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 Administrative Code.	)))))	Case No. 13-651-EL-UNC
In the Matter of the Commission's Review of its Rules for the Alternative Energy Portfolio Standard Contained in Chapter 4901:1-40 of the Ohio Administrative Code.	)))))	Case No. 13-652-EL-ORD
In the Matter of the Amendment of Ohio Administrative Code Chapter 4901:1-40 regarding the Alternative Energy Portfolio Standard, to Implement Am. Sub. S.B. 315.	)))))	Case No. 12-2156-EL-ORD

COMMENTS OF DUKE ENERGY OHIO, INC.

I. Introduction

The Public Utilities Commission of Ohio (Commission) initiated Case No. 12-2156-EL-ORD on July 25, 2012. The Commission initiated Case Nos. 13-651-EL-ORD and 13-652-EL-ORD on March 15, 2013. By Entry issued on January 29, 2014 in all three proceedings, the Commission invited any person wishing to file comments to do so on February 28, 2014. Below are the comments of Duke Energy Ohio, Inc. (Duke Energy Ohio).

II. Comments

Rule 4901:1-39-01(D) Definitions

The definition of the term "Benchmark comparison method" should be made clearer and provide some explanation as to how it is used. For purposes of calculations for mercantile

exemptions the rule should provide clearer guidance as to its application. There appears to be a disconnect between the current definition and the manner in which the rules are applied.

Rule 4901:1-39(E)

This rule contains a reference to a summer on-peak period defined as June through August on weekdays between 3:00p.m. and 6:00p.m. Duke Energy Ohio suggests that this specific reference to a specific time period should be deleted. Over time, the peak could occur at an hour other than between 3:00p.m. and 6:00p.m.

Rule 4901:1-39(F)

The rule provides a definition for combined heat and power systems and refers to the fact that such systems are *designed* to achieve thermal efficiency. The Commission should consider whether it intends that systems be designed to achieve, or whether they are *actually operating* at that efficiency. And also, a question arises as to whether this should be a minimum determination or an average determination in order to inform the decision-making around such measurements.

Rule 4901:1-39(H)

This rule provides a definition for the term "cost effective," and states that it will be evaluated based upon the total resource cost test or the utility cost test *as applicable*. It is unclear under what circumstances each test will apply and who determines which is applicable. This should be made clearer in the rule.

Rule 4901:1-39(O)

This rule provides a definition for the term "independent program evaluator" and sets forth the activities that the independent program evaluator will undertake. Also, to the extent the rules provide a definition of the independent program evaluator, they should also include a definition of the utility's independent evaluator. The suggested definition for the utility

independent evaluator is the person(s) hired by an electric utility to conduct periodic impact, process and market transformation evaluations of utility programs.

Many of the activities delineated are new and duplicative of the same activities undertaken by the utilities' evaluator. The tasks of each, the independent program evaluator, and the utility evaluator should be clearly specified and allocated in a way such that there is no costly duplication. On the one hand, the duplication adds needless cost to the process and skews the M&V evaluation. Additionally, some of the activities that are duplicated involved collecting data from customers that causes these customers to experience fatigue. This can be remedied by providing that the independent program evaluator use the data that the utilities have already collected in order to produce the necessary evaluation, measurement and verification (EM&V). Another possible remedy would be to put a cost cap on the activities of the independent program evaluator relative to program costs in total.

The new provisions included in the rule as (O)(2) and (O)(3) are both new provisions that will increase costs and although they may appear reasonable, add little value to the overall process.

Given past experience with the delays in reports from the Independent Program Evaluator, the new provisions included in the rule as (O)(4) have the potential to delay a utility's recovery of its costs. In addition, a lengthy time lag will make utility program planning extremely difficult. While utility spending on DSM programs must be evaluated for prudency, lengthy time lags for ex post spending reviews increases a utility's risk of recovering its prudently incurred costs. Utilities must spend significant amounts of funds in order to meet the legislated mandates. If there is a lengthy period between the spending of funds and a determination of reasonableness, this raises the utility's risk of recovery. It would create an unreasonable situation, in which a utility will need to continue to spend at high levels for a long

period of time in order to meet the EE mandates, but have little to no idea of when its past spending will be found reasonable and hence have the ability to recover its costs. Duke Energy Ohio suggests that this continues to be a process conducted by Commission Staff and not the Independent Evaluator.

Rule 4901:1-39(S)

This rule provides a definition of the term "peak demand" which is not necessary. At a minimum, it should be made consistent with the definition for coincident peak demand above.

Rule 4901:1-39(AA)

This rule provides a definition of the term "total resource cost test" and states that it means an ex ante analysis. Previously the term included an ex post analysis. This raises a question as to whether this change is intentional. Also, to the extent the rules provide a definition of the total resource cost test, they should also include a definition of the utility cost test or UCT. The suggested definition for UCT - A benefit-cost test where benefits are avoided utility costs resulting from the demand-side management program, and costs are those incurred by the utility (including incentive costs) and excluding any direct customer costs. Also known as the Program Administrator Test (PACT).

Rule 4901:1-39(BB)

This rule defines the term "verified savings." A program evaluation is costly and time consuming so Duke Energy Ohio only updates impacts once during a portfolio interval unless there are significant changes. Clarification is needed with respect to whether the frequency of the reports that the Company receives from its program evaluator will need to be increased to an annual basis.

Rule 4901:1-39-03 Program planning requirements

This rule provides that the Assessment of Potential be filed every five years. Duke Energy Ohio agrees that a five year interval is reasonable and supports the five-year amendment. However, section (A)(2) of this rule is unclear in that it neglects to explain which cost test applies and how such determination is made. Nor does it explain who is permitted to make the determination.

For part (B)(1) of this rule, there is no explanation of which cost test to apply in determining relative cost-effectiveness. Clarity is also needed on when to apply the tests.

Part (B)(2) of this rule mentions that one must consider benefits and costs to non-participants. The previous rules only define the TRC and UCT. Is this referring to the Ratepayer Impact Measure (RIM) test? Clarity is also needed on when to apply this test.

For part (B)(7), the reference to anticipated impacts on the construction of new facilities or replacement facilities is puzzling since the electric distribution utility presumably has no control over generating facilities. This rule needs to provide further clarification/explanation regarding its intent.

With regard to part (B)(8), while Duke Energy Ohio does offer a number of programs that are similar in nature to programs offered by other electric distribution utilities, each utility has designed its programs to optimize the effectiveness of the program based on the characteristic of its customers and market conditions, so requiring coordination with other utilities may be counterproductive.

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

This rule directs a utility to continue to offer its existing portfolio of programs even after program portfolio approval has expired. Duke Energy Ohio appreciates the Commission's efforts to provide clarity around its expectations in this regard. It would be appropriate also to

clarify that existing cost recovery mechanisms are extended along with the portfolio of programs where appropriate. Also, the utilities' programs are generally managed year to year on a calendar basis. It would be helpful for the approvals and cost recovery to match with the timing of the programs.

Duke Energy Ohio also suggests extending the portfolio approval from the current three year timeframe to a five year timeframe and establishing clarity regarding the necessary flexibility for a utility to add new programs on an annual basis in order to address new technological developments and changing market conditions, as well as, the ability to remove measures or programs as needed.

Rule 4901:1-39-05(A)(1)(b) Annual performance verification

The rule states "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". Further clarification is needed. Is a mercantile customer only eligible to contribute such savings? Is the utility required to actively offer or promote commitment payments for such measures?

Rule 4901:1-39-05(B)(3)

The requirements set forth in this rule for the content included in the independent program evaluator's report, include 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 and cost recovery riders.

Duke Energy Ohio suggests that the Independent Program Evaluator's report should be used as an evaluation of the electric utility's energy efficiency portfolio plan's programs and measures solely for the purpose of determining its annual achievement for measuring compliance

and the cost-effectiveness of the program offerings, while the appropriateness and prudence of the costs included in the electric utility's energy efficiency and cost recovery riders should continue to be a process conducted by Commission Staff and not the Independent Program Evaluator. As stated in the comments for Rule 4901:1-39(O)(4), the Company is in jeopardy due to a time lag leading to a risk on recovery of costs.

In addition, Duke Energy Ohio believes that the Independent Program Evaluator should not provide evaluations of Demand Response programs. The Independent Program Evaluator review of the Demand Response programs could be in conflict with the findings of PJM evaluation which could cause duplicative and potentially inconsistent regulation, which in turn will likely result in increased confusion, administrative burden, and costs.

Rule 4901:1-39-05(D)

The rule states that 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. The Commission's Order adopting the technical reference manual (TRM) mentions that the standard of review is "just and reasonable" and that any party not using the TRM bears the burden of proof. These terms should be included in the rule as well.

Rule 4901:1-39-05(E)

The updated TRM should be updated after the hearing as this is where the utility will bear the burden of proof if using different results from the TRM.

The TRM should be updated periodically based on new information and available data and the updated TRM should be applied prospectively for future program years. Updates should not alter the level of S.B. 221 achievement, once recognized by the Commission, nor should it

alter any energy savings or designed for demand reductions already in service. In other words, updates to the TRM should be applied only on a prospective basis.

Subjecting the TRM to an annual review process would introduce an added and unnecessary level of uncertainty and cost. A more appropriate cycle would match the program planning cycle that EDUs will use as directed by the Commission for program planning purposes. An exception to this would be to create a mechanism that enables a new measure to be added to the TRM in any given year. Any proposed new measure should be finalized by September for use the following program year.

Lastly, if there are conflicts between the TRM and an approved compliance plan, the approved compliance plan should control at least for purposes of determining if an EDU should be subjected to a non-compliance finding.

Rule 4901:1-39-07(B)(3) Historical mercantile customer programs, combined heat and power, or waste energy recover systems.

A portion of Part (B)(4) of the rules states "…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". Duke needs further clarification. Is the utility required to claim impacts for mercantile projects on an as-found basis or can the utility choose to claim impacts based on the market standard to simplify the operation of mercantile programs?

Rule 4901:1-39-07(B)(4)

Part (B)(4) of the rules states that inclusion of all 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,

O.A.C. Duke Energy Ohio would like confirmation that the verification will be included in the Independent Evaluator's report and not by the Utility's Independent Evaluator.

Rule 4901:1-39-07(C)

The rule refers to the mercantile customers' commitment of energy efficiency implemented in the previous *three years*. It should be clarified to establish whether or not these are calendar years or not. And further, do the three years include the current calendar year.

Rule 4901:1-39-07(C)(3)

This rule states that no exemption from a rider will be granted unless the applicant provides an annual update to the staff and that the length of the rider exemption shall be determined by the use of the benchmark comparison method. It is unclear when a customer must submit such an update. Should such update be submitted one year after an exemption start date, on year after submission, or at the end of each year. How will the Commission facilitate the process with each applicant who is likely to be unfamiliar with such processes and requirements? The rule indicates that the staff will publish a form but this may not be sufficiently clear for a customer who is unfamiliar with the Commission's website. Much of what will be required to guide an applicant through this process will require significant attention from the Commission staff. There may be a more efficient and easy process for such applicants that can be set up when the application is first submitted so that the applicant understands the requirements.

Finally, it is unclear whether the annual update that is required will be approved under some automatic approval process or some other process.

Application to Commit Combined Heat and Power System (mercantile customer only)

In section 3(B) of this form, there is an Option 1 payment that indicates it shall not exceed $0.005 per kWh generated. A question arises as to how this kWh quantity is determined.

Is the value defined as all kWh generated by the combined heat and power (CHP) system per year. While the CHP definition ensures that overall systems will be generally efficient, this method of determining kWh does not ensure that only electrical and incremental efficiency gains (above and beyond the grid) are captured. Also, how many years can the incentive be paid? Is it for five years/or sixty months?

III. Alternative Energy Portfolio Standard (AEPS) Rules

In the Commission's Entry inviting comments for these rules, the Commission explains that the Staff is considering different options for compiling cost data related to compliance with the AEPS mandates. Proposed Rule 4901:1-40-05, sets forth Staff's proposed changes and provides details around what is to be included in the AEPS status reports that are filed annually. Duke Energy Ohio does not have any suggested changes to the language proposed in the rule but does believe that the information provided to the Commission related to costs as submitted by individual reporting entities must be kept confidential. The renewable energy credit (REC) market is competitive and company transactions are sensitive and proprietary. However, confidential information provided by all the reporting entities aggregated would not need to be protected. It is anticipated that the Commission will provide trade secret protection of this information and that the status reports filed may be filed under seal.

With respect to Rule 4901:1-40-04(D)(4), the new rule changes the time period within which a REC may be counted. Upon implementation of the rule, the Commission should consider grandfathering for any RECs held by an electric utility or an electric services company that was purchased prior to the enactment of the proposed new rule.

IV. Conclusion

Duke Energy Ohio appreciates this opportunity to provide comments to the Commission regarding changes to the energy efficiency, peak demand, renewable and advanced energy rules under review. Duke Energy Ohio respectfully requests that the Commission consider the comments made above and adopt the above recommendations in a final order.

Respectfully submitted,
Duke Energy Ohio, Inc.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/3/2014 10:40:54 AM

in

Case No(s). 13-0651-EL-ORD, 13-0652-EL-ORD, 12-2156-EL-ORD

Summary: Comments Comments of Duke Energy Ohio, Inc. electronically filed by Carys Cochern on behalf of Watts, Elizabeth H. Ms.