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-ORD
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 THE OMA ENERGY GROUP

I. INTRODUCTION

The Ohio Manufacturers' Association Energy Group (OMAEG) respectfully submits these comments on the proposed changes to certain Public Utilities Commission of Ohio (Commission) rules included in Chapter 4901:1-39, Ohio Administrative Code (O.A.C.). The rule changes addressed herein were proposed by the staff of the Commission (Staff) and were appended to the Entry filed in the above-captioned dockets on January 29, 2014 (January 29 Entry). Other issues upon which OMAEG has provided comments in this document were also posed for discussion by the Commission in the January 29 Entry. OMAEG appreciates the opportunity afforded by the Commission to provide the following comments, which address a number of the proposed rule changes and the issues potentially arising therefrom.

II. COMMENTS

A. Energy Efficiency Proposed Rule Changes – Proposed Chapter 4901:1-39, O.A.C.

Generally, Staff has proposed changes to incorporate the Mercantile Customer Pilot Program into the existing energy efficiency (EE) and peak demand reduction (PDR) rules, as directed by the Commission's July 17, 2013 Finding and Order in Case No. 10-0834-EL-POR. Staff has further made changes to the rules to incorporate combined heat and power (CHP) and waste energy recovery (WER) systems pursuant to newly enacted SB 315. Most notably, Staff has proposed changes to reporting times and procedures in the administrative review process for each electric utility's energy efficiency and peak demand reduction (collectively, EEDR) program portfolio plans to meet the requirements of Section 4928.66, Revised Code. OMAEG will be addressing certain of these proposed changes in these comments according to rule number, for purposes of administrative efficiency. Staff has also proposed a number of issues for additional consideration by interested parties. OMAEG will address those issues following its analysis of rule-specific changes.

1. Proposed Rule 4901:1-39-01 Definitions.

OMAEG notes generally that the addition of definitions for certain terms in the proposed rules, including "annualized energy savings" and "benchmark comparison method," among others, is very helpful to identify and clarify concepts that have been developed in a number of Commission proceedings to date.

Specifically, OMAEG notes that proposed paragraph (O) of the rule appears to permit Staff to serve as an independent program evaluator of the utility's EE programs for purposes of compliance with Ohio's benchmarks. To the extent Staff is used as an independent program

evaluator, OMAEG would expect that the administrative costs associated with EE evaluation, measurement, and verification (EM&V) to decrease accordingly, which would benefit customers.

2. Proposed Rule 4901:1-39-03 Program planning requirements.

Proposed Rule 4901:1-39-03 implements a maximum five-year period, in paragraph (A), between electric utilities' assessments of potential energy savings and peak-demand reductions from adoption of EE and demand response measures within their certified territories. Although electric utilities may update their assessments at less than five-year intervals if market conditions warrant, they are not required to do so. OMAEG recommends that the Commission reserve the flexibility, in this rule, to order electric utilities to update their assessments inside of the five-year required time period in the event that market conditions or technologies change significantly. Additionally, OMAEG recommends that the Commission consider PJM's capacity auction timeframe when setting program planning requirements. For purposes of bidding EE savings into PJM auctions, PJM accepts four years of EE savings from a project, with the savings being bid three years in advance. Bidding efficiency savings into PJM's capacity auctions is important in maximizing price suppression to ratepayers, as well as maximizing capacity payments to utility programs, which, in turn, reduces program costs. A five-year program approval will allow utilities to bid four years of efficiency into the PJM Base Residual Auction (BRA) for the first two years of the program; however, in later program years, the electric utilities may still have unapproved program years overlapping with the PJM BRA timeframe. OMAEG therefore recommends that the Commission retain additional flexibility in the rule to extend the electric utilities' programs if market conditions or program initiatives warrant such extensions. As a minimum threshold, OMAEG recommends that the Commission adopt a five-year program approval, with biannual

renewals that extend program approval for another five years, such that the timing of the approved programs will always coincide with PJM auctions. OMAEG also recommends that the Commission specifically recognize its continual oversight authority over the electric utilities' EEDR programs and specifically retain such right, as well as the right to adjust the program terms, as necessary.

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

Proposed Rule 4901:1-39-04 requires electric utilities to file an updated program portfolio plan no later than September 15 in the last year of an existing commission approved portfolio plan. OMAEG contends that the September 15 date is too late a date for the electric utilities to file such a plan, to the extent that the Commission will attempt to issue a ruling on the plan prior to its effective date, implementation, and corresponding cost recovery. The proposed timing affords interested parties and the Commission fewer than four months to resolve concerns related to the electric utilities' proposed program portfolio plans prior to their implementation. Accordingly, OMAEG recommends that the Commission revise the proposed deadline for filing updated program portfolio plans to no later than July 15 in order to provide interested parties and the electric utilities ample time to resolve contested issues prior to the implementation date of the plan, and so that the Commission may rule upon the plan prior to the proposed implementation date. Alternatively, the Commission could retain the existing deadline of April 15 each year, which historically has allowed ample time to resolve issues and for a Commission decision to be issued prior to implementation.[1]

[1] See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio of Programs,* Case No. 13-0431-EL-POR, Opinion and Order (December 4, 2013) and *In the Matter of the Application of Dayton Power and Light Company for Approval of its Energy Efficiency Portfolio Plan,* Case Nos. 13-0833-EL-POR, et al., Opinion and Order (December 4, 2013).

Additionally, the rule fails to establish a procedural process after the filing of comments and after the electric utility's response to address the unresolved, contested issues. If contested issues exist, an opportunity for a hearing on the program portfolio plan submitted by the electric utility and the costs associated with such plan is imperative **prior** to the implementation of its program portfolio plan and **prior** to charges being collected from customers pursuant to the electric utility's application. See Proposed Rule 4901:1-39-06 discussion below. Accordingly, OMAEG recommends that existing Rule 4901:1-39-04(E) should be retained in the new rules.

Although the proposed rule states that the electric utility's program portfolio plan is required to be cost-effective on a portfolio basis, the proposed rule eliminates (in sections (B) and (E)) the specific requirement that the electric utility must actually demonstrate through its portfolio plan filing that its plan is cost-effective. The electric utility has the burden of proof and the rules should specify that the electric utility must satisfy its burden of proof by demonstrating that its application is just and reasonable, as well as cost-effective. Accordingly, OMAEG recommends that existing Rule 4901:1-39-04(E) should be retained in the new rules.

4. Proposed Rule 4901:1-39-05 Annual performance verification

Proposed Rule 4901:1-39-05(A)(1)(b) allows the electric utilities to count energy savings from law or regulation, including, but not limited to, those savings embodied by the Energy Independence and Security Act of 2007 (EISA) or an applicable building code. In so doing, the proposed rule reverses the existing rule, which prohibits counting savings from appliance standards and building codes such as those in EISA. Proposed Rule 4901:1-39-05(A)(1)(b) also allows for a "commitment payment" from the electric utility to a customer for these efficiency resources, which is a type of incentive. OMAEG opposes counting energy savings from legal

appliance standards and building codes to satisfy the statutory benchmark outside of the mercantile self-direct program, and also opposes, outside of the mercantile self-direct program, an incentive payment or commitment payment for contribution of these "savings" for purposes of satisfying the benchmarks. Energy savings from appliance standards and building codes are already built into the marketplace, and have been for some time. No incentive is required to persuade consumers to purchase or install equipment that includes such energy saving measures. Thus, the tendering and receipt of payments for committing these types of "savings" to electric utilities to achieve their benchmarks represents a pure cost to ratepayers, with no corresponding financial benefit.

Additionally, the proposed rule appears to directly contradict the Commission's decision with regard to mercantile applications and equipment failures. In that case, the Commission specifically recognized that "unless the mercantile customer can demonstrate that it has installed more efficiency equipment than was otherwise available, no incentive should be paid...[.]" See *In the Matter of a Mercantile Application Pilot Program Regarding Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders*, Case No. 10-834-EL-EEC, Entry at ¶ 7 (September 15, 2010). Further, counting these savings towards the statutory benchmark would displace real, additive gains in energy efficiency. OMAEG therefore strongly opposes this policy reversal.

The proposed timing of applications to amend benchmarks also concerns OMAEG. Because the proposed rules move from a "pre-approval process" for portfolio plans, as currently exists, to a "post-approval scenario," electric utilities will file applications to amend their benchmarks after the compliance period. Filing such applications after the compliance period may result in a depleted effort by electric utilities to comply with their applicable benchmarks

once it has been determined that an application to amend the benchmarks will be filed for the compliance period.

Proposed Rule 4901:1-39-05(A)(1)(d) requires an electric utility to choose where the banked savings will be directed in the status report for the year in which the surplus occurs. OMAEG believes it is unnecessary to force the electric utilities to designate where the surplus will be applied in the status report filed in May following the year in which the surplus occurred. The electric utilities should have the flexibility to apply the banked savings where and when the banked savings are needed the most. Additionally, the POR collaboratives and stakeholders should assist in this decision, particularly when determining whether the banked surplus savings should be used in certain years to reduce compliance costs. Allowing the flexibility also makes sense given that the advance energy requirements do not occur until 2025.

Based upon comments received on the electric utility's annual portfolio performance report and the independent program evaluator's report, Proposed Rule 4901:1-39-05(D) requires the Commission to either hold a hearing "on the electric utility's performance in meeting its annual statutory requirements for energy efficiency and peak demand reduction" or issue an opinion and order. It is unclear exactly what the criteria are for holding a hearing, what the hearing will entail, what the result of the hearing may be, or what the remedy to customers who have paid for the electric utility's program portfolio plan may be if the electric utility's performance is deemed to be inadequate, imprudent, or unreasonable. Existing Rules 4901:1-39-06(B), (C), (D) provided for such remedy, including the assessment of a forfeiture if the electric utility had not demonstrated compliance with the approved program portfolio plan. At a minimum, the Commission should retain the remedies described in the existing rules. Also see Proposed Rule 4901:1-39-06 discussion below.

5. Proposed Rule 4901:1-39-06 Recovery mechanism

Without due process, Proposed Rule 4901:1-39-06 seems to require the electric utility to file a rate adjustment mechanism for recovery of all costs incurred in implementing its program portfolio plan with the filing of its updated plan on September 15 of each year. The rule does not require that such costs that are included in its filing for recovery only include those costs that were reasonable, prudently incurred, or associated with cost-effective programs.

Proposed Rule 4901:1-39-06 also seems to provide guaranteed recovery of lost distribution revenue and shared savings incentives for electric utilities. Historically, the question and degree of recovery have been a part of litigated and/or negotiated Commission proceedings in the electric utilities' program portfolio plan cases (POR cases). By guaranteeing recovery of lost distribution revenue and the collection of shared savings, Staff appears to be proposing to limit or impede the ability of parties to negotiate and/or litigate these issues on a case-by-case basis upon an electric utility's application to the Commission for approval.

Authorizing the recovery of all costs associated with the program portfolio plan, including the recovery of lost distribution revenue and shared savings, is particularly problematic given the elimination of the pre-approval process in the proposed rules as discussed previously (see, e.g., Proposed Rule 4901:1-39-04 discussion above). If no approval process with interested parties' involvement is required before the program is approved, these costs will be automatically included in the program and recovered by the electric utilities. Once the electric utilities recover these costs from customers, the electric utilities will argue that the Commission cannot subsequently order a refund of such costs. The "post-approval scenario" created by the rules will

be insufficient to protect customers' interests and could result in rates that will not be able to be refunded under Ohio law by the subsequent administrative process envisioned by the rules.

The application to establish such rates is the proceeding by which any rates that are to be charged to customers should be decided. It is this application process that creates a burden of proof upon the utility. Guaranteeing this type of cost recovery without requiring electric utilities to sustain their burden of proof through each application undermines the administrative review process and eliminates the rights of intervening parties to meaningfully participate in the proceedings. The proposed rule would also eliminate the Commission's discretion in awarding these types of incentives and cost recovery to electric utilities on a case-by-case basis.

Existing Rule 4901:1-39-07 requires the electric utility to file an application to seek cost recovery for these costs and requires the application to be just and reasonable. At a minimum, OMAEG recommends that the Commission retain these requirements in its new rules regarding the electric utility's cost recovery mechanism.

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

Proposed Rule 4901:1-39-07 recognizes the mercantile customer pilot program established by the Commission in Case No. 10-834-EL-POR. OMAEG is supportive of incorporating the mercantile customer pilot program into the Commission regulations, as it has been an effective, streamlined process which has resulted in the implementation of numerous EE projects. OMAEG further urges the Commission to recognize, by incorporating into its rules, the concept that mercantile customers retain their ownership rights to the EE attributes of their self-direct projects when committing the savings therefrom to an electric utility. The Commission recognized this important concept by entry in FirstEnergy's most recent POR case. See *In the Matter of the*

Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015, Case No. 12-2190-EL-POR et al., Third Entry on Rehearing a ¶ 12 (September 11, 2013) (FE POR case).

B. Other Issues of Interest to the Commission

As stated previously, the Commission seeks input from interested stakeholders on a number of issues related to the EE rules under consideration. OMAEG has addressed certain of these issues below.

1. 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.

OMAEG supports adoption of and regular updating of the Ohio TRM, for several important reasons. First, it is not clear that all of the electric utilities use the same deemed savings values for the same prescriptive measures. As a result, reported program savings may differ from utility to utility, making it difficult to benchmark cost-effectiveness of one utility program to another. Second, energy-efficient technology is evolving at a rapid pace, and thus, the content of the TRM needs to be regularly updated to ensure inclusion of new technological developments. Third, changes in federal and state appliance standards and building codes necessitate regular updates/adjustments to the TRM baselines. Accordingly, OMAEG recommends biannual updates to the Ohio TRM. Furthermore, OMAEG recommends that the Commission establish a stakeholder process for suggesting revisions and additions to the TRM.

2. Staff is soliciting feedback on the attached Combined Heat and Power and Waste Energy Recovery application templates.

OMAEG finds the cash payment of $0.005/kWh generated for CHP/WER projects through reasonable arrangements to be insufficient for manufacturers to self-finance CHP and WER projects, and out of line with typical cash payments for other energy-efficiency technologies. For example, most utilities offer $0.08/kWh incentives for custom projects for commitment of the annual savings achieved in the EE measures' first year. Further, mercantile self-direct applications typically pay 75% of the program incentive as a commitment payment. Under this scenario, custom projects such as variable frequency drive installations, compressed air projects, etc., receive $0.06/kWh for savings commitments. The $0.005/kWh CHP/WER commitment payment recommended by Staff would necessitate 12 years of project operation before a self-direct CHP project is able to recoup the cash payment level applicable in the first year of a custom project.

CHP projects share the main market barrier of these custom projects for manufacturers. Specifically, good CHP projects will have simple paybacks of approximately five to seven years, or more. Manufacturers typically have investment payback thresholds of one to three years. Thus, in order for manufacturers to realistically have the option of self-financing CHP projects, an up-front payment based on first-year savings will be necessary.

While electric utilities' programs could, in theory, offer more lucrative incentive payments, Ohio electric utilities either do not presently offer CHP programs, or the programs that are available have extremely limited budgets. Thus, the reality is that the self-direct option presents the only option for widespread CHP installation over the next

several years. Accordingly, OMAEG recommends that the Commission revise the CHP and WER application form to offer an up-front cash payment on par with typical custom projects, i.e., 75% of the custom program incentive offer. Additionally, OMAEG recommends retaining as an available choice the option for a $0.005/kWh generated ongoing payment, as that option may prove attractive to third-party financiers of CHP/WER projects.

Further, as noted by the Commission in FirstEnergy's most recent POR case, when participating in mercantile self-direct programs, mercantile customers are not required to transfer ownership of their projects' EE attributes to the utility when committing energy savings for integration into the utility's energy efficiency and peak demand reduction programs. See *In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015*, Case No. 12-2190-EL-POR et al., Third Entry on Rehearing (September 11, 2013). In view of this determination, OMAEG similarly recommends that the Commission include a section in the mercantile Application to Commit template for Combined Heat and Power Systems that appears as follows:

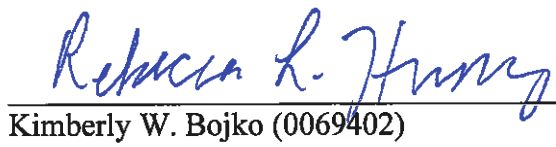
> **Section ___: Energy Efficiency Attributes**
>
> Mercantile customers retain ownership rights of their projects' energy efficiency attributes unless they voluntarily elect to transfer such attributes to the utility for integration into the utility's EE/PDR programs.
>
> If the customer filing this application voluntarily elects to commit ownership of the energy efficiency attributes of its project (in addition to the savings), check here. ☐

The addition of this simple section to the mercantile commitment application will clarify whether customers intend to maintain ownership of the energy efficiency attributes associated with their CHP projects, or commit those attributes to the electric utility.

III. CONCLUSION

OMAEG offers the foregoing comments and suggestions regarding the proposed rule changes to Chapters 4901:1-39, O.A.C. OMAEG appreciates the opportunity to comment on Ohio's EE rules, and recommends that the Commission adopt the suggestions it has discussed herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on March 3, 2014.

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Summary: Comments Of The OMA Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group