(a) of section 4928.66 of the Revised Code.~~

~~(L) "Energy efficiency" means reducing the consumption of energy while maintaining or improving the end-use customer's existing level of functionality, or while maintaining or improving the utility system functionality.~~

~~(M) "Independent program evaluator" means the person(s) hired by one or more of the electric utilities, at the direction of the commission, to complete the following activities:~~

- ~~(1) Monitor, verify, evaluate, and report on the electric energy savings and peak-demand reductions resulting from utility program and mercantile customer activities.~~
- ~~(2) Determine program and portfolio cost-effectiveness.~~
- ~~(3) Conduct program process evaluations.~~
- ~~(4) Perform due diligence reviews of evaluations or documentation provided by an electric utility or mercantile customer, as directed by the commission.~~

~~Such person shall work at the sole direction of the commission.~~

~~(N) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases customer adoption of energy efficiency or peak reduction measures that will be sustained after any program promoting such behavior ceases.~~

~~(O) "Measure" means any material, device, technology, operational practice, or educational program that makes it possible to deliver a comparable level and quality of end-use energy service while using less energy or less capacity than would otherwise be required.~~

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

~~(Q) "Nonenergy benefits" mean societal benefits that do not affect the calculation of program cost-effectiveness pursuant to the total resource cost test including but not~~

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~~limited to benefits of low-income customer participation in utility programs; reductions in greenhouse gas emissions, regulated air emissions, water consumption, natural resource depletion to the extent the benefit of such reductions are not fully reflected in cost savings; enhanced system reliability; or advancement of any other state policy enumerated in section 4928.02 of the Revised Code.~~

- ~~(R) "Peak demand," when measuring reduction programs, means the average maximum hourly electricity usage during the highest one hundred hours on the electric utility's system in a calendar year.~~
- ~~(S) "Peak-demand baseline" means the average peak demand on the electric utility's system in the preceding three calendar years as reported in the electric utility's most recent long-term forecast report, pursuant to division (A)(2)(a) of section 4928.66 of the Revised Code.~~
- ~~(T) "Peak-demand benchmark" means the reduction in peak demand an electric utility's system must achieve as provided in division (A)(1)(b) of section 4928.66 of the Revised Code.~~
- ~~(U) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.~~
- ~~(V) "Program" means a single offering of one or more measures provided to consumers. For example, a weatherization program may include insulation replacement, weather stripping, and window replacement measures.~~
- ~~(W) "Staff" means the staff or authorized representative of the public utilities commission.~~
- ~~(X) "Technical potential" means the reduction in energy usage or peak demand that would result if all homes and businesses adopted the most efficient measures, regardless of cost.~~
- ~~(Y) "Total resource cost test" means an analysis to determine if, for an investment in energy efficiency or peak-demand reduction measure or program, on a life-cycle basis, the present value of the avoided supply costs for the periods of load reduction, valued at marginal cost, are greater than the present value of the monetary costs of the demand-side measure or program borne by both the electric utility and the participants, plus the increase in supply costs for any periods of increased load resulting directly from the measure or program adoption. Supply costs are those costs of supplying energy and/or capacity that are avoided by the~~

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~~investment, including generation, transmission, and distribution to customers. Demand-side measure or program costs include, but are not limited to, the costs for equipment, installation, operation and maintenance, removal of replaced equipment, and program administration, net of any residual benefits and avoided expenses such as the comparable costs for devices that would otherwise have been installed, the salvage value of removed equipment, and any tax credits.~~

~~(Z) "Verified savings" means an annual reduction of energy usage or peak demand from an energy efficiency or peak demand reduction program directly measured or calculated using reasonable statistical and/or engineering methods consistent with approved measurement and verification guidelines.~~

4901:1-39-01 Definitions.

- (A) "Achievable potential" means the reduction in energy usage or peak demand that would result from the expected adoption by electricity consumers of the most efficient and cost-effective commercially available energy efficiency measures, taking into account applicable societal and market-related barriers to customer adoption of those measures. Achievable potential is a subset of "economic potential."
- (B) "Annualized energy savings" means the recognition, in the year of installation or implementation, of the total amount of energy savings that would be achieved in a full year of service, regardless of the actual date of installation or implementation.
- (C) "Anticipated savings" means the reduction in energy usage or peak demand that is expected to accrue from program participation.
- (D) "Benchmark comparison method" means the comparison of customer's energy efficiency savings percentage to the electric utility's statutorily required energy efficiency savings percentage, for the purpose of determining the length of the rider exemption that the customer may receive for dedication of its energy efficiency savings to the electric utility.
- (E) "Coincident peak-demand savings" means the demand savings resulting from energy efficiency measures that occur during the summer on-peak period which is defined as June through August on weekdays between 3:00 p.m. and 6:00 p.m.
- (F) "Combined Heat and Power System" means the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve thermal-efficiency levels of at least sixty per cent, with at least twenty per cent of the system's total useful energy in the form of thermal energy.

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- (G) "Commission" means the public utilities commission of Ohio.
- (H) "Cost-effective" means that the measure, program, or portfolio being evaluated satisfies the total resource cost test or utility cost test, as applicable.
- (I) "Demand response" means a change or potential change in customer behavior or a change in customer-owned or operated equipment that reduces the demand for electricity during specified time periods as a result of price signals or other incentives.
- (J) "Economic potential" means the reduction in energy usage or peak demand that would result if all electricity consumers adopted the most efficient, cost-effective commercially available energy efficiency measures. Economic potential is a subset of technical potential.
- (K) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (L) "Energy baseline" means the annual average total kilowatt-hours of distribution service sold to retail customers of the electric utility in the preceding three calendar years as reported in the electric utility's most recent long-term forecast report, pursuant to division (A)(2)(a) of section 4928.66 of the Revised Code.
- (M) "Energy benchmark" means the annual level of energy savings that an electric utility must achieve as provided in division (A)(1)(a) of section 4928.66 of the Revised Code.
- (N) "Energy efficiency" means reducing the consumption of electrical energy, without substitution from other energy sources, while maintaining or improving the end-use customer's existing level of functionality, or while maintaining or improving the utility system functionality, or producing electricity from waste energy recovery systems or producing electricity from combined heat and power systems.
- (O) "Independent program evaluator" means the person(s) chosen by the commission, to monitor, verify, evaluate and report on one or more of the following activities:
 - (1) Electric energy savings and peak-demand reductions resulting from electric utility energy efficiency and peak demand reduction programs, as reported in the electric utility's annual performance verification process, pursuant to rule 4901:1-39-05, of the Administrative Code.

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- (2) Electric utility energy efficiency portfolio plan design and implementation, including evaluation of the plan's programs, measures, and cost effectiveness, and make recommendations for improvement.
- (3) Recommend updates to the technical reference manual, as necessary, pursuant to changes in regulations, equipment availability, and market conditions.
- (4) Appropriateness and reasonableness of all costs included in any riders designed to recover the costs of energy efficiency portfolio plan implementation from ratepayers.
- (5) Perform other due-diligence reviews of evaluations and/or documentation provided by an electric utility or mercantile customer, as directed by the commission or its staff.

Such person shall work at the sole direction of the commission. If a person other than staff is chosen by the commission as an independent program evaluator, that person shall contract with the electric utility for payment for the work activities, and work at the direction of the commission or its staff.

- (P) "Measure" means any material, device, technology, operational practice, or educational program that makes it possible to deliver a comparable level and quality of end-use electrical energy service while using less electrical energy or capacity than would otherwise be required.
- (Q) "Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states, as set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (R) "Nonenergy benefits" mean positive non-monetized impacts that do not affect the calculation of program cost-effectiveness pursuant to the total resource cost test including but not limited to low-income customer participation in utility programs, reductions in greenhouse gas emissions, reductions in regulated air emissions, reductions in natural resource depletion, enhanced system reliability, or advancement of state policy as itemized in section 4928.02 of the Revised Code.
- (S) "Peak demand," when measuring reduction programs, means the average maximum hourly electricity usage during the highest one hundred hours on the electric utility's system in a calendar year.

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- (T) "Peak-demand baseline" means the annual average of peak demand on the electric utility's system in the preceding three calendar years as reported in the electric utility's most recent long-term forecast report, pursuant to division (A)(2)(a) of section 4928.66 of the Revised Code.
- (U) "Peak-demand benchmark" means the reduction in peak demand an electric utility's system must achieve, or have the capability to achieve, as provided in division (A)(1)(b) of section 4928.66 of the Revised Code.
- (V) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (W) "Program" means a single offering that includes one or more measures provided to electricity consumers. For example, a weatherization program may include insulation replacement, weather stripping, and window replacement measures.
- (X) "Shared savings" means the percentage of the net savings that a distribution electric utility may earn in any year in which it exceeds a statutory energy efficiency and/or peak demand reduction benchmark. The net savings is the difference in the present value of the EDU's portfolio of avoided generation, transmission and distribution costs minus the total costs of the energy efficiency programs inclusive of each program's measurement and verification costs
- (Y) "Staff" means the public utilities commission's staff or authorized representative.
- (Z) "Technical potential" means the reduction in energy usage or peak demand that would result if all electricity consumers adopted the most efficient commercially available energy efficiency measures.
- (AA) "Total resource cost test" means an ex-ante analysis to determine if, for an investment in energy efficiency or peak-demand reduction measure or program, on a life-cycle basis, the present value of the avoided supply costs for the periods of load reduction, valued at marginal cost, are greater than the present value of the monetary costs of the demand-side measure or program borne by both the electric utility and the participants, plus the increase in supply costs for any periods of increased load resulting directly from the measure or program adoption. Supply costs are those costs of supplying energy and/or capacity that are avoided by the investment, including generation, transmission, and distribution to customers. Demand-side measure or program costs include, but are not limited to, the costs for equipment, installation, operation and maintenance, removal of replaced equipment, and program administration, net of any residual benefits and avoided

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expenses such as the comparable costs for devices that would otherwise have been installed, and the salvage value of removed equipment.

(BB) "Verified savings" means an annual reduction of energy usage or peak demand from an energy efficiency or peak-demand reduction program directly measured or calculated using reasonable statistical and/or engineering methods consistent with approved measurement and verification guidelines.

(CC) "Waste Energy Recovery System" shall have the same meaning as set forth in division (A)(38) of section 4928.01 of the Revised Code.

"Rescind"

~~4901:1-39-02~~ **Purpose and scope.**

~~(A) Pursuant to division (A)(1)(a) of section 4928.66 of the Revised Code, beginning in 2009, each electric utility is required to implement energy efficiency programs. Such programs, at a minimum, shall achieve established statutory benchmarks for energy efficiency. Additionally, pursuant to division (A)(1)(b) of section 4928.66 of the Revised Code, beginning in 2009, each electric utility is required to implement peak-demand reduction programs designed to achieve established statutory benchmarks for peak-demand reduction. The purpose of this chapter is to establish rules for the implementation of electric utility programs that will encourage innovation and market access for cost-effective energy efficiency and peak-demand reduction, achieve the statutory benchmark for peak-demand reduction, meet or exceed the statutory benchmark for energy efficiency, and provide for the participation of stakeholders in developing energy efficiency and peak-demand reduction programs for the benefit of the state of Ohio.~~

~~(B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.~~

4901:1-39-02 **Purpose and scope.**

(A) Pursuant to division (A)(1)(a) of section 4928.66 of the Revised Code, each electric utility is required to implement energy efficiency programs. Such programs, at a minimum, shall achieve established statutory energy benchmarks for energy efficiency and peak demand reduction, and may include a combined heat and power system placed into service or retrofitted on or after September 10, 2012, or a waste energy recovery system placed into service or retrofitted on or after the same

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date, except that a waste energy recovery system described in division (A)(38)(b) of section 4928.01 of the Revised Code may be included only if it was placed into service between January 1, 2002, and December 31, 2004. The purpose of this chapter is to establish rules for the implementation of electric utility energy efficiency and peak-demand reduction programs.

- (B) The commission may, sua sponte, or upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

4901:1-39-03 Program planning requirements.

- (A) Assessment of potential. Prior to ~~implementing an proposing its comprehensive~~ energy efficiency and peak-demand reduction program portfolio plan, and at least every five years thereafter, an electric utility shall conduct an assessment of potential energy savings and peak-demand reduction from adoption of energy efficiency and demand-response measures within its certified territory, ~~which will be included in the electric utility's program portfolio filing pursuant to rule 4901:1-39-04 of the Administrative Code. Such assessment may be updated by the electric utility from time to time, at less than five year intervals, as market conditions warrant.~~ An electric utility may collaborate with other electric utilities to co-fund or conduct such an assessment on a broader geographic basis than its certified territory. However, such an assessment must also disaggregate results on the basis of each electric utility's certified territory. Such assessment shall include, but not be limited to, the following:
- (1) Analysis of technical potential. ~~Each electric utility shall survey and characterize the energy-using capital stock located within its certified territory and quantify its actual and projected energy use and peak demand. Based upon the~~ a survey and characterization of electricity consuming facilities within its certified territory, the electric utility shall conduct an analysis of the technical potential for energy efficiency and peak-demand reduction obtainable from applying commercially available ~~alternate~~ measures.
 - (2) Analysis of economic potential. For each available ~~alternate~~ measure identified in its assessment of technical potential, the electric utility shall conduct an assessment of cost-effectiveness using either the total resource cost test or the utility cost test, whichever is applicable.
 - (3) Analysis of achievable potential. For each available ~~alternate~~ measure identified in its analysis of economic potential as cost-effective, the electric

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utility shall conduct an analysis of achievable potential. Such analysis shall consider the ability of the program design to overcome barriers to customer adoption, including, but not limited to, appropriate bundling of measures.

- (4) For each measure considered, the electric utility shall describe all attributes relevant to assessing its value, including, but not limited to potential energy savings or peak-demand reduction, cost, and nonenergy benefits.
- (B) Program portfolio plan design criteria. When developing programs for inclusion in its program portfolio plan, an electric utility shall consider the following criteria:
 - (1) Relative cost-effectiveness.
 - (2) Benefits and costs to all members of a customer class, including nonparticipants.
 - (3) Potential for broad participation within the targeted customer class.
 - (4) ~~Likely-Projected~~ magnitude of aggregate energy savings or peak-demand reduction.
 - (5) Nonenergy benefits.
 - (6) Equity among customer classes.
 - (7) ~~Relative advantages or disadvantages of energy efficiency and peak demand reduction programs for~~ Anticipated impacts on the construction of new facilities, or the replacement of retiring capital stock, or retrofitting of existing facilities ~~capital stock.~~
 - (8) Potential to partner ~~integrate~~ the proposed program with similar programs offered by other utilities, ~~if such integration produces the most~~ in a cost-effective result and is in the public interest ~~manner.~~
 - (9) ~~The degree to which a program~~ Potential to bundle ~~bundles~~ measures so as to avoid lost opportunities to attain energy savings or peak reductions that would not be cost-effective or would be less cost-effective if installed individually.
 - (10) ~~The degree to which the program design~~ Potential to engage ~~engages~~ the energy efficiency supply chain and leverages partners in program delivery.
 - (11) ~~The degree to which the program~~ Potential to successfully addresses ~~addresses~~ market barriers or market failures.

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- (12) ~~The degree to which the program leverages~~ Potential to leverage knowledge gained from existing program successes and failures.
- (13) ~~The degree to which the program promotes market transformation.~~
- (C) Promising measures not selected. Each electric utility shall identify measures considered but ~~not found~~ not to be cost-effective or achievable but show promise for future deployment. The electric utility shall identify potential actions that it could undertake to improve the measure's technical potential, economic potential, and achievable potential to enhance the likelihood that the measure would become cost-effective and reasonably achievable.
- (D) The electric utility may seek to collaborate or consult with other utilities, regional and municipal governmental organizations, nonprofit organizations, businesses, and other stakeholders to develop programs meeting the requirements of this chapter.

“Rescind”

~~4901:1-39-04 — Program portfolio plan and filing requirements.~~

- (A) ~~Each electric utility shall design and propose a comprehensive energy efficiency and peak demand reduction program portfolio, including a range of programs that encourage innovation and market access for cost-effective energy efficiency and peak demand reduction for all customer classes, which will achieve the statutory benchmarks for peak demand reduction, and meet or exceed the statutory benchmarks for energy efficiency. An electric utility's first program portfolio plan filed pursuant to this rule, shall be filed with supporting testimony prior to January 1, 2010. Each electric utility shall file an updated program portfolio plan by April 15, 2013, and by the fifteenth of April every third year thereafter, unless otherwise directed by the commission.~~
- (B) ~~Each electric utility shall demonstrate that its program portfolio plan is cost-effective on a portfolio basis. In general, each program proposed within a program portfolio plan must also be cost effective, although each measure within a program need not be cost effective. However, an electric utility may include a program within its program portfolio plan that is not cost effective when that program provides substantial nonenergy benefits.~~
- (C) ~~Content of filing. An electric utility's program portfolio plan shall include, but not be limited to, the following:~~

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- ~~(1) An executive summary and its assessment of potential pursuant to paragraph (A) of rule 4901:1-39-03 of the Administrative Code.~~
- ~~(2) A description of stakeholder participation in program planning efforts and program portfolio development.~~
- ~~(3) A description of attempts to align and coordinate programs with other public utilities' programs.~~
- ~~(4) A description of existing programs. The electric utility shall provide a summary of existing programs with a recommendation for whether the program should continue and, if so, a description of its relationship to any proposed programs. If a program has previously been approved and is unchanged, the electric utility may reference the program description currently in effect. If the electric utility is proposing to modify an existing program, the electric utility shall provide a description of the proposed modification and the basis for proposed changes.~~
- ~~(5) A description of proposed programs. An electric utility shall describe each program proposed to be included within its program portfolio plan with at least the following information:
 - ~~(a) A narrative describing why the program is recommended pursuant to the program design criteria in this chapter.~~
 - ~~(b) Program objectives, including projections and basis for calculating energy savings and/or peak demand reduction resulting from the program.~~
 - ~~(c) The targeted customer sector.~~
 - ~~(d) The proposed duration of the program.~~
 - ~~(e) An estimate of the level of program participation.~~
 - ~~(f) Program participation requirements, if any.~~
 - ~~(g) A description of the marketing approach to be employed, including rebates or incentives offered through each program, and how it is expected to influence consumer choice or behavior.~~
 - ~~(h) A description of the program implementation approach to be employed.~~~~

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- ~~(i) A program budget with projected expenditures, identifying program costs to be borne by the electric utility and collected from its customers, with customer class allocation, if appropriate.~~
 - ~~(j) Participant costs, if any.~~
 - ~~(k) Proposed market transformation activities, if any, which have been identified and proposed to be included in the program portfolio plan.~~
 - ~~(l) A description of the plan for preparing reports that document the electric utility's evaluation, measurement, and verification of the energy savings and/or peak demand reduction resulting from each program and the process evaluations conducted by the electric utility. The independent program evaluator will prepare an independent evaluation, measurement, and verification plan at the direction of the commission staff to monitor, verify, evaluate and report on the energy savings and peak demand reductions resulting from utility programs and mercantile customer activities. The independent program evaluator's plan may rely on data collected and reported by the electric utility.~~
- ~~(D) Unless otherwise ordered by the commission, any person may file objections within sixty days after the filing of an electric utility's program portfolio plan. Any person filing objections shall specify the basis for all objections, including any proposed additional or alternative programs, or modifications to the electric utility's proposed program portfolio plan.~~
- ~~(E) The commission shall set the matter for hearing and shall cause notice of the hearing to be published one time in a newspaper of general circulation in each county in the electric utility's certified territory. At such hearing, the electric utility shall have the burden to prove that the proposed program portfolio plan is consistent with the policy of the state of Ohio as set forth in section 4928.02 of the Revised Code, and meets the requirements of section 4928.66 of the Revised Code.~~

4901:1-39-04 Program portfolio plan and filing requirements.

- (A) Upon the expiration of any existing commission-approved program portfolio plans, each electric utility shall continue to implement a comprehensive energy efficiency and peak-demand reduction program portfolio, which was developed pursuant to the requirements of rule 4901:1-39-03, of the Administrative Code, and which will cost-effectively achieve the statutory benchmarks for energy efficiency and peak-demand reduction. No later than September 15 in the last year of an

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existing commission approved portfolio plan, and no later than September 15 each year thereafter, electric utility shall file an updated program portfolio plan to be implemented in the following calendar year, unless otherwise directed by the commission.

- (B) An electric utility's program portfolio plan shall be cost-effective on a portfolio basis. In general, each program proposed within a program portfolio plan must also be cost-effective, although each measure within a program need not be cost-effective. However, an electric utility may include a program within its program portfolio plan that is not cost-effective when that program provides substantial nonenergy benefits.
- (C) Content of filing. An electric utility's program portfolio plan shall include, but not be limited to, the following:

 - (1) An executive summary and its assessment of potential pursuant to paragraph (A) of rule 4901:1-39-03 of the Administrative Code.
 - (2) A description of stakeholder participation in program planning efforts and program portfolio development. At a minimum, each electric utility shall conduct quarterly stakeholder meetings at which it shall provide updates on the energy efficiency and peak demand reductions achieved by its programs, all costs incurred in implementation of its programs, new programs or measures that it is considering, and solicit input from stakeholders on existing and potential new programs.
 - (3) A description of attempts to align and coordinate programs with other public utilities' programs.
 - (4) An analysis of existing programs. The electric utility shall provide a description of each existing program, and measures within the program, including an analysis of the success of the program and the electric utility's rationale for continuing, modifying, or eliminating the program or measures within the program.
 - (5) A description of programs included in the portfolio plan. An electric utility shall describe each program included within its program portfolio plan with at least the following information:

 - (a) A narrative describing why the program is being included pursuant to the program design criteria in this chapter. For existing programs being

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retained from the prior portfolio plan, a reference to the analysis described in paragraph (C)(4) of this rule is sufficient

- (b) Program objectives, including projections and basis for calculating energy savings and/or peak-demand reduction resulting from the program.
 - (c) The targeted customer sector.
 - (d) The proposed duration of the program.
 - (e) An estimate of the level of program participation.
 - (f) Program participation requirements, if any.
 - (g) A description of the marketing approach to be employed, including rebates or incentives offered through each program, and how it is expected to influence consumer choice or behavior.
 - (h) A description of the program implementation approach to be employed.
 - (i) A program budget with projected expenditures, identifying program costs to be borne by the electric utility and collected from its customers, with customer class allocation, if appropriate.
 - (j) Participant costs, if any.
 - (k) A description of the plan for preparing reports that document the electric utility's evaluation, measurement, and verification of the energy savings and/or peak-demand reduction resulting from each program and the process evaluations conducted by the electric utility.
- (D) Unless otherwise ordered by the commission, any person may file comments within thirty days after the filing of an electric utility's program portfolio plan. Any person filing comments shall specify the basis for all recommendations made, including any proposed additional or alternative programs or measures, or modifications that are suggested to be made to the electric utility's proposed program portfolio plan.
- (E) Within thirty days after the deadline for filing comments pursuant to paragraph (D) of this rule, the electric utility shall file its response, in which it shall indicate which recommendations it has accepted for inclusion into its program portfolio plan.

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~~4901:1-39-05 — Benchmark and annual status reports.~~

- ~~(A) Initial benchmark report. Within sixty days of the effective date of this rule, each electric utility shall file an initial benchmark report with the commission that identifies the following information:~~
- ~~(1) The energy and demand baselines for kilowatt hour sales and kilowatt demand for the reporting year, including a description of the method of calculating the baseline, with supporting data.~~
 - ~~(2) The applicable statutory benchmarks for energy savings and electric utility peak demand reduction.~~
- ~~(B) An electric utility may file an application to adjust its sales and/or demand baseline. The baseline shall be normalized for weather and for changes in numbers of customers, sales, and peak demand to the extent such changes are outside the control of the electric utility. The electric utility shall include in its application all assumptions, rationales, and calculations, and shall propose methodologies and practices to be used in any proposed adjustments or normalizations. To the extent approved by the commission, normalizations for weather, changes in numbers of customers, sales, and peak demand shall be consistently applied from year to year.~~
- ~~(C) Portfolio status report. By March fifteenth of each year, each electric utility shall file a portfolio status report addressing the performance of all approved energy efficiency and peak demand reduction programs in its program portfolio plan over the previous calendar year which includes, at a minimum, the following information:~~
- ~~(1) Compliance demonstration. Each electric utility shall include a section in its portfolio status report detailing its achieved energy savings, achieved demand reductions, and the expected demand reductions that its programs were reasonably designed to achieve, relative to its corresponding baselines. At a minimum, this section of the portfolio status report shall include each of the following:~~
 - ~~(a) An update to its benchmark report.~~

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- ~~(b) A comparison with the applicable benchmark of actual energy savings and peak-demand reductions achieved by electric utility programs.~~
- ~~(c) An affidavit as to whether the reported performance complies with the statutory benchmarks.~~
- ~~(2) Program performance assessment. Each electric utility shall include a section in its portfolio status report demonstrating whether it has successfully implemented the energy efficiency and demand reduction programs approved in its program portfolio plan. At a minimum, this section of the annual portfolio status report shall include each of the following:~~
 - ~~(a) A description of each approved energy efficiency or peak-demand reduction program implemented in the previous calendar year including:~~
 - ~~(i) The key activities undertaken in each program, the number and type of participants, a comparison of the forecasted savings to the verified savings achieved by such program, the magnitude of anticipated savings, and a trend analysis of how anticipated savings will be realized over the life of the program.~~
 - ~~(ii) All energy savings counted toward the applicable benchmark as a result of energy efficiency improvements implemented by mercantile customers and committed to the electric utility.~~
 - ~~(iii) All peak-demand reductions counted toward the applicable benchmark as a result of energy efficiency improvements, demand response, or demand reduction improvements implemented by mercantile customers and committed to the electric utility.~~
 - ~~(iv) A description of all transmission and distribution infrastructure improvements made by the electric utility that reduce line losses to the extent the reduction in line losses has been applied to meet the applicable benchmarks with a calculation and description of the net impact of such improvements on losses.~~
 - ~~(b) An evaluation, measurement, and verification report that documents the energy savings and peak-demand reduction values and the cost-effectiveness of each energy efficiency and demand-side management program reported in the electric utility's portfolio status report. Such report shall include documentation of any process evaluations and expenditures, measured and verified savings, and cost-effectiveness of each program.~~

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~~Measurement and verification processes shall confirm that the measures were actually installed, the installation meets reasonable quality standards, and the measures are operating correctly and are expected to generate the predicted savings. Upon commission order, the staff may publish guidelines for program measurement and verification.~~

- ~~(c) A recommendation for whether each program should be continued, modified, or eliminated. The electric utility may propose alternative programs to replace eliminated programs, taking into account the overall balance of programming in its program portfolio plan. The electric utility shall describe any alternate program or program modification by providing at least the information required for proposed programs in its program portfolio plan pursuant to this chapter. An electric utility may seek written staff approval to reallocate funds between programs serving the same customer class at any time, provided that the reallocation supports the goals of its approved program portfolio plan and is limited to no more than twenty five per cent of the funds available for programs serving that customer class. In addition, an electric utility may change its program mix or budget allocations at any time, as long as it provides notice to all parties in the proceeding in which the program portfolio plan was approved.~~
- ~~(D) Independent program evaluator report. Subsequent to the filing of the electric utility's portfolio status report, the independent program evaluator will prepare and file a report of the independent program evaluator's activities and conclusions in monitoring, verifying, and evaluating the energy savings and peak demand reductions resulting from the electric utility programs and mercantile customer activities. The report shall also include the verification and evaluation, through the use of due diligence techniques including project inspections, of the electric utility's evaluation, measurement, and verification report.~~
- ~~(E) An electric utility may satisfy its peak demand reduction benchmarks through a combination of energy efficiency and peak demand response programs implemented by electric utilities and/or programs implemented on mercantile customer sites where the mercantile program is committed to the electric utility.~~
 - ~~(1) For energy efficiency programs, an electric utility may count the programs' effects resulting in coincident peak demand savings.~~
 - ~~(2) For demand response programs, an electric utility may count demand reductions towards satisfying some or all of the peak demand reduction benchmarks by demonstrating that either the electric utility has reduced its~~

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actual peak demand, or has the capability to reduce its peak demand and such capability is created under either of the following circumstances:

- ~~(a) A peak demand reduction program meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization approved by the Federal Energy Regulatory Commission.~~
 - ~~(b) A peak demand reduction program equivalent to a regional transmission organization program, which has been approved by this commission.~~
- ~~(F) A mercantile customer's energy savings and peak demand reductions shall be measured by including the effects of all demand response programs of the mercantile customer and all mercantile customer-sited energy efficiency and peak demand reduction programs. A mercantile customer's energy savings and peak demand reductions shall be presumed to be the effect of a demand response, energy efficiency, or peak demand reduction program to the extent they involve the early retirement of fully functioning equipment, or the installation of new equipment that achieves reductions in energy use and peak demand that exceed the reductions that would have occurred had the customer used standard new equipment or practices where practicable. Electric utilities may make an alternative demonstration that mercantile customer energy savings or peak demand reductions are effects of such a program.~~
- ~~(G) A mercantile customer may file, either individually or jointly with an electric utility, an application to commit the customer's demand reduction, demand response, or energy efficiency programs for integration with the electric utility's demand reduction, demand response, and energy efficiency programs, pursuant to division (A)(2)(d) of section 4928.66 of the Revised Code. Such application shall:~~
- ~~(1) Address coordination requirements between the electric utility and the mercantile customer with regard to voluntary reductions in load by the mercantile customer, which are not part of an electric utility program, including specific communication procedures.~~
 - ~~(2) Grant permission to the electric utility and staff to measure and verify energy savings and/or peak demand reductions resulting from customer-sited projects and resources.~~
 - ~~(3) Identify all consequences of noncompliance by the customer with the terms of the commitment.~~

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- ~~(4) Include a copy of the formal declaration or agreement that commits the mercantile customer's programs for integration, including any requirement that the electric utility will treat the customer's information as confidential and will not disclose such information except under an appropriate protective agreement or a protective order issued by the commission pursuant to rule 4901-1-24 of the Administrative Code.~~
- ~~(5) Include a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results, and identify and explain all deviations from any program measurement and verification guidelines that may be published by the commission.~~
- ~~(H) An electric utility shall not count in meeting any statutory benchmark the adoption of measures that are required to comply with energy performance standards set by law or regulation, including but not limited to, those embodied in the Energy Independence and Security Act of 2007, or an applicable building code.~~
- ~~(I) Benchmarks not reasonably achievable. If an electric utility determines that it is unable to meet a benchmark due to regulatory, economic, or technological reasons beyond its reasonable control, the electric utility may file an application to amend its benchmarks. To the extent that forecasted peak demand and peak prices do not materialize for economic reasons, the electric utility may be granted a waiver of its benchmark for the difference between actual performance and expected performance of demand response programs.~~
- ~~(J) Benchmarks not reasonably achievable. If an electric utility determines that it is unable to meet a benchmark due to regulatory, economic, or technological reasons beyond its reasonable control, the electric utility may file an application to amend its benchmarks. To the extent that forecasted peak demand and peak prices do not materialize for economic reasons, the electric utility may be granted a waiver of its benchmark for the difference between the actual and expected performance of demand response programs. In any such application, the electric utility shall demonstrate that it has exhausted all reasonable compliance options.~~

4901:1-39-05 Annual performance verification.

- ~~(A) Portfolio performance report. By May fifteenth of each year, each electric utility shall file a portfolio performance report addressing the performance of its energy efficiency and peak-demand reduction programs in its program portfolio plan over the previous calendar year which includes, at a minimum, the following information:~~

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- (1) Compliance demonstration. Each electric utility shall include a section in its portfolio performance report detailing its achieved annualized energy savings, achieved demand reductions, and the demand reductions that its programs were reasonably designed to achieve, relative to its corresponding energy and peak demand reduction baselines. At a minimum, this section of the portfolio status report shall include each of the following:
- (a) A benchmark report. The benchmark report shall provide the energy and peak demand baselines for kilowatt-hour sales and kilowatt demand for the reporting year, including a description of the method of calculating the baselines, and the applicable statutory benchmarks for energy savings and electric utility peak-demand reduction, with supporting data.
 - (b) A comparison of actual annualized energy savings and peak-demand reductions achieved by electric utility programs with the applicable benchmarks. An electric utility shall not provide a financial or rider exemption incentive for, but may count in meeting any statutory benchmark, the adoption of measures that are required to comply with energy performance standards set by law or regulation, including but not limited to, those embodied in the Energy Independence and Security Act of 2007, or an applicable building code. The prohibition against a financial or rider exemption incentive does not preclude the electric utility from compensating a customer for the administrative costs and inconvenience of undertaking the commitment process, in the form of a commitment payment.
 - (c) An electric utility may file an application to adjust its sales and/or demand baseline. In making such an adjustment, the baseline shall be normalized for weather and for changes in numbers of customers, sales, and peak demand to the extent such changes are outside the control of the electric utility. The electric utility shall include in its application all assumptions, rationales, and calculations, and shall propose methodologies and practices to be used in any proposed adjustments or normalizations. To the extent approved by the commission, normalizations for weather, changes in numbers of customers, sales, and peak demand shall be consistently applied from year to year.
 - (d) 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

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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.

- (e) Benchmarks not reasonably achievable. If an electric utility determines that it is unable to meet a benchmark due to regulatory, economic, or technological reasons beyond its reasonable control, the electric utility may file an application to amend its benchmarks. To the extent that forecasted peak demand and peak prices do not materialize for economic reasons, the electric utility may be granted a waiver of its benchmark for the difference between actual performance and expected performance of demand response programs.
- (2) Program performance assessment. Each electric utility shall include a section in its portfolio performance report demonstrating whether it has successfully implemented the energy efficiency and demand-reduction programs in its program portfolio plan. At a minimum, this section of the annual portfolio performance report shall include each of the following:

 - (a) A description of each energy efficiency or peak-demand reduction program implemented in the previous calendar year including:

 - (i) The key activities undertaken in each program, the number and type of participants, a comparison of the forecasted savings to the verified savings achieved by such program, the magnitude of anticipated savings, and a trend analysis of how anticipated savings will be realized over the life of the program.
 - (ii) All energy savings and peak-demand reductions counted toward the applicable benchmark as a result of energy efficiency improvements, demand response, or demand reduction improvements implemented by mercantile customers and committed to the electric utility.
 - (iii) A description of all transmission and distribution infrastructure improvements made by the electric utility that reduce line losses to the extent the reduction in line losses has been applied to meet the applicable benchmarks with a calculation and description of the net impact of such improvements on losses.

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- (iv) A description of all other applicable energy efficiency and peak demand reduction activities that the electric utility proposes to count toward its applicable benchmarks.
 - (b) An evaluation, measurement, and verification report that documents the energy savings and peak-demand reduction values and the cost-effectiveness of each energy efficiency and demand-side management program reported in the electric utility's portfolio status report. Such report shall include documentation of any process evaluations and expenditures, measured and verified savings, and cost-effectiveness of each program. Measurement and verification processes shall confirm that the measures were actually installed, the installation meets reasonable quality standards, and the measures are operating correctly and are expected to generate the predicted savings.
- (B) Independent program evaluator report. The independent program evaluator may conduct its report related review activities on an ongoing basis, including during the implementation of the electric utility's program portfolio plan, subsequent to completion of the plan year, and subsequent to the filing of the electric utility's portfolio performance report. The electric utility shall cooperate with the independent program evaluator as it conducts its review activities. Subsequent to the filing of the electric utility's portfolio performance report, the independent program evaluator will prepare and file a report which shall include, but is not limited to, the following:
 - (1) A description of the independent program evaluator's activities, analyses, and conclusions in monitoring, verifying, and evaluating the energy savings and peak-demand reductions resulting from the electric utility programs and mercantile customer activities.
 - (2) The independent program evaluator's verification and evaluation, through the use of due-diligence techniques including project inspections, of the electric utility's evaluation, measurement, and verification report.
 - (3) An evaluation of the electric utility's energy efficiency portfolio plan's programs, measures, cost-effectiveness, and the appropriateness of all costs included in the electric utility's energy efficiency cost recovery riders.
 - (4) The independent evaluator's recommended revisions to be made to the technical reference manual, as an appendix to the report.

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- (C) Any person may file comments regarding an electric utility's annual portfolio performance report and the independent program evaluator's report filed pursuant to this chapter within thirty days after the filing of the independent program evaluator's report.
- (D) Based upon the recommendations of the independent program evaluator relative to the electric utility's performance, and the comments received on the reports pursuant to paragraph (C) of this rule, the commission shall schedule a hearing on the electric utility's performance in meeting its annual statutory requirements for energy efficiency and peak demand reduction, or issue its opinion and order.
- (E) Based upon the recommendations of the independent program evaluator relative to revisions to the technical reference manual, and the comments received on the independent program evaluator's recommendations pursuant to paragraph (C) of this chapter, the commission's staff shall direct the independent program evaluator to file an updated technical reference manual.

“Rescind”

~~4901:1-39-06 — Review of annual reports and issuance of the commission verification report.~~

- ~~(A) Any person may file comments regarding an electric utility's initial benchmark report or annual portfolio status report filed pursuant to this chapter within thirty days of the filing of such report.~~
- ~~(B) Upon receipt of such report, the staff shall review the report and any timely filed comments, and file its findings and recommendations regarding program implementation and compliance with the applicable benchmarks, and any proposed modifications thereto, verifying the electric utility's compliance or noncompliance with its approved program portfolio plan and the mandated energy efficiency improvements and peak demand reductions. If staff finds that an electric utility has not demonstrated compliance with the approved program portfolio plan or annual sales or peak demand reductions required by division (A) of section 4928.66 of the Revised Code, staff may recommend remedial action and/or the assessment of a forfeiture. Additionally, the staff may recommend modifications to a program within the electric utility's program portfolio plan.~~
- ~~(C) The commission may schedule a hearing on the electric utility's portfolio benchmark report or status report. If staff recommends a forfeiture, the commission shall schedule a hearing on the staff's recommendations.~~

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- ~~(D) The commission shall adopt, or modify and adopt, the staff's recommendations and findings as its annual verification report of the electric utility's achieved energy efficiency and peak-demand reductions pursuant to division (B) of section 4928.66 of the Revised Code. Such verification report shall be provided to the consumers' counsel of Ohio.~~

4901:1-39-06 Recovery mechanism.

Concurrent with the filing of its program portfolio plan, the electric utility shall propose a rate adjustment mechanism for recovery of costs incurred in implementing its energy efficiency, peak-demand reduction, and demand response programs. Inclusion of any lost distribution revenue and shared savings in the proposed rate adjustment mechanism shall be consistent with prior Commission directives. Any cost recovery that occurs under the electric utility's rate adjustment mechanism shall be subject to reconciliation based on the commission's opinion and order issued in the performance verification process.

“Rescind”

4901:1-39-07 Recovery mechanism.

- ~~(A) With the filing of its proposed program portfolio plan, the electric utility may submit a request for recovery of an approved rate adjustment mechanism, commencing after approval of the electric utility's program portfolio plan, of costs due to electric utility peak-demand reduction, demand response, energy efficiency program costs, appropriate lost distribution revenues, and shared savings. Any such recovery shall be subject to annual reconciliation after issuance of the commission verification report issued pursuant to this chapter.~~
- ~~(1) The extent to which the cost of transmission and distribution infrastructure investments that are found to reduce line losses may be classified as or allocated to energy efficiency or peak-demand reduction programs, pursuant to division (A)(2)(d) of section 4928.66 of the Revised Code, shall be limited to the portion of those investments that are attributable to and undertaken primarily for energy efficiency or demand reduction purposes.~~
- ~~(2) Mercantile customers, who commit their peak-demand reduction, demand response, or energy efficiency projects for integration with the electric utility's programs as set forth in rule 4901:1-39-08 of the Administrative Code, may individually or jointly with the electric utility, apply for exemption from such recovery.~~

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~~(B) Any person may file objections within thirty days of the filing of an electric utility's application for recovery. If the application appears unjust or unreasonable, the commission may set the matter for hearing.~~

4901:1-39-07 Historical mercantile customer programs, combined heat and power, or waste energy recovery systems.

(A) An application to commit a mercantile customer's energy efficiency program, or a customer's combined heat and power system or waste energy recovery system, to its electric utility's programs, pursuant to division (A)(2) of section 4928.66 of the Revised Code may include a request for an incentive payment based on payment levels established in the electric utility's portfolio plan, or a commitment payment for behavioral programs, combined heat and power systems, waste energy recovery systems, or other payment for efficiency savings that do not qualify for an incentive payment, or an exemption from the cost recovery mechanism set forth in rule 4901:1-39-06 of the Administrative Code. Such application shall be filed pursuant to the requirements set forth in section (C) of this rule. Alternatively, an application for an incentive payment, commitment payment, or cost recovery mechanism exemption may be combined with any other reasonable arrangement, approved pursuant to Chapter 4901:1-38 of the Administrative Code, if such reasonable arrangement contains appropriate measurements and verification of program results.

(B) In meeting its energy efficiency and peak-demand reduction benchmarks, an electric utility shall include mercantile customer energy efficiency and peak demand reduction programs implemented on mercantile customer sites where the mercantile program is committed to the electric utility.

(1) For energy efficiency programs, an electric utility may count the programs' effects resulting in energy savings and coincident peak-demand savings towards its energy efficiency requirements and peak demand reduction requirements.

(2) For demand response programs, an electric utility may count demand reductions towards satisfying some or all of the peak-demand reduction benchmarks by demonstrating that either the electric utility has reduced its actual peak demand, or has the capability to reduce its peak demand and such capability is created under either of the following circumstances:

(a) A peak-demand reduction program meets the requirements to be counted as a capacity resource under the tariff or capacity auction of a regional

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transmission organization approved by the federal energy regulatory commission.

- (b) A peak-demand reduction program equivalent to a regional transmission organization program, which has been approved by this commission.
- (3) A mercantile customer's energy savings and peak-demand reductions shall be presumed to be the effect of a demand response, energy efficiency, or peak-demand reduction program to the extent they involve the replacement of functioning equipment. If the mercantile customer's program involves the replacement of non-functioning equipment or an initial installation of new equipment, the electric utility may count the savings based on the efficiency of the replaced equipment, if any, but may provide a financial or rate exemption incentive based only on the reductions in energy use and peak demand that exceed the reductions or levels that would have occurred had the customer used standard new equipment or practices where practicable. However, nothing in this section prohibits the electric utility from compensating a mercantile customer for the administrative costs and inconvenience of undertaking the commitment process, in the form of a commitment payment. Electric utilities may make an alternative demonstration, subject to commission approval, that mercantile customer energy savings or peak demand reductions are eligible to be counted toward the electric utility's statutory requirements.
- (4) Inclusion of all such mercantile customer energy efficiency and peak demand reduction programs shall be subject to commission approval and subsequent verification through the annual performance verification process, pursuant to rule 4901:1-39-05 of the Administrative Code.
- (C) A mercantile customer may file, either individually or jointly with an electric utility, an application to commit the customer's demand reduction, demand response, or energy efficiency programs that have been implemented in the previous three years for integration with the electric utility's demand reduction, demand response, and energy efficiency programs, pursuant to division (A)(2) of section 4928.66 of the Revised Code. Such application, if filed individually, shall be filed no later than one calendar year after the end of the three-year period. However, such applications that are filed jointly shall be filed no later than March 31 of the year following the individual application deadline, but only if the mercantile customer commitment agreement with the electric utility was executed by the individual filing deadline.

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- (1) Any such application filed in accordance with the automatic approval template published by the commission shall be deemed automatically approved unless suspended by order of the commission or an attorney examiner within 60 days of the filing of the application.
- (2) Commitment of a mercantile customer's behavioral energy efficiency program that is made pursuant to a commitment payment shall be counted by the electric utility for one year. Subsequent annual applications may be made if the behavioral program continues. After five consecutive years of approved commitment payment applications, the energy efficiency savings shall be counted as permanent by the electric utility. If the energy savings levels vary from year to year during the five year period, the lowest of the energy savings levels shall be counted as permanent by the electric utility, and no additional payments will be made to the customer.
- (3) No exemption from an energy efficiency cost recovery rider granted pursuant to an automatic approval shall extend more than one year unless the applicant provides an annual update to staff on such form as published by the commission. The length of rider exemption shall be determined by the use of the benchmark comparison method.
- (4) An application to commit a mercantile customer's demand reduction, demand response, or energy efficiency program to the electric utility that is not filed in accordance with the commission's automatic approval template, shall not be deemed automatically approved. Such an application shall address the following areas:
 - (a) coordination requirements between the electric utility and the mercantile customer with regard to voluntary reductions in load by the mercantile customer, which are not part of an electric utility program, including specific communication procedures.
 - (b) Grant permission to the electric utility and staff to measure and verify energy savings and/or peak-demand reductions resulting from customer-sited projects and resources.
 - (c) Identify all consequences of noncompliance by the customer with the terms of the commitment.
 - (d) Include a copy of the formal declaration or agreement that commits the mercantile customer's programs for integration, including any requirement

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that the electric utility will treat the customer's information as confidential and will not disclose such information except under an appropriate protective agreement or a protective order issued by the commission pursuant to rule 4901-1-24 of the Administrative Code.

- (e) Include a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results, and identify and explain all deviations from any program measurement and verification guidelines that may be published by the commission.

“Rescind”

~~4901:1-39-08 — Mercantile customer exemptions.~~

~~An application to commit a mercantile customer program for integration filed pursuant to paragraph (G) of rule 4901:1-39-05 of the Administrative Code, may include a request for an exemption from the cost recovery mechanism set forth in rule 4901:1-39-07 of the Administrative Code. To be eligible for such exemption, the mercantile customer must consent to providing an annual report on the energy savings and electric utility peak demand reductions achieved in the customer's facilities in the most recent year. The report shall include the following:~~

- ~~(A) A demonstration that energy savings and peak demand reductions associated with the mercantile customer's program are the result of investments that meet the total resource cost test, or that the electric utility's avoided cost exceeds the cost to the electric utility for the mercantile customer's program.~~
- ~~(B) A statement distinguishing programs implemented before and after January 1, 2009, or in future reports filed for years subsequent to 2009, before and after the most recent year.~~
- ~~(C) A quantification of the energy savings or peak demand reductions for programs initiated prior to 2009 in the baseline period, recognizing that programs may have diminishing effects over time as technology evolves or equipment degrades.~~
- ~~(D) A recognition that the energy saving and demand reduction effects during the electric utility's baseline period of any mercantile customer-sited energy efficiency or peak demand reduction programs that are integrated into an electric utility's programs are excluded from the electric utility's baselines by increasing its baseline~~

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~~for energy savings and baseline for peak demand reductions by the amount of mercantile customer energy savings and demand reductions.~~

- ~~(E) A listing and description of the customer programs implemented, including measures taken, devices or equipment installed, processes modified, or other actions taken to increase energy efficiency and reduce peak 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.~~
- ~~(F) An accounting of expenditures made by the mercantile customer for each program and its component energy savings and electric utility peak demand reduction attributes.~~
- ~~(G) The timeline showing when each program went into effect, and when the energy savings and peak demand reductions occurred.~~
- ~~(H) Any request for an exemption may be combined with any other reasonable arrangement, approved pursuant to Chapter 4901:1-38 of the Administrative Code, if such reasonable arrangement contains appropriate measurements and verification of program results.~~

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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) "Biologically derived methane gas" means landfill methane gas; 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.
- (E) "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 and by-products (including fats, oils, greases and manure); biodegradable solid waste; and biologically derived methane gas.
- (F) "Clean coal technology" means any technology that removes or has the design capability to remove criteria pollutants and carbon dioxide from an electric generating facility that uses coal as a fuel or feedstock as identified in the control plan requirements in paragraph (C) of rule 4901:1-41-03 of the Administrative Code.
- (G) "Co-firing" means simultaneously using multiple fuels in the generation of electricity. In the event of co-firing, the proportion of energy input comprised of a renewable energy resource shall dictate the proportion of electricity output from the facility that can be considered a renewable energy resource.
- (H) "Commission" means the public utilities commission of Ohio.
- (I) "Deliverable into this state" means that the electricity originates from a facility within a state contiguous to Ohio. It may also include electricity originating from

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other locations, pending a demonstration that the electricity ~~could be~~ is physically deliverable ~~delivered~~ to the state.

- (J) "Demand response" has the meaning set forth in rule 4901:1-39-01 of the Administrative Code.
- (K) "Demand-side management" has the meaning set forth in paragraph (F) of rule 4901:5-5-01 of the Administrative Code.
- (L) "Distributed generation" means electricity production that is on-site and is connected to the electricity grid.
- (M) "Double-counting" means utilizing renewable energy, renewable energy credits, or energy efficiency savings to do any of the following:
 - (1) Satisfy multiple Ohio state renewable energy requirements or such requirements for more than one state.
 - (2) Comply with both the energy efficiency and advanced energy statutory benchmarks.
 - (3) Support multiple voluntary product offerings.
 - (4) Substantiate multiple marketing or public relations claims.
 - (5) Some combination of these.
- (N) "Electric generating facility" means a power plant or other facility where electricity is produced.
- (O) "Electric services company" has the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- (P) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (Q) "Energy efficiency" has the meaning set forth in rule 4901:1-39-01 of the Administrative Code.
- (R) "Energy storage" means a facility or technology that permits the storage of energy for future use as electricity.
- (S) "Fuel cell" means a device that uses an electrochemical energy conversion process to produce electricity.

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- (T) "Geothermal energy" means hot water or steam extracted from geothermal reservoirs in the earth's crust and used for electricity generation..
- (U) "Hydroelectric energy" means electricity generated by a hydroelectric facility as defined in division (A)(3537) of section 4928.01 of the Revised Code.
- (V) "Hydroelectric facility" has the meaning set forth in division (A)(3537) of section 4928.01 of the Revised Code.
- (W) "Mercantile customer" has the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (X) "MISO" means "Midwest Independent Transmission System Operator, Inc." or any successor regional transmission organization.
- (Y) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (Z) "PJM" means "PJM Interconnection, LLC" or any successor regional transmission organization.
- (AA) "Placed-in-service" means when a facility or technology becomes operational.
- (BB) "Renewable energy credit" means the environmental attributes associated with one megawatt-hour of electricity generated by a renewable energy resource, ~~except for electricity generated by facilities as described in paragraph (E) of rule 4901:1-40-04 of the Administrative Code.~~
- (CC) "Renewable energy resource" has the meaning set forth in division (A)(3537) of section 4928.01 of the Revised Code.
- (DD) "Solar energy resources" means solar photovoltaic and/or solar thermal resources.
- (EE) "Solar photovoltaic" means energy from devices which generate electricity directly from sunlight through the movement of electrons.
- (FF) "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.
- (GG) "Solid wastes" has the meaning set forth in section 3734.01 of the Revised Code.
- (HH) "Staff" means the commission staff or its authorized representative.

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- (II) "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.
- (JJ) "Waste energy recovery system" has the meaning set forth in division (A)(38) of section 4928.01 of the Revised Code
- (KK) "Wind energy" means electricity generated from wind turbines, windmills, or other technology that converts wind into electricity.

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, 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 during a given calendar year shall not be required to comply with the terms of the alternative energy portfolio standard during that calendar year.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, 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, electricity from alternative energy resources equals at least twenty-five per cent of their retail electric sales in the state.
- (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:

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Annual benchmarks for alternative energy resources generated from renewable and solar energy resources

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 annual renewable energy resources, including solar energy resources, shall be met through electricity generated by facilities located in this state. Facilities located in the state shall include a hydroelectric generating facility that is located on a river that is within or bordering this state, and wind turbines located in the state's territorial waters of lake Erie.
- (b) To qualify towards a benchmark, any electricity from renewable energy resources, including solar energy resources, that originates from a state not contiguous to Ohio ~~outside of the state~~ must be shown to be deliverable into this state.

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- (3) All costs incurred by an electric utility in complying with the requirements of section 4928.64 of the Revised Code, shall be avoidable by any consumer that has exercised choice of electricity supplier, during such time that a customer is served by an electric services company.
- (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 of 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 an average of the three preceding calendar years of 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 kilowatt-hour sales in the electric services company's most recent quarterly market monitoring reports or reporting forms.~~
 - (a) If an electric services company has not been continuously supplying Ohio retail electric customers during the preceding three calendar years, the baseline shall 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.
 - (b) For an electric services company with no retail electric sales in the state during the preceding three calendar years, its initial baseline shall consist of its actual Ohio retail electric sales during the compliance ~~a reasonable projection of its retail electric sales in the state for a full calendar year.~~ Subsequent baselines shall ~~consist of actual sales data,~~ be computed in a manner consistent with paragraph (B)(2)(a) of this rule.
 - (3) An electric utility or electric services company may request ~~file an application requesting~~ a reduced baseline to reflect new economic growth in its service territory or service area. A company requesting a reduced baseline shall file an application with the Commission seeking approval for such reduction, and any ~~Any~~ such application shall include a justification indicating why timely

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compliance based on the unadjusted baseline is not feasible, a schedule for achieving compliance based on its unadjusted baseline, quantification of a new change in the rate of economic growth, and a methodology for measuring economic activity, including objective measurement parameters and quantification methodologies.

~~(C) Beginning in the year 2010, each electric utility and electric services company annually shall file a plan for compliance with future annual advanced and renewable energy benchmarks, including solar, utilizing at least a ten-year planning horizon. This plan, to be filed 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) A description of the methodology used by the company to evaluate its compliance options.~~
- ~~(4) A discussion of any perceived impediments to achieving compliance with required benchmarks, as well as suggestions for addressing any such impediments.~~

“Rescind”

~~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 derived from fractionalization, biological decomposition, or other process that does not principally involve combustion.~~
- ~~(6) Biomass energy.~~

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- ~~(7) Energy from a fuel cell.~~
- ~~(8) A 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, or the equivalent renewable energy credits are obtained.~~
 - ~~(b) The amount of energy that may qualify from a storage facility is the amount of electricity dispatched from the storage facility.~~
- ~~(9) Distributed generation system used by a customer to generate electricity from one of the resources or technologies listed in paragraphs (A)(1) to (A)(8) of this rule.~~
- ~~(10) A renewable energy resource created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998.~~
- ~~(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 emissions (tons per year) in comparison to its actual annual carbon dioxide emissions preceding the modification. In such an instance, it is the incremental increase in generation output that may be quantified and applied toward an advanced energy requirement.~~
 - ~~(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) Advanced nuclear energy technology, from:~~
 - ~~(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. In such an instance, it is the incremental increase in generation attributable to the improvement that~~

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~~may be quantified and applied toward an advanced energy requirement. Extension of the life of existing nuclear generation capacity shall not qualify as advanced nuclear energy technology.~~

- ~~(5) Energy from a fuel cell.~~
- ~~(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' annual, renewable 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 4901:1-39-08 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 and would otherwise qualify as a renewable energy resource if it were utilized directly by an electric utility.~~
 - ~~(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.~~

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- ~~(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 would otherwise qualify as an advanced energy resource if it were utilized directly by an electric utility.~~
- ~~(D) An electric utility or electric services company may 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, and be measured by a utility-grade meter in compliance with paragraph (B) of rule 4901:1-10-05 of the Administrative Code, for facilities with generating capacity of more than six kilowatts. Such facilities could include a mercantile customer-sited resource that is not committed for integration into an electric utility's demand response, energy efficiency, or peak demand reduction program pursuant to rule 4901:1-39-08 of the Administrative Code but that otherwise qualifies under the terms of paragraph (A) of this rule.~~
 - ~~(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's generation attributes tracking system.~~
 - ~~(b) The MISO's renewable energy tracking system.~~
 - ~~(c) Another credible tracking system 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) The RECs must be associated with electricity that was generated no earlier than July 31, 2008.~~
- ~~(E) For a generating facility of seventy five megawatts or greater that is situated within this state and has committed by December 31, 2009, to modify or retrofit its generating unit or units to enable the facility to generate principally from biomass energy by June 30, 2013, the number of RECs produced by each megawatt hour of~~

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~~electricity generated principally from biomass energy shall equal the actual percentage of biomass feedstock heat input used to generate such megawatt hour multiplied by the quotient obtained by dividing the then existing unit dollar amount used to determine a renewable energy compliance payment as provided under division (C)(2)(b) of section 4928.64 of the Revised Code, by the then existing market value of one REC, but such megawatt hour shall not equal less than one credit.~~

~~(F) An entity seeking resource qualification shall file an application for certification of its resources or technologies, upon such forms as may be prescribed by the commission. The application shall include a determination of deliverability to the state in accordance with paragraph (I) of rule 4901:1-40-01 of the Administrative Code.~~

- ~~(1) Any interested person may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.~~
- ~~(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 date filed.~~
- ~~(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 where applicable. The commission shall provide this certificate number to the appropriate attribute tracking system.~~
- ~~(5) Representatives of certified facilities must notify the commission within thirty days of any material changes in information previously submitted to the commission during the certification process. Failure to do so may result in revocation of certification status.~~
- ~~(6) Certification of a resource or technology shall not predetermine compliance with annual benchmarks, and does not constitute any commission position regarding cost recovery.~~

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~~(G) At its discretion, the commission may classify any new technology or additional resource as an advanced or renewable energy resource. Any interested person may request a hearing on such classification.~~

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 derived from fractionalization, biological decomposition, or other process that does not principally involve combustion.
- (6) Biomass energy.
- (7) Energy from a fuel cell.
- (8) A storage facility, if it promotes the better utilization of a renewable energy resource. The amount of energy that may qualify from a storage facility is the amount of electricity dispatched from the storage facility.
- (9) Abandoned coal mine methane energy.
- (10) Waste energy recovery system placed into service or retrofitted on or after September 10, 2012, as defined in division (A)(38)(a) of Section 4928.01 of the Revised Code. The portion of the electricity production that is generated from recovered waste energy shall be recognized as renewable.
- (11) A waste energy recovery system defined in division (A)(38)(b) of section 4928.01 of the Revised Code, provided that it was placed into service between January 1, 2002, and December 31, 2004.
- (12) Distributed generation system used by a customer to generate electricity from one of the resources or technologies listed in paragraphs (A)(1) to (A)(8) of this rule.

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- (13) A renewable energy resource created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998.
- (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 non-renewable portion of the alternative energy resource benchmarks:
- (1) Any modification to an electric generating facility that increases its generation output without increasing the facility's carbon dioxide emissions (tons per year) in comparison to its actual annual carbon dioxide emissions preceding the modification. In such an instance, it is the incremental increase in generation output that may be quantified and applied toward the non-renewable portion of an alternative energy benchmark.
 - (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) Advanced nuclear energy technology, from:
 - (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. In such an instance, it is the incremental increase in generation attributable to the improvement that may be quantified and applied toward the non-renewable portion of an alternative energy benchmark. Extension of the life of existing nuclear generation capacity shall not qualify as advanced nuclear energy technology.
 - (5) Energy from a fuel cell.
 - (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.
 - (8) Any new, retrofitted, refueled, or repowered generating facility located in Ohio, including a simple or combined-cycle natural gas generating facility or a

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generating facility that uses biomass, coal, modular nuclear, or any other fuel as its input.

(9) Any uprated capacity of an existing electric generating facility if the uprated capacity results from the deployment of advanced technology. Such deployment must occur on or after September 10, 2012, in order for the facility to qualify as an advanced energy resource.

(C) The following new or existing mercantile customer-sited resources may be qualified resources for meeting electric utilities' annual, alternative -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 4901:1-39-08 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 and would otherwise qualify as a renewable energy resource if it were utilized directly by an electric utility.

(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 would otherwise qualify as an advanced energy resource if it were utilized directly by an electric utility.

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- (D) An electric utility or electric services company shall use renewable energy credits (REC) to satisfy its renewable energy resource benchmarks, including a solar energy resource benchmark.
- (1) To be eligible for use towards satisfying a benchmark, a REC must originate from a facility that has been certified by the commission under paragraph (E) of this rule.
- (2) To become certified under paragraph (E) of this rule an electric generating facility must demonstrate that it satisfies at least the following:
- (a) The definition of a renewable energy resource, including solar energy resources;
 - (b) The applicable placed in-service date;
 - (c) The deliverability requirement;
 - (d) It is registered with, or commits to becoming registered with, an attribute tracking system recognized by the commission; and
 - (e) The facility's electrical output is measured by a utility-grade meter in compliance with paragraph (B) of rule 4901:1-10-05 of the Administrative Code, for facilities with generating capacity of more than six kilowatts.
- (3) To demonstrate compliance with a renewable energy resource benchmark, an electric utility or electric services company must retire the requisite renewable energy credits with one of the following attribute tracking systems:
- (a) The PJM's generation attributes tracking system.
 - (b) The MISO's renewable energy tracking system.
 - (c) Another credible tracking system approved for use by the commission.
- (4) A REC may be used for compliance any time in the five calendar years following the date of its creation by the applicable attribute tracking system.
- (5) Double counting is prohibited.
- (6) The RECs must be associated with electricity that was generated no earlier than July 31, 2008 for resources or technologies included in the definition of "renewable energy resources" by Amended Substitute Senate Bill 221 (127th General Assembly). For resources or technologies added to the definition of

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"renewable energy resources" by Amended Substitute Senate Bill 315 (129th General Assembly), the RECs must be associated with electricity that was generated no earlier than September 10, 2012.

- (7) The RECs must be associated with electricity that was generated no later than the end of the compliance year.
- (E) An entity seeking facility qualification shall file an application for certification of its electric generating facility, upon such forms as may be prescribed by the commission. The application shall include a determination of deliverability to the state in accordance with paragraph (I) of rule 4901:1-40-01 of the Administrative Code.
- (1) Any interested person may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.
- (2) An application is deemed automatically approved unless suspended by order of the commission or an attorney examiner issued within 30 days after the application is filed.
- (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.
- (4) Upon commission approval, the applicant shall receive notification of approval and a numbered certificate where applicable. The commission shall provide this certificate number to the appropriate attribute tracking system.
- (5) Representatives of certified facilities must notify the commission within thirty days of any material changes in information previously submitted to the commission during the certification process. Failure to do so may result in revocation of certification status.
- (6) The Commission may revoke a certificate due to changes that negate the facility's certification eligibility. In the event a certificate is revoked, the Commission may recognize as viable compliance resources the RECs generated during the time of certification unless specifically stated otherwise by the commission.

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- (7) Certification of a resource or technology shall not predetermine compliance with annual benchmarks, and does not constitute any commission position regarding cost recovery.
- (G) At its discretion, the commission may classify any new technology or additional resource as an advanced- or renewable-energy resource. Any interested person may request a hearing on such classification.

“Rescind”

~~4901:1-40-05 — Annual status reports and compliance reviews.~~

- ~~(A) Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, an annual alternative energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks and planning requirements have or will be met. Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.~~
- ~~(1) Beginning in the year 2010, the annual review will include compliance with the most recent applicable renewable and solar energy resource benchmark.~~
- ~~(2) Beginning in the year 2025, the annual review will include compliance with the most recent applicable advanced energy resource benchmark.~~
- ~~(3) The annual compliance reviews shall consider any under compliance an electric utility or electric services company asserts is outside its control, including but not limited to, the following:~~
- ~~(a) Weather-related causes.~~
- ~~(b) Equipment shortages for renewable or advanced energy resources.~~
- ~~(c) Resource shortages for renewable or advanced energy resources.~~
- ~~(B) Any person may file comments regarding the electric utility's or electric services company's alternative energy portfolio status report within thirty days of the filing of such report.~~
- ~~(C) Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings~~

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and recommendations and any proposed modifications thereto.

- ~~(D) The commission may schedule a hearing on the alternative energy portfolio status report.~~

4901:1-40-05 Annual status reports and compliance reviews.

(A) Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, an annual alternative energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks have been met. Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.

- (1) The annual review will include compliance with the most recent applicable renewable- and solar-energy resource benchmark.
- (2) Beginning in the year 2025, the annual review will also include compliance with the most recent applicable alternative energy resource benchmark.
- (3) The annual compliance reviews shall consider any under-compliance an electric utility or electric services company asserts is outside its control, including but not limited to, the following:
 - (a) Weather-related causes.
 - (b) Equipment shortages for renewable or advanced energy resources.
 - (c) Resource shortages for renewable or advanced energy resources.
- (4) The alternative energy portfolio status reports filed by each electric utility and electric services company shall include at least the following content, that shall be made publicly available, for the applicable compliance year:
 - (a) The actual annual sales volumes used to compute the compliance baseline, including identification of the source of the sale volume figures.
 - (b) A quantification in dollars per megawatt-hour of all applicable alternative energy portfolio standard compliance requirements, including the in-state minimums.

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- (c) An indication of the compliance status relative to each of the applicable alternative energy portfolio standard compliance requirements, including the in-state minimums.
 - (d) Demonstration of status relative to the statutory three percent cost provision(s), pursuant to the calculation methodology described in rule 4901:1-40-07 of the Administrative Code.
 - (e) Identification of the attribute tracking system(s) used to demonstrate compliance.
 - (f) A discussion of any perceived impediments to achieving compliance with required benchmarks, as well as suggestions for addressing any such impediments.
- (B) Any person may file comments regarding the electric utility's or electric services company's alternative energy portfolio status report within thirty days of the filing of such report.
- (C) Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.
- (D) The commission may schedule a hearing on the alternative energy portfolio status report.

4901:1-40-06 Force majeure.

An electric utility or electric services company may seek a force majeure determination from the commission for all or part of a minimum renewable- or solar-energy benchmark.

- (A) 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.
 - (1) 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.

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- (2) The request shall include an assessment of the availability of qualified in-state resources, as well as qualified resources within the service territories of any regional transmission organizations that manage transmission systems located in OhioPJM and the MISO.
- (B) 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.
 - (1) Such modification does not automatically reduce future-year obligations.
 - (2) The commission retains the right to increase a future year's compliance obligation by the amount of any under compliance in a previous year that is attributed to a force majeure determination.

“Rescind”

~~4901:1-40-07 Cost cap.~~

- ~~(A) An electric utility or electric services company may file an application requesting a determination from the commission that its reasonably expected cost of compliance with an advanced energy resource benchmark would exceed its reasonably expected cost of generation to customers 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 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 or electric services company may file an application requesting 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 cost of generation to customers~~

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~~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 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.~~
- ~~(C) Calculations involving a three per cent cost cap shall consist of comparing the total expected cost of generation to customers of an electric utility or electric services company, while satisfying an alternative energy portfolio standard requirement, to the total expected cost of generation to customers of the electric utility or electric services company without satisfying that alternative energy portfolio standard requirement.~~
- ~~(D) Any costs included in a commission approved unavoidable surcharge for construction or environmental expenditures of generation resources shall be excluded from consideration as a cost of compliance under the terms of the alternative energy portfolio standard and therefore, would not count against the applicable cost cap. Such costs should, however, be included in the calculation of the total expected cost of generation to customers described in paragraph (C) of this rule.~~
- ~~(E) If the commission makes a determination that a three per cent 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.~~

4901:1-40-07 Cost cap.

- (A) By no later than April fifteenth of each compliance year, electric utilities and electric services companies shall calculate their maximum recoverable compliance funds to be used for compliance with (A)(1) and (A)(2), as applicable, during that

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compliance year. The calculations shall be provided to the commission pursuant to any cost cap requirements provided for in rule 4901:1-40-05 of the Administrative Code. Alternatively, an electric utility or electric services company may file an application with the commission for review of its cost cap calculation prior to the date required in rule 4901:1-40-05 of the Administrative Code.

- (1) A 3 percent cost cap is applicable to the renewable energy benchmarks specified in division (B)(2) of section 4928.64 of the Revised Code.
 - (2) Beginning in the year 2024, a separate 3 percent cost cap is applicable to the cost of compliance with the 12.5 percent increment that represents the difference between the total alternative energy requirement and the renewable energy benchmark for that year.
 - (3) The burden of proof for demonstrating compliance with the 3 percent cost caps shall remain with the entity filing the application.
 - (4) An electric utility or electric services company shall pursue all reasonable compliance options prior to requesting relief from compliance with alternative energy resource requirements based on the 3 percent cost caps.
 - (5) In the case that the commission makes a determination that an electric utility's or electric services company's compliance costs exceed the applicable 3 percent cost cap, the electric utility or electric services company may not be required to fully comply with that specific benchmark.
- (B) The calculation of the maximum recoverable compliance funds shall follow the multi-step process as detailed below. In the event that an electric utility reaches its maximum recoverable compliance funds for a year for paragraphs (A)(1) or (A)(2) of this rule, it shall not seek recovery of any additional compliance costs towards that benchmark for that compliance year.
- (1) Determine the compliance baseline in dollars per megawatt-hour for the compliance year consistent with the applicable section of paragraph (B) of rule 4901:1-40-03 of the Administrative Code.
 - (2) Calculate a reasonably expected dollars per megawatt-hour figure for the compliance year.

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- (a) For an electric utility that seeks to serve 100 percent of its load during the compliance year through competitive bid, this dollars per megawatt-hour figure should be a weighted average of the reasonably expected cost of the SSO supply for delivery during the compliance year net of distribution losses.
- (b) For an electric utility that is transitioning to 100 percent competitive bid rates, the dollars per megawatt-hour figure should be a weighted average of the bid results for delivery during the compliance year and an applicable base generation rate. The base generation rate component shall consist of a reasonable projection of any rate schedule and riders to be used during the compliance year to collect by-passable energy, capacity, and transmission and ancillary service costs while excluding any by-passable rider used to recover compliance costs associated with section 4928.64 of the Revised Code.
- (c) For electric service companies, this dollars per megawatt-hour figure should be a weighted average of the reasonably expected cost of supply for delivery during the compliance year, net of distribution system losses.
- (3) Calculate the total cost by multiplying the dollars per megawatt-hour figure in paragraph (2) by the compliance baseline calculated in paragraph (1).
- (4) Multiply the total cost in paragraph (3) by 3 percent, with the result representing the maximum recoverable compliance funds to be applied towards compliance resources for paragraphs (A)(1) or (A)(2), as applicable, for that compliance year.
- (C) If the commission determines that a 3 percent provision is triggered, the electric utility or electric services company shall comply with each benchmark up to the point that the 3 percent increment would be reached for each benchmark.

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

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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.

- (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:

$$= ((\text{CPIYR2}/\text{CPIYR1}) * \text{current per MWh payment})$$

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- (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 by the commission.
- (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 file ~~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 filed ~~submitted to staff~~ within thirty days of the imposition of any compliance payment requirement.

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 alternative ~~advanced~~ ~~and~~ ~~renewable-energy~~ resource benchmarks.

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- (2) Suggested strategies for electric utility and electric services company compliance.
- (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.
- (4) Average annual renewable energy credit costs for the compliance year(s) covered by the report.
- (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.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Angela Hawkins, Legal Director
Phone: 614-466-0122 Fax: 614-728-8373
Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Energy Efficiency Programs

Rule Number(s): Ohio Adm.Code Chapter 4901:1-39
4901:1-39-01; 4901:1-39-02; 4901:1-39-03;
4901:1-39-04; 4901:1-39-05; 4901:1-39-06;
4901:1-39-07; and 4901:1-39-08

Date: January 29, 2014

Rule Type:

- | | |
|---|---|
| <input checked="" type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input checked="" type="checkbox"/> Rescinded |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. *Please include the key provisions of the regulation as well as any proposed amendments.*

The proposed revisions to the rules in Ohio Adm.Code Chapter 4901:1-40 are in accordance with the State of Ohio's 5-year rule review procedures. R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The rules in Ohio Adm.Code Chapter 4901:1-39 set forth the provisions for energy efficiency programs. The proposed revisions to Ohio Adm.Code Chapter 4901:1-39 would update the Commission's policies regarding implementation of energy efficiency programs.

Staff's proposal includes the addition of multiple new definitions and revisions to definitions for the purposes of clarifying the rules and bringing them into compliance with Am. Sub. S.B. 315 and Commission precedent. The purpose of the rules in Ohio Adm.Code Chapter 4901:1-39 is to establish rules for the implementation of electric utility energy efficiency and peak-demand reduction programs. Pursuant to R.C. 4928.66(A)(1)(a), each electric utility is required to implement energy efficiency programs that, at a minimum, achieve established statutory benchmarks for energy efficiency and peak demand reduction. A summary of some of the proposed changes follows:

- Definitions added for combined heat and power system and waste energy recovery system, as well as revisions to other definitions as needed to provide clarity.
- Each electric utility will be required to hold quarterly stakeholder meetings to provide updates on the energy efficiency and peak-demand reductions achieved by its programs, all costs incurred, new programs being considered, and to solicit input from stakeholders.
- Stakeholders will have thirty days to file comments to after the utility files its program portfolio plan. The utility will then have 30 days to file its responses to the comments.
- The Rules have been revised to include provisions for combined heat and power systems and waste energy recovery systems pursuant to S.B. 315.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

The amendments to the rules in Ohio Adm.Code Chapter 4901:1-39 are in response to R.C. 119.032, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue the rules without change, with amendments, or with rescissions. The Commission has determined that certain amendments to the rules are necessary to streamline the reporting process and to provide clarity to the energy efficiency and peak-demand reduction program rules. The statutory authority for the rules is R.C. 4901.13, 4905.04, 4905.06, 4928.02, and 4928.66.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? *If yes, please briefly explain the source and substance of the federal requirement.*

This regulation implements state requirements. It does not implement a federal requirement. The statutory authority for the rules is R.C. 4901.13, 4905.04, 4905.06, 4928.02, and 4928.66.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The regulation does not contain provisions specifically required by the federal government. The rationale for the rules is to implement the statutory provisions adopted by the General Assembly in R.C. 4928.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules contained in this chapter are intended to implement provisions in R.C. 4928, specifically in R.C. 4928.66. The provisions of R.C. 4928.66 implement energy efficiency and peak-demand reduction programs.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules contained in this chapter govern state energy efficiency and peak-demand reduction programs. The success of the regulation in terms of outputs and outcomes will be measured based upon electric distribution utility compliance with R.C. 4928 and Ohio Adm.Code Chapter 4901:1-39. The rules being revised contain reporting requirements specifically for

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the purpose of enabling the Commission to measure the success of the regulation and compliance with the statute. Ohio Adm.Code 4901:1-39-05 requires that by May 15th of each year, each electric utility must file a portfolio performance report addressing the performance of its energy efficiency and peak-demand reduction programs in its program portfolio plan over the previous calendar year. This will include a compliance demonstration, a benchmark report, and other output measurable for the Commission to determine the success of the energy efficiency and peak-demand reduction programs.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.***

The Commission conducted a workshop on April 23, 2013, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's review of Ohio Adm.Code Chapter 4901:1-39 is 13-651-EL-ORD. The entry providing notice of the workshop was served upon all electric companies in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Ohio Consumers' Counsel, the Electric-Energy industry list-serve, the Renewable and Advanced Energy Portfolio Standards list-serve, and other interested persons. The workshop was held in conjunction with another electric industry rules workshop for rules in Ohio Adm.Code Chapter 4901:1-40

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Stakeholders provided general comments on the rules at the workshop. However, further stakeholder input will be considered subsequent to the comment and reply comment period. Additionally, the Commission notes that the scope of stakeholder input considered by the Commission is limited to the rules in Ohio Adm.Code Chapter 4901:1-39 and does not include analysis or consideration of the General Assembly's adoption of R.C. 4928.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No scientific data was used to develop Staff's proposal. However, Staff reviewed the energy efficiency and peak demand reduction program status reports for the development of its proposals.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Commission did not consider regulatory alternatives due to Ohio Adm.Code 4901:1-39-02(B), which provides that the Commission may waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown. Therefore, an alternative to the regulation already exists in the regulation itself, if a party can demonstrate good cause for waiver of a requirement. Additionally, the Commission finds that the rules and revisions in Ohio Adm.Code Chapter 4901:1-40 are necessary for the implementation of R.C. 4928. The Commission will consider the regulatory alternatives proposed by stakeholders in the Commission's comment and reply comment period

11. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules in Ohio Adm.Code Chapter 4901:1-39 implement performance-based regulations adopted by the General Assembly in R.C. 4928.66. The rules themselves are not intended to define the required outcome; rather they dictate the process the stakeholders must use to achieve compliance with the statute. The rules implement performance-based provisions of R.C. 4928, which these rules are being proposed pursuant to.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Commission has reviewed other Ohio regulations and found no duplicate.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Upon completion of the rulemaking process, the rule changes made in Ohio Adm.Code Chapter 4901:1-39 will be attached to the Commission's finding and order and served upon all electric companies in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Ohio Consumers' Counsel, the Electric-Energy industry list-serve, the Renewable and Advanced Energy Portfolio Standards list-serve, and any other interested persons.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Ohio Adm.Code 4901:1-39-02(A) identifies that parties affected by the rules in Ohio Adm.Code Chapter 4901:1-39 include all Ohio electric utilities, which are required to implement energy efficiency programs pursuant to R.C. 4928.66. The rules themselves apply to the electric distribution utilities, but the increasing statutory benchmarks for energy efficiency and peak-demand reduction will require the electric distribution utilities to engage the business community to find participants. The business community will be positively impacted because the electric distribution utilities will be engaging them to implement energy efficiency and peak-demand reduction programs, which should decrease the electricity requirements, and bills, for businesses that implement those efficiency measures.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The proposed revisions were drafted in an effort to minimize any adverse impact on business. For example, when an electric distribution utility describes the programs in its program portfolio plan, it will be required to include a program budget with program costs to be borne by the electric utility and collected from customers, as well as the expected participant cost, if there is any. In total, the energy efficiency and demand reduction programs provide a benefit to mercantile customers, not an adverse impact.

c. Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

No adverse impact is expected from the existing rules, proposed rules, or revisions in Ohio Adm.Code Chapter 4901:1-39. However, Ohio Adm.Code 4901:1-39-06 provides that concurrent with the filing of its program portfolio plan, the electric utility shall propose a rate adjustment mechanism for recovery of costs incurred in implementing its energy efficiency, peak-demand reduction, and demand response

programs. Inclusion of any lost distribution revenue and shared savings in the proposed rate adjustment must be consistent with Commission precedent. Additionally, any cost recovery that occurs under the electric utility's rate adjustment mechanism shall be subject to reconciliation based on the Commission's opinion and order issued in the performance verification process.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Commission has proposed revisions to the rules in Ohio Adm.Code Chapter 4901:1-39 pursuant to R.C. 4928. Any adverse impact to the regulated business community that may exist is a result of the General Assembly enacting R.C. 4928.66.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Small businesses are not required to participate in energy efficiency or demand reduction programs. Therefore, small businesses are not within the scope of the rules in Ohio Adm.Code Chapter 4901:1-39, and no exemption or alternative means of compliance is necessary.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Ohio Adm.Code 4901:1-39-02(B) permits the Commission to grant a waiver of any requirement of the chapter, other than a requirement mandated by statute, for good cause shown. If good cause can be shown for waiver of a penalty for paperwork violation, then a waiver may be granted by the Commission.

18. What resources are available to assist small businesses with compliance of the regulation?

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 13-651-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry.

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Angela Hawkins, Legal Director
Phone: 614-466-0122 Fax: 614-728-8373
Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Alternative Energy Portfolio Standards

Rule Number(s): Ohio Adm.Code Chapter 4901:1-40
4901:1-40-01; 4901:1-40-02; 4901:1-40-03; 4901:1-40-04;
4901:1-40-05; 4901:1-40-06; 4901:1-40-07; 4901:1-40-08;
and 4901:1-40-09

Date: January 29, 2014

Rule Type:

<input checked="" type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" type="checkbox"/> Amended	<input checked="" type="checkbox"/> Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The proposed revisions to the rules in Ohio Adm.Code Chapter 4901:1-40 are in accordance with the State of Ohio's 5-year rule review procedures. R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The rules in

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Ohio Adm.Code Chapter 4901:1-40 set forth the alternative energy portfolio standard. The proposed revisions to Ohio Adm.Code Chapter 4901:1-40 would update the Commission's policies for implementing the alternative energy portfolio standard.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

The amendments to the rules in Ohio Adm.Code Chapter 4901:1-40 are in response to Section 119.032, Revised Code, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue the rules without change, with amendments, or with rescissions. The statutory authority for the rules is R.C. 4901.13, 4905.04, 4905.06, 4928.01, 4928.02, 4928.64, and 4928.65.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

This regulation implements state requirements. It does not implement a federal requirement. The state statutory authority for the rules is R.C. 4901.13, 4905.04, 4905.06, 4928.01, 4928.02, 4928.64, and 4928.65.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The regulation does not contain provisions specifically required by the federal government. The rationale for the rules is to implement the statutory provisions adopted by the General Assembly in R.C. 4928.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules contained in this chapter are intended to implement R.C. 4928, specifically R.C. 4928.64 and 4928.65.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules contained in this chapter govern the alternative energy portfolio standards and renewable energy credits. The success of the regulation in terms of outputs and outcomes will be measured based upon electric distribution utility compliance with R.C. 4928 and Ohio Adm.Code 4901:1-40. The rules being revised contain reporting requirements specifically

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for the purpose of enabling the Commission to measure the success of the regulation and compliance with the statute.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Commission conducted a workshop on April 23, 2013, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-40 is 13-652-EL-ORD. The entry providing notice of the workshop was served upon all electric companies in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Ohio Consumers' Counsel, the Electric-Energy industry list-serve, the Renewable and Advanced Energy Portfolio Standards list-serve, and other interested persons. The workshop was held in conjunction with another electric industry rules workshop for rules in Ohio Adm.Code 4901:1-39.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Stakeholders provided general comments on the rules at the workshop. However, further stakeholder input will be considered subsequent to the comment and reply comment period. Additionally, the Commission notes that the scope of stakeholder input considered by the Commission is limited to the rules in Ohio Adm.Code Chapter 4901:1-40 and does not include analysis or consideration of the General Assembly's adoption of R.C. 4928.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No scientific data was used to develop Staff's proposal. However, Staff reviewed the alternative energy portfolio program status reports for the development of its proposals.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

The Commission did not consider regulatory alternatives due to Ohio Adm.Code 4901:1-40-02(B), which provides that the Commission may waive any requirement of the chapter, other

than a requirement mandated by statute, for good cause shown. Therefore, an alternative to the regulation already exists in the regulation itself, if a party can demonstrate good cause for waiver of a requirement. Additionally, the Commission finds that the rules and revisions in Ohio Adm.Code Chapter 4901:1-40 are necessary for the implementation of R.C. 4928. The Commission will consider the regulatory alternatives proposed by stakeholders in the Commission's comment and reply comment period.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The regulations in Ohio Adm.Code Chapter 4901:1-40 are primarily performance-based regulations. The rules themselves are not intended to define the required outcome; rather they dictate the process the stakeholders must use to achieve compliance with the statute. The rules implement performance-based provisions of R.C. 4928, which these rules are being proposed pursuant to.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Commission has reviewed other Ohio regulations and found no duplicate.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Upon completion of the rulemaking process, the rule changes made in Ohio Adm.Code Chapter 4901:1-40 will be attached to the Commission's finding and order and served upon all electric companies in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Ohio Consumers' Counsel, the Electric-Energy industry list-serve, the Renewable and Advanced Energy Portfolio Standards list-serve, and any other interested persons.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Ohio Adm.Code 4901:1-40-02(A) identifies that parties affected by the rules in Ohio Adm.Code Chapter 4901:1-40 include all Ohio electric utilities and all electric

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CSIOhio@governor.ohio.gov

services companies serving retail electric customers in Ohio. Any entity that does not serve Ohio retail electric customers during a given calendar year is not required to comply with the alternative energy portfolio standards in the rules. The business community may be impacted by the alternative energy portfolio standards, however, those effects are a result of the underlying statutes that these rules are adopted pursuant to. R.C. 4928 requires that electric utilities and all electric services companies serving retail electric customers in Ohio must comply with the renewable energy resource and solar energy resource benchmarks. The rules in Ohio Adm.Code Chapter 4901:1-40 have been adopted pursuant to R.C. 4928. Additionally, the scope of the Commission's review of any adverse impact to business is limited to a review of the rules in Ohio Adm.Code Chapter 4901:1-40 and does not include an analysis of any adverse impact on business that may exist pursuant to R.C. 4928.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The proposed revisions were drafted in an effort to minimize any adverse impact on business, while implementing the provisions of R.C. 4928 and promoting the policies of the state of Ohio in R.C. 4928.02. The Commission notes that it has found that the proposed rules do not provide an adverse impact on business, but the Commission takes no position on whether the underlying statutory provisions provide an adverse impact on business. The scope of the Commission's business impact analysis was limited to the rules in Ohio Adm.Code Chapter 4901:1-40 and Staff's proposed revisions.

The following summaries explain the license fees, fines, employer time for compliance, and other costs that may result from Ohio Adm.Code Chapter 4901:1-40. The Commission reiterates that it does not believe that Staff's proposed revisions provide an adverse impact on business.

Ohio Adm.Code 4901:1-40-03 requires that all electric utilities and affected electric services companies shall ensure that, by the end of 2024 and each year thereafter, electricity from alternative energy resources equals at least 25 percent of their retail electric sales in the state of Ohio. However, pursuant to Ohio Adm.Code 4901:1-40-03(A)(3), all costs incurred by an electric utility in complying with the requirements of R.C. 4928.64 shall be avoidable by any consumer that has exercised choice of electricity supplier, during such time that a customer is served by an electric services company.

Ohio Adm.Code 4901:1-40-05 requires each electric utility and electric services company to file by April 15th of each year an annual alternative energy portfolio status report analyzing all activities that have been undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks have been met.

Ohio Adm.Code 4901:1-40-07 directs that by no later than April 15th of each compliance year, electric utilities and electric services companies shall calculate their maximum recoverable compliance funds to be used for compliance, as applicable, during that compliance year. The electric utility or electric services company may file an application with the Commission for review of its cost cap calculation prior to April 15th of each year. A three percent cost cap is applicable to the renewable energy benchmarks specified in division (B)(2) of Section 4928.64 of the Revised Code. The entity filing the application will have the burden of demonstrating compliance with the three percent cost caps. Additionally, all reasonable compliance options must be pursued prior to requesting relief from compliance with alternative energy resource requirements based on the three percent caps. If the Commission determines that compliance costs exceed the applicable three percent cost cap, then the electric utility or electric services company may not be required to fully comply with that specific benchmark.

Ohio Adm.Code 4901:1-40-07 also contains a calculation for the maximum recoverable compliance funds. If the maximum recoverable compliance funds for a year are reached, the electric utility shall not seek recovery of any additional compliance costs towards that benchmark for that compliance year.

Ohio Adm.Code 4901:1-40-08 contains a compliance payment remittance amount for noncompliance, unless a force majeure condition exists or the Commission determines that the three percent cost cap provision applies. Any compliance payment shall be submitted to the Commission for deposit to the credit of the advanced energy fund. Compliance payments are subject to the collection and enforcement procedures of R.C. 4905.55 to 4905.60 and R.C. 4905.64. The cost of compliance payments are prohibited from being passed on to consumers.

- c. **Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.***

Ohio Adm.Code 4901:1-40-08 contains a compliance payment schedule for noncompliance with any solar energy resource benchmark. The schedule begins at \$450 per Megawatt-hour for noncompliance in the year 2009, and decreases \$50 per Megawatt-hour each subsequent two-year period. For years 2014 and 2015, the compliance payment will be \$300 per Megawatt-hour. For years 2016 and 2017, the compliance payment will be \$250 per Megawatt-hour. And for years 2018 and 2019, the compliance payment will be \$200 per Megawatt-hour.

Additionally, Ohio Adm.Code 4901:1-40-08 contains the compliance payment requirements for any renewable energy resource benchmark, excluding solar. This compliance payment amount is adjusted annually to reflect the annual change to the consumer price index, but in no event shall it be less than \$45 per Megawatt-hour.

While the Commission does not believe that there is an adverse impact to business as a result of Staff's proposed revisions, these are the quantifiable terms of compliance with the Ohio Adm.Code Chapter 4901:1-40. The Commission believes that any adverse impact to business that may exist is a result of R.C. 4928 and not the Commission's adoption of Ohio Adm.Code Chapter 4901:1-40.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Commission does not believe that these rules provide an adverse impact on business, and if any adverse impact does exist, it is justified by the regulatory requirement to comply with the Revised Code.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Yes. All electric utilities and electric services companies serving retail electric customers in Ohio are under the jurisdiction of the Commission and may not be exempted from the requirements provided in Ohio Adm.Code Chapter 4901:1-40. However, Ohio Adm.Code 4901:1-40-03(A)(3) states that all costs incurred by an electric utility in complying with the requirements of Section 4928.64 of the Revised Code shall be avoidable by any consumer that has exercised choice of electricity supplier, during such time that a customer is served by an electric services company.

Additionally, Ohio Adm.Code 4901:1-40-06 provides provisions for an electric utility or an electric services company to seek a force majeure determination from the Commission. The Commission may then determine that force majeure conditions exist and modify the compliance obligation of the electric utility or electric services company.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Ohio Adm.Code 4901:1-40-02(B) states that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

Additionally, as indicated above, an electric utility or an electric services company may seek a force majeure determination from the Commission and if the Commission determines that force majeure conditions exist, then it may modify the compliance obligation of the electric utility or electric services company.

18. What resources are available to assist small businesses with compliance of the regulation?

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 13-652-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry.



Public Utilities Commission

Application to Commit
Combined Heat and Power System
(Mercantile Customers Only)

Case No.: ____-____-EL-EEC

Mercantile Customer:

Electric Utility:

Program Title or
Description:

Ohio Revised Code (O.R.C.) 4928.66 (A) (1) (a), allows that an electric utility's energy efficiency program may include a combined heat and power (CHP) system. The following application form is to be used by mercantile customers, either individually or jointly with their electric utility, to apply for commitment of such programs.

Complete a separate application for each customer program. Projects undertaken by a customer as a single program at a single location or at various locations within the same service territory should be submitted together as a single program filing, when possible. Check all boxes that are applicable to your program. For each box checked, be sure to complete all subparts of the question, and provide all requested additional information. Submittal of incomplete applications may result in a suspension of the automatic approval process or denial of the application.

Any confidential or trade secret information may be submitted to Staff on disc or via email at ee-pdr@puc.state.oh.us.

Section 1: Mercantile Customer Information

Name:

Principal address:

Address of facility for which this energy efficiency program applies:

Name and telephone number for responses to questions:

Electricity use by the customer (check the box(es) that apply):

- ☐ The customer uses more than seven hundred thousand kilowatt hours per year at the above facility. (Please attach documentation.)
- ☐ The customer is part of a national account involving multiple facilities in one or more states. (Please attach documentation.)

Section 2: Application Information

A) The customer is filing this application (choose which applies):

- ☐ Individually, without electric utility participation.
- ☐ Jointly with the electric utility.

B) The electric utility is: _____

**Section 3: Request for Cash Payment Reasonable
Arrangement (Option 1) or Exemption from Rider (Option 2)**

Under this section, check the box that applies and fill in all blanks relating to that choice.

A) The customer is applying for:

- ☐ Option 1: A cash payment reasonable arrangement.

OR

- ☐ Option 2: An exemption from the energy efficiency cost recovery mechanism implemented by the electric utility.

B) The value of the option that the customer is seeking is:

Option 1:

- ☐ A cash payment of \$_____. (Payment shall not exceed \$ 0.005 per kwh generated.)

Option 2: An exemption from payment of the electric utility's energy efficiency/peak demand reduction rider.

- ☐ An exemption from payment of the electric utility's energy efficiency/peak demand reduction rider for ____ months (not to exceed 24 months). (Attach calculations showing how this time period was determined.)

OR

- ☐ Ongoing exemption from payment of the electric utility's energy efficiency/peak demand reduction rider for an initial period of 24 months because this program is part of the customer's ongoing efficiency program. (Attach documentation that establishes the ongoing nature of the program.) In order to continue the exemption beyond the initial 24 month period, the customer will need to provide a future application establishing additional energy savings and the continuance of the organization's energy efficiency program.)

Section 4: Cost Effectiveness

The CHP system is cost effective because it has a benefit/cost ratio greater than 1 using the (choose which applies):

- ☐ Total Resource Cost (TRC) Test. The calculated TRC value is: _____
(Continue to Subsection 1, then skip Subsection 2)
- ☐ Utility Cost Test (UCT) . The calculated UCT value is: _____ (Skip to Subsection 2.)

Subsection 1: TRC Test Used (please fill in all blanks).

The TRC value of the CHP system is calculated by dividing the value of our avoided supply costs (generation capacity, energy, and any transmission or distribution) by the sum of our program overhead and installation costs and any incremental measure costs paid by either the customer or the electric utility.

Subsection 2: UCT Used (please fill in all blanks).

We calculated the UCT value of our CHP system by dividing the value of our avoided supply costs (capacity and energy) by the costs to our electric utility (including administrative costs and incentives paid or rider exemption costs) to obtain our commitment.

Section 5: Combined Heat and Power System Information

Additional information to clarify or supplement this Application may also be requested by Staff. Please fill out this form and attach the following supporting documentation to this application:

Criteria 1: CHP Efficiency Level

Ohio Revised Code (ORC) Sec. 4928.01(40)

- 1) State the overall combined heat and power (CHP) systems' efficiency level and describe how it was determined.

Criteria 2: Amount of Useful Thermal Energy

Ohio Revised Code (ORC) Sec. 4928.01(40)

- 1) State the systems' amount of thermal energy produced.
- 2) State the systems' use for that thermal energy (e.g. domestic hot water, process hot water, process steam, space heating, absorption chiller, etc.)

Criteria 3: Service Date

Ohio Revised Code (ORC) Sec. 4928.66(A)(1)(a)

- 1) Provide the date that the system was or will be placed into service.
- 2) Provide the date that the system was retrofitted and describe the retrofit (if applicable).

Section 6: Additional Information

Please attach the following supporting documentation to this application:

- A copy of the formal declaration or agreement that commits the program or measure to the electric utility, including:
 - 1) any confidentiality requirements associated with the agreement;
 - 2) a description of any consequences of noncompliance with the terms of the commitment;
 - 3) permission by the customer to the electric utility and Commission staff and consultants to measure and verify energy savings and/or peak-demand reductions resulting from your program; and,
 - 4) a commitment by the customer to provide an annual report on your energy savings and electric utility peak-demand reductions achieved.
 - A description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results. Additionally, identify and explain all deviations from any program measurement and verification guidelines that may be published by the Commission.
-

1. SYSTEM DESCRIPTION

Provide a description of the Combined Heat and Power (CHP) system.

- a. Describe the technology/configuration, e.g. Combustion Gas Turbine, Power Boiler with Steam Turbine, Reciprocating engine(s) or other.
- b. Describe the type of business/facility that will benefit from the useful thermal energy to be supplied by the cogeneration. Include a description of how the thermal energy will be used throughout a representative year and whether there are any hourly, daily or seasonal variations in thermal demand. If applicable describe the system replaced by the CHP facility.

2. EQUIPMENT DESCRIPTION

Provide a complete equipment description for all major components including: Combustion Turbine Generator, Steam Turbine Generator, HRSG, plant control system, air emissions control equipment, cooling system, major pumps, water treatment system, fuel storage facilities, etc.

- a. Equipment manufacturer/model/date of manufacture.

3. OPERATION MODES

- a. Describe and list the major operating modes of the CHP system and projected time period (per annum) that each mode will be utilized.
-
- b. Will the system include a "thermal dump?"
 - i. A "thermal dump" refers to a sub-system of the CHP that rejects heat allowing the system to generate electricity during periods when the full useful thermal output of the heat recovery system cannot be transferred due to insufficient demand.

4. PROCESS FLOW DIAGRAM

- a. Provide a process flow diagram for each major operating mode.
- b. Include locations for all meters.

5. MATERIALS AND ENERGY BALANCE DIAGRAMS

- a. For each fuel, include the flow (lb/hr), temperature (°F), pressure (psia), and enthalpy (BTU/lb) for all water, steam, combustion air, and fuel streams entering and exiting the boundaries of the generating unit and of each major equipment component.

6. ELECTRICAL

a. ELECTRICAL GENERATOR

- i. Manufacturer/Model Number/Output Volts /Capacity
- b. Is the generation unit designed or approved to export power onto the electric grid?
- c. Does the generation unit have either an approved interconnection plan or submitted an application to the local distribution utility company requesting permission for an interconnection?
- d. Provide a single line electrical distribution and interconnection diagram.

7. METERING

Provide the following information for each meter of the CHP facility. Include locations for all meters on process flow diagram.

a. Fuel Meters

- i. Meter Type
- ii. Manufacturer
- iii. Model
- iv. Is it a revenue grade meter?
- v. What is the guaranteed accuracy (in %) of the meter?

b. BTU Meters

- i. Meter Type
- ii. Manufacturer
- iii. Model
- iv. Is it a revenue grade meter?
- v. What is the guaranteed accuracy (in %) of the meter?

c. Steam Meters

- i. Meter Type
- ii. Manufacturer
- iii. Model
- iv. Is it a revenue grade meter?
- v. What is the guaranteed accuracy (in %) of the meter?

d. Electric Meters

- i. Meter Type
- ii. Manufacturer
- iii. Model

- iv. Is it a utility grade meter? (i.e. in compliance with paragraph B of rule 4901:1-10-05 of the Ohio Administrative Code)
 - v. What is the guaranteed accuracy (in %) of the meter?
-



Public Utilities Commission

Application to Commit
Combine Heat and Power System
(Mercantile Customers Only)

Case No.: ____ - ____ -EL-EEC

State of _____ :

_____, Affiant, being duly sworn according to law, deposes and says that:

1. I am the duly authorized representative of:

[insert customer or EDU company name and any applicable name(s) doing business as]

2. I have personally examined all the information contained in the foregoing application, including any exhibits and attachments. Based upon my examination and inquiry of those persons immediately responsible for obtaining the information contained in the application, I believe that the information is true, accurate and complete.

Signature of Affiant & Title

Sworn and subscribed before me this _____ day of _____, _____ Month/Year

Signature of official administering oath

Print Name and Title

My commission expires on _____

Case No.: ____-____-EL-EEC

Mercantile Customer:

Electric Utility:

Program Title or
Description:

Ohio Revised Code (O.R.C.) 4928.66 (A) (1) (a), allows that an electric utility's energy efficiency program may include a waste energy recovery (WER) system. The following application form is to be used by mercantile customers, either individually or jointly with their electric utility, to apply for commitment of such programs.

Complete a separate application for each customer program. Projects undertaken by a customer as a single program at a single location or at various locations within the same service territory should be submitted together as a single program filing, when possible. Check all boxes that are applicable to your program. For each box checked, be sure to complete all subparts of the question, and provide all requested additional information. Submittal of incomplete applications may result in a suspension of the automatic approval process or denial of the application.

Any confidential or trade secret information may be submitted to Staff on disc or via email at ee-pdr@puc.state.oh.us.

Section 1: Mercantile Customer Information

Name:

Principal address:

Address of facility for which this energy efficiency program applies:

Name and telephone number for responses to questions:

Electricity use by the customer (check the box(es) that apply):

- ☐ The customer uses more than seven hundred thousand kilowatt hours per year at the above facility. (Please attach documentation.)
- ☐ The customer is part of a national account involving multiple facilities in one or more states. (Please attach documentation.)

Section 2: Application Information

A) The customer is filing this application (choose which applies):

- ☐ Individually, without electric utility participation.
- ☐ Jointly with the electric utility.

B) The electric utility is: _____

**Section 3: Request for Cash Payment Reasonable
Arrangement (Option 1) or Exemption from Rider (Option 2)**

Under this section, check the box that applies and fill in all blanks relating to that choice.

A) The customer is applying for:

- ☐ Option 1: A cash payment reasonable arrangement.

OR

- ☐ Option 2: An exemption from the energy efficiency cost recovery mechanism implemented by the electric utility.

B) The value of the option that the customer is seeking is:

Option 1:

- ☐ A cash payment of \$_____. (Payment shall not exceed \$ 0.005 per kwh generated.)

Option 2: An exemption from payment of the electric utility's energy efficiency/peak demand reduction rider.

- ☐ An exemption from payment of the electric utility's energy efficiency/peak demand reduction rider for ____ months (not to exceed 24 months). (Attach calculations showing how this time period was determined.)

OR

- ☐ Ongoing exemption from payment of the electric utility's energy efficiency/peak demand reduction rider for an initial period of 24 months because this program is part of the customer's ongoing efficiency program. (Attach documentation that establishes the ongoing nature of the program.) In order to continue the exemption beyond the initial 24 month period, the customer will need to provide a future application establishing additional energy savings and the continuance of the organization's energy efficiency program.)

Section 4: Cost Effectiveness

The WER system is cost effective because it has a benefit/cost ratio greater than 1 using the (choose which applies):

- ☐ Total Resource Cost (TRC) Test. The calculated TRC value is: _____
(Continue to Subsection 1, then skip Subsection 2)
- ☐ Utility Cost Test (UCT) . The calculated UCT value is: _____ (Skip to Subsection 2.)

Subsection 1: TRC Test Used (please fill in all blanks).

The TRC value of the WER system is calculated by dividing the value of our avoided supply costs (generation capacity, energy, and any transmission or distribution) by the sum of our program overhead and installation costs and any incremental measure costs paid by either the customer or the electric utility.

Subsection 2: UCT Used (please fill in all blanks).

We calculated the UCT value of our WER system by dividing the value of our avoided supply costs (capacity and energy) by the costs to our electric utility (including administrative costs and incentives paid or rider exemption costs) to obtain our commitment.

Section 5: Waste Energy Recovery System Information

Additional information to clarify or supplement this Application may also be requested by Staff. Please fill out this form and attach the following supporting documentation to this application:

Criteria 1: Electricity generation (check the box(es) that apply):

Ohio Revised Code (ORC) Sections 4928.01(37) and 4928.01(38)

- ☐ The system generates electricity through recovered exhaust heat from an engine.
 - ☐ The system generates electricity through recovered exhaust heat from a manufacturing, industrial, commercial, or institutional site.
 - ☐ The system generates electricity from a reduction of pressure in a gas pipeline before gas is distributed through the pipeline with no fossil fuel addition.
-
- ☐ Provide the case number if this WER system was certified as an Ohio Renewable Energy Resource Generating Facility.

Section 6: Additional Information

Please attach the following supporting documentation to this application:

- A copy of the formal declaration or agreement that commits the program or measure to the electric utility, including:
 - 1) any confidentiality requirements associated with the agreement;
 - 2) a description of any consequences of noncompliance with the terms of the commitment;
 - 3) permission by the customer to the electric utility and Commission staff and consultants to measure and verify energy savings and/or peak-demand reductions resulting from your program; and,
 - 4) a commitment by the customer to provide an annual report on your energy savings and electric utility peak-demand reductions achieved.
 - A description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results. Additionally, identify and explain all deviations from any program measurement and verification guidelines that may be published by the Commission.
-

1) PROCESS FLOW DIAGRAM

Provide a process flow diagram.

2) SERVICE DATE

Provide the date that the system was or will be placed into service.

Provide the date that the system was retrofitted and describe the retrofit (if applicable).

3) ONE LINE ELECTRICAL DIAGRAM

Provide a one line electrical diagram.

4) MATERIALS AND ENERGY BALANCE DIAGRAM(S)

Include the flow (lb/hr), temperature (°F), pressure (psia), and enthalpy (BTU/lb) for all water, steam, combustion air, gas, and fuel streams entering and exiting the boundaries of the generating unit and of each major equipment component.

If applicable what is the reduction of pressure in the gas pipeline before gas is distributed through the pipeline.

5) HEAT RECOVERY SYSTEM

Provide the following information for each heat recovery system.

Type (e.g. stack heat exchanger, HRSG, engine jacket heat exchanger, or other)

Manufacturer

Model Number

Heat Transfer Duty

6) ELECTRICAL GENERATOR

Provide the following information for each generator.

Manufacturer / Model Number / Output Volts / Capacity

7) METERING

Provide the following information for each meter.

a. Electric Meters

i. Meter Type

ii. Manufacturer

iii. Model

iv. Is it a utility grade meter? (i.e. in compliance with paragraph B of rule 4901:1-10-05 of the Ohio Administrative Code)

v. What is the guaranteed accuracy (in %) of the meter?



Application to Commit
Waste Energy Recovery System
(Mercantile Customers Only)

Case No.: ____ - ____ -EL-EEC

State of _____ :

_____, Affiant, being duly sworn according to law, deposes and says that:

1. I am the duly authorized representative of:

[insert customer or EDU company name and any applicable name(s) doing business as]

2. I have personally examined all the information contained in the foregoing application, including any exhibits and attachments. Based upon my examination and inquiry of those persons immediately responsible for obtaining the information contained in the application, I believe that the information is true, accurate and complete.

Signature of Affiant & Title

Sworn and subscribed before me this ____ day of _____, ____ Month/Year

Signature of official administering oath

Print Name and Title

My commission expires on _____

CHP/WER Annual Savings Report Attachment

Instructions

This form is initially to be filed after the first 12 months of rider exemption or 12 months after the initial cash payment. It will then be filed annually thereafter, until the exemption has expired as explained below, in the case docket in which the exemption or cash payment was originally granted by the Commission.

Section A: Provide the historical information from the original application, as it was approved by the Commission.

Section B: Provide the updated current customer baseline, which is the customer's kWh usage plus the established energy savings over the prior three calendar years, divided by three. Divide the established savings by the current customer baseline, and show the savings as a percentage of the current baseline.

Section C: Provide this information about the performance of the combined heat and power (CHP) or Waste Energy Recovery (WER) system.

Section A

Original Case Number:

Subsequent Case Number:

Utility Name:

Customer Name:

Exemption Start Date:

Energy (kwh) Savings Established:

Original Customer Baseline:

Savings as Percentage of Baseline:

Original Exemption End Date:

Section B

Current Customer Baseline:

Savings as Percentage of Current Baseline:

Updated Exemption End Date:

Section C

- 1) State the CHP systems' kwh generated for the prior year.
- 2) State the systems' amount of thermal energy produced for the prior year.
- 3) State the overall CHP systems' efficiency level for the prior year.
- 4) Provide the date that the system was or will be placed into service.
- 5) Is this WER system certified as an Ohio Renewable Energy Resource Generating Facility?
- 6) If yes, what is the case number?
- 7) Cash payment requested \$ _____. (Payment shall not exceed \$ 0.005 per kwh generated.)

Updated Exemption End Date: Calculate a revised exemption end date, based on the use of the benchmark comparison methodology. If the revised exemption end date is later than the original exemption end date, show the original exemption end date. If the revised exemption end date is earlier than the original exemption end date, show the revised exemption end date.

If the revised exemption end date is also earlier than the filing date of this annual form, then add the phrase "Exemption Expired." The customer is no longer approved to be exempt from the rider. If the revised exemption end date occurs between the current filing date and the next annual filing date, then add the phrase "Exemption Expiration Pending." The customer will no longer be exempt from the rider on the stated date. No further annual reports are required for "Exemption Expired" or "Exemption Expiration Pending" filings.
