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**

INITIAL COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

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I. INTRODUCTION

As part of its five year review of the Commission's rules, the Commission's Staff made various recommendations for modifications to the rules governing energy efficiency and peak demand reduction requirements as set forth in Ohio Adm. Code 4901:1-39 and Alternative Energy Portfolio Standards as set forth in Ohio Adm. Code 4901:1-40, including certain amendments to incorporate combined heat and power ("CHP") projects and Waste Energy Recovery ("WER") projects consistent with Am. Sub. S.B. 315. By Entry dated January 29, 2014, the Commission established a comment period in which interested parties could submit comments on the proposed changes to the aforementioned rules. Pursuant to the Entry, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison

Company (collectively, "Companies") hereby submit their comments. Comments on the energy efficiency and peak demand reduction ("EEPDR") rules are set forth in Section III; comments on the Alternative Energy Portfolio Standards, in Section IV.

II. FACTORS TO CONSIDER

Pursuant to Section 119.032(C), Ohio Revised Code ('O.R.C."), the Commission must consider the following factors when it reviews the rules and determine whether the rules should be amended, rescinded or continued without change:

(1) Whether the rules should be continued, without amendment, be amended or be rescinded, taking into consideration the purpose, scope and intent of the statute under which the rule was adopted;

(2) Whether the rule needs amendment or rescission to give more flexibility at the local level;

(3) Whether the rule needs amendment to eliminate unnecessary paperwork;

(4) Whether the rule duplicates, overlaps with, or conflicts with other rules; and

(5) Whether the rule has an adverse impact on businesses, reviewing the rule as if it were a draft rule being reviewed under sections 107.52 and 107.53 of the Revised Code, and whether any such adverse impact has been eliminated or reduced.

Subparagraph (D) of Section 119.032, O.R.C. also provides:

> In making the review required under division (C) of this section, the agency shall consider the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.

Additionally, pursuant to the Governor's Executive Order 2011-01K, the Commission must:

(a) Determine the impact that a rule has on small businesses;

(b) Attempt to balance the critical objections of regulation and the cost of compliance by the regulated parties; and

(c) 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.

III. CHAPTER 4901:1-39: ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION RULES

The Companies commend the Staff on its efforts to streamline processes and clarify issues that have arisen during the more than four years the current EEPDR rules have been in effect. Generally, the Companies agree with many of the proposed changes, however, as discussed below, there are several issues that the Companies believe require further modification. The proposed rules giving rise to these issues, as well as the Companies' proposed modifications, are discussed below.

A. Rule 4901:1-39-01 Definitions

1. Subparagraph (E)

Coincident Peak Demand Savings: This definition establishes the summer peak period as "June through August on weekdays between 3:00 p.m. and 6:00 p.m." PJM references peak hours as "hours ending" 3:00 PM and 6:00 PM.[1] For consistency purposes, and in order to avoid confusion, the Companies recommend that the rule be changed to be consistent with the PJM definition by changing 3:00 PM to 2:00 PM or, alternatively, the definition should be modified to reflect "hours ending".

2. Subparagraph (H)

Cost Effective: This definition was modified to include not only the "total resource cost" ("TRC") test for purposes of determining cost effectiveness of a portfolio, program or measure, but also the utility cost test ("UCT"), "as applicable." As more fully discussed in the comments

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[1] The EE Performance Hours are between the hour ending 15:00 Eastern Prevailing Time (EPT) and the hour ending 18:00 EPT during all days from June 1 through August 31, inclusive, of such Delivery Year, that is not a weekend or federal holiday. (2014 PJM Manual 18 footnote 6 p. 53).

addressing the substantive rules, there is no indication as to when it is appropriate to apply the UCT. Without such an indication, the EDU is left guessing. Therefore, the Companies recommend that this definition be expanded to clarify that the UCT should be applied to the Mercantile Customer Self Direct program according to current practice, and then specify which, if any additional situations require the use of the UCT.

3. Subparagraph (L)

Energy Baseline: This definition was modified to remove the statement that *"The total kilowatt-hours sold shall equal the total kilowatt-hours delivered by the electric utility."* Because long term forecast reports are provided at both the customer and generation level, the Companies recommend that this statement be restored in the definition. Without the above clarification, it is unclear which forecast should be used.

4. Subparagraph (O)

Independent Program Evaluator ("IPE"): The definition of the IPE will be discussed in conjunction with proposed Rule 4901:1-39-05.

5. Subparagraph (S)

Peak demand: Peak demand is defined based on the "average maximum hourly electricity usage during the highest one hundred hours on the electric utility's system in a calendar year." The Companies believe that the determination of peak demand based on the top 100 hours is arbitrary, impractical, administratively burdensome and unnecessarily increases the cost of compliance. The Pennsylvania Public Utility Commission ("PAPUC") agrees. In 2013, the PAPUC authorized GDS Associates, Inc., its statewide program evaluator ("SWE") to evaluate the use of the Top 100 hour's methodology for determining peak demand. Based upon this study, the SWE concluded that this methodology does not adequately capture the complexities of the demand response ("DR") market and leads to the dispatch of DR resources when not cost-effective.[2] Additionally, the SWE noted that this methodology leads to predictive difficulties for the EDCs.[3] It is impossible to predict the weather with any certainty. Therefore, the EDC cannot know the actual peak hours until after the fact, thus precluding it from taking corrective action should it be short of its compliance target. Because of this possibility, an EDC must over-comply with the targets to increase the likelihood of hitting the mathematical average reductions over the top 100 hours, thus resulting in an increase in event calling, which may disrupt customer operations, and an increase in compliance costs, which results in higher customer bills.[4] Based upon these findings, the SWE recommended, and the PAPUC agreed, that the Top 100 hour methodology should be discontinued for future phases of the Pennsylvania peak demand reduction requirements.

Further the use of the Top 100 hour methodology in Ohio has no direct correlation to the actual administration of the DR requirement. As R.C. 4928.66 provides, an EDU is only required to implement peak demand reduction programs that are "designed to achieve" peak demand reductions. Thus, the program is designed to comply with the statutory DR requirements, regardless of whether the peak is determined based on the top 100 hours or another subset of hours. The result is the same. Therefore, there is no practical reason to tie peak demand to the top 100 hours and require an EDU to track it. As a result, the Companies suggest

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[2] *See* page 2 of the Amended DR Study. Docket Nos. M-2012-2289411 and M-2008-2069887, *Act 129 Demand Response Study – Final Report*, Prepared for the Pennsylvania Public Utility Commission, by GDS Associates, *et al.*, Submitted May 13, 2013, Addendum added November 1, 2013.

[3] *Id.*, page 54.

[4] Relying on facts such as this, as well as the SWE's expert opinion, the PAPUC concluded that the Top 100 hours methodology was not a cost-effective manner for purposes of determining peak demand reductions and ordered that it not be used in future EEPDR phases. Docket Nos. M-2012-2289411 and M-2008-2069887, pg. 22, Final Order, February 20, 2014.

that proposed Rule 4901:1-39-01(S) be modified to align with the PJM EE Performance Hours as follows:

> "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.~~ during the summer peak period which is defined as June through August on weekdays between 2:00 p.m. and 6:00 p.m.[5]

6. Subparagraph (X)

Shared Savings: This is a new definition. The Companies generally agree with the definition, but suggest that the references to "savings" be clarified to set the savings based on the kilowatt hours as reported for compliance purposes in the EDU's annual portfolio status report. This will avoid any confusion as to the level of savings that should be used to determine Shared Savings. As such, the Companies recommend that proposed Rule 4901:1-39-01(X) be modified as follows:

> "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 as reported in its portfolio performance report. The net savings is the difference in the present value between ~~of~~ the EDU's portfolio of avoided generation, transmission and distribution costs, and ~~minus~~ the total costs of the energy efficiency programs inclusive of each program's measurement and verification costs.

B. Rule 4901:1-39-02 – Purpose and Scope

The Companies have no comments on this proposed rule.

C. Rule 4901:1-39-03 - Program Planning Requirements

The Companies commend the Staff on their efforts to manage costs, time and resources involved in the preparation of a market potential study by only requiring that such a study be

[5] This definition is consistent with the Companies' recommendation to modify the definition of "coincident peak demand savings" as discussed in Section III (A)(1).

done once every five years, absent significant changes in the market. The Companies agree with this proposed change.

D. Rule 4901:1-39-04 Program Portfolio Plan and Filing Requirements

With the changes proposed by the Staff, the Companies believe that this rule is no longer necessary and suggest that it be removed in its entirety. In the Commission's January 29, 2014 Entry in this docket (at page 3), the Commission indicates that "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." Yet, the proposed rules require annual filings. If the plans are not going to be pre-approved by the Commission, then there should be no need for an EDU to make any filings with the Commission prior to implementing their programs. Further, Subparagraphs (D) and (E) allow parties to comment on the filed plans and allow the EDU to submit reply comments. If the Commission is not going to render an opinion on the plans, then what is the purpose of submitting comments and reply comments? If, indeed, the assumption is that there will be no pre-approval process, then there is no need for this rule and any filing requirements should be limited to those reports contemplated in Rule 4901:1-39-05.

If this is not acceptable, then the rule must be left with a pre-approval process, similar to that set forth in the current rule. Assuming the pre-approval process is retained, the Companies believe that it should be modified in order to streamline this process as described below.

Rule 4901:1-39-04 addresses the content requirements of the portfolio plan and the suggested processes for submitting comments on the portfolio plans. The Companies generally agree with the portfolio plan content requirements and, except for the mandate to host stakeholder meetings and release specific information, which is discussed below, the Companies have no comments on this subject, leaving the remainder of the comments on this rule focused on suggestions to streamline the approval process.

1. Subparagraph (A)

As currently drafted, Rule 4901:1-39-04(A) requires an EDU to maintain its currently approved portfolio plan through expiration and then "continue to implement a comprehensive energy efficiency and peak-demand reduction program portfolio…." It also establishes a one year effective period for the portfolio plans and creates an annual filing deadline of September 15th. Assuming this rule is retained, these changes to the rule create unnecessary regulatory uncertainty, administrative burdens and cost increases. Accordingly, the Companies recommend that the rule be modified consistent with the comments set forth below.

a. Continuation of Programs:

An EDU is required to "continue to implement a comprehensive energy efficiency and peak-demand reduction program portfolio…." This provision implies that the EDU is required to continue to implement programs that it may or may not wish to continue after the expiration of the existing plan, but before the next plan is approved, thus placing the EDU in a state of "limbo" for an indefinite period of time.[6] This situation could be avoided through one of several options. First, the rule could be structured with an automatic approval process for new plans that resembles that established for the mercantile projects filed pursuant to proposed Rule 4901:1-39-07. Under this scenario, the EDU's new portfolio plan would be automatically approved within a set period of time following the filing of the plan, absent an Order being issued in the case or the Commission or Attorney Examiner staying such a process. If, however, this suggestion is rejected, then the rule, at a minimum, should be modified to clarify that the EDU is only required

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[6] The Companies have experienced this state of "limbo" in both of their prior plan filings. The first plan was not approved until March 23, 2011 – fifteen months after the plan was supposed to take effect; the second, on March 20, 2013 – three and a half months after the prior plan was scheduled to expire.

to carry over programs that it retains in its next portfolio plan. There is a reason certain programs are cancelled. They should not be continued simply because the next portfolio plan has not yet been approved. And, if any of these programs are to be carried forward during the "limbo" period, the rule should be further modified to clarify that the EDU is entitled to recover the costs of those programs so as to avoid unnecessary costs and the uncertainty of cost recovery. Without such a clarification, the EDU's participation in the continued program could be chilled, thus potentially creating unnecessary transitional problems between approved plans.

b. Effective Period:

If retained, subparagraph (A) of the proposed rule also creates a portfolio plan that is in effect for one year periods. This change is administratively burdensome and will create implementation difficulties that will increase the cost of the plans for the EDU and its customers, thus negating the Staff's goal to "minimize the expense for all stakeholders in the administrative review process…." (Entry, p. 3).

These plans are complex and require a significant amount of planning and analysis. Market research, complex modeling, and benchmarking are just several of the many activities that must be done when developing a portfolio plan. Program feasibility must be determined based on cost-effectiveness of programs which depend on numerous factors, including anticipated participation rates, avoided costs, and energy and capacity savings assumptions, all of which are critical inputs into the modeling process. The requirement to submit annual updated plans will require the EDU to increase its staffing levels to accommodate such a rigorous requirement, thus increasing costs. Moreover, the State has six EDUs, all of which will be filing annual plans. Not only do the Companies have limited resources, but so too does Staff and other interested parties. Annual filings will stress these already limited resources. Finally, the contracting process is disrupted with a plan term of only one year. Under current rules, the knowledge that the plans will remain in effect for three years reduces vendor risk and creates certain synergies and other benefits that are generally reflected through reduced pricing. With only a one year effective period, vendors have shorter expected cash flow streams and resource utilization, thus increasing the vendor's risk. This risk requires higher risk premiums to be incorporated into pricing, thus increasing the overall cost of the plan.

Based on the foregoing, the Companies recommend that the current three year effective period remain in place and the proposed one year effective period be rejected. The three year period is long enough to provide reasonable program planning and implementation timelines, but also short enough for plans to be updated based on changing market conditions.

c. Filing Deadline:

The rule as currently proposed also sets a filing deadline for the next portfolio plan of no later than September 15th of the year the currently approved portfolio plan is schedule to expire. Regardless of the length of time that the portfolio plan is in effect, this filing deadline is too late in the year for the EDU to have sufficient time to finalize arrangements for a seamless transition to the next portfolio plan.

Under the rule as currently proposed, if an EDU files its portfolio plan on September 15, parties would be permitted to file objections to the plan through October 15. (Rule 4901:1-39-04(D)). The EDU would then have until November 14 to submit replies to the comments received. (*Id.* at (E)). Final terms with third party suppliers, vendors and program managers cannot be set unless and until the EDU knows that its plan is approved (assuring that there is an approval process). Assuming that the Commission takes thirty days after the submission of the EDU's reply comments to issue its order, the order would not be issued until mid-December, without factoring in a potential need for an evidentiary hearing or the submission of applications for rehearing. Without certainty as to the scope of the plan as approved, it will be extremely difficult to finalize arrangements for program implementation activities prior to the expiration of the then current plan. Further, the rule as currently proposed does not factor in time for discovery or technical conferences. As more fully discussed in Section 4 below, these issues should also be addressed in the rule. The Commission should not adopt the September 15 filing date for these reasons.

2. Subparagraph (B)

This portion of the rule mirrors the prior rule with only minor changes. The Companies do not take issue with this provision, except to the extent that the new definition of "cost effective" set forth in proposed Rule 4901:1-39-01(H) is applied. As explained in Section III A(2), *supra*, the new definition of cost effectiveness not only incorporates the TRC test, but also incorporates a scenario in which the UCT is used "as applicable". Because the current definition of cost effective does not specify when the UCT is to be applied, it renders Rule 4901:1-39-04(B) vague and unmanageable. Therefore, either proposed Rule 4901:1-39-04(B) must be clarified to specify that only the TRC should be used for purposes of determining cost effectiveness under this rule, or the definition of cost effectiveness as set forth in proposed Rule 4901:1-39-01(H) must be modified to clarify exactly when the UCT should be utilized for purposes of determining cost effectiveness.

3. Subparagraph (C)(2)

This provision requires an EDU to host stakeholder meetings at least quarterly and mandates that certain information, including program cost information be provided during these meetings. This provision exceeds the Commission's authority and interferes with the daily management of the EDU. Nothing in the statutes require an EDU to host *any* stakeholder meetings and certainly nothing in any statute requires a utility to divulge operational and cost information to third parties -- especially when these third parties are not bound by any confidentiality requirements.

It is the EDU that is obligated under R.C. 4928.66 to meet certain statutory energy efficiency and peak demand reduction benchmarks. It is the EDU that is responsible for designing programs that comply with the statutes, consistent with its corporate philosophy. And, it is the EDU that is subject to potential forfeitures if it fails to meet these benchmarks. Therefore, while the Companies are certainly not opposed to meeting with interested third parties to discuss potential and existing issues, it is the EDU that should be responsible for setting a reasonable stakeholder meeting schedule and determining the content thereof. This approach is consistent with the provision set forth in Rule 4901:1-39-03(D) which indicates that an EDU "*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" (emphasis added).

In light of the foregoing, there is no need for the Commission to dictate either the frequency or content of stakeholder meetings and, accordingly, these requirements should be removed from the rule. However, in order to provide interested parties with the opportunity to suggest modifications to the portfolio plan prior to filing, and in an effort to streamline the discovery process, the Companies are not opposed to a modification to the rule which would require the EDU to host (i) a special meeting no later than thirty days prior to the filing of the portfolio plan in which the EDU provides to interested parties pertinent information related to the plan that it intends to file; and (ii) one technical conference to be held within fifteen days after such filing. Both of these meetings should streamline the filing and approval process.

4. Subparagraphs (D) and (E)

These provisions set forth the process to be followed should a party have objections to the portfolio plan. As a preliminary matter, it appears that the rule is based on a premise that plans will be filed annually. As has been demonstrated above, such a short effective period is impractical and unnecessarily increases the cost of compliance for the EDU and its customers. If the Commission rightfully rejects the annual filing concept and, instead, adopts continuation of the three year plan cycle, then a hearing process should be incorporated into the rule, but, unlike today, the hearing should be optional at the discretion of the Commission and only after the filing of comments. The comment provision should be further modified to further streamline the approval process by limiting the scope of issues in any hearing to only those raised in comments addressing matters contained in the plan.[7] These issues, along with several minor observations on other aspects of the rule, are discussed below.

The rule as currently proposed only provides for a comment period. It allows interested parties to submit comments to the proposed plan within thirty days of the filing of such plan and allows the EDU to submit reply comments thirty days thereafter. But, because Staff designed this rule with no pre-approval process, the rule makes no provision for a hearing or other vehicle for resolution of disputed issues raised in the comments. Therefore, if there is to be a pre-approval process, the rule should, at a minimum, be modified to incorporate a provision similar to that found in Rule 4901:1-39-05(D) which requires the Commission to either schedule a hearing or issue its order (preferably with an automatic approval if not stayed or ruled on by the Commission or Attorney Examiner within 60 days of the submission of reply comments by the

[7] This is consistent with a similar concept incorporated into base rate cases.

electric utility). In an effort to streamline the approval process and narrow the scope of any evidentiary hearing, the rule should be further modified to indicate that only issues raised in the comments would be addressed in a hearing, should one be deemed necessary. By incorporating this provision, the number of issues raised during hearing, the discovery needed to resolve such issues and the issues that must be briefed by the parties and addressed by the Commission should be more focused, thereby helping to streamline the approval process.

Finally, in order to further streamline the approval process, the rule should set forth a procedural schedule for any hearing, should one be deemed necessary. With the procedural schedule included in the rule, all parties are on notice and can plan accordingly, thus minimizing the need for continuances that further delay the issuance of an order.[8] Further, because discovery should be completed and positions developed prior to the submission of comments, there should be no need for an extended period for the drafting of testimony. Accordingly, the Companies suggest that the hearing commence within thirty days of the Commission finding the need for one.

5. Summary

In sum, if there is to be no pre-approval process, then there should be no filing requirement and Rule 4901:1-39-04 should be eliminated in its entirety. If, however, the Commission retains the pre-approval process, then Rule 4901:1-39-04 should be modified to allow portfolio plans to be in effect for three years. Because of the three year effective period, the rule should allow for an evidentiary hearing at the discretion of the Commission or the Attorney Examiner. However, in an effort to streamline the approval process, the rule should be modified to (i) require comments and reply comments to be filed as proposed in the rule, with

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[8] Attorney Examiners or the Commission itself would retain authority to modify the procedural schedule for good cause shown.

such comments establishing the scope of the proceeding; (ii) require a special meeting in which the EDU provides interested parties with a preview of the portfolio plan so that the parties have time to try to resolve issues that otherwise may be subject to litigation; (iii) require a technical conference shortly after the plan is filed so as to potentially minimize the need for discovery; and (iv) establish a procedural schedule so that parties can plan accordingly to minimize the need for continuances. To further stream-line the process, there should be an automatic approval process, subject to a stay at the discretion of the Commission or Attorney Examiner. Finally because of the modifications to the procedural schedule, the filing deadline should be changed from September 15th to April 30th. If the recommendations set forth above are adopted, the procedural schedule would be as follows:

▪ Preview meeting	No later than March 31
▪ Filing	No later than April 30
▪ Technical Conference	No later than May 15
▪ Comments	No later than June 15
▪ Reply Comments	No later than July 15
▪ Commission issues its order	No later than September 15
▪ If a hearing is necessary	Commences no later than October 15

In light of the foregoing, the Companies recommend that proposed Rule 4901:1-39-04 either be eliminated in its entirety, or be modified as described above and as set forth on attached Exhibit A.

E. Rule 4901:1-39-05 Annual performance verification / Rule 4901:1-39-01(O) Definition of Independent Program Evaluator

The purpose of proposed rule 4901:1-39-05 is to establish the content to be included in an EDU's annual status report. It also establishes the scope of work to be performed by the

Independent Program Evaluator ("IPE") and the content of the IPE's report. Except for a minor issue involving amendments to benchmarks and the process for changing the program mix or budgets, both of which are discussed below, the Companies generally agree with the content requirements and have no further comments on this issue. However, as more fully discussed below, the IPE's scope of work as set forth in this rule creates redundancies that unnecessarily increase the cost of compliance for the Companies and their customers, or is beyond the scope of authority that can be conveyed upon a consultant. Accordingly, the proposed rule should be modified consistent with the following comments:

1. Subparagraph (A)(1)(e)

Subparagraph A(1)(e) in the proposed rule accommodates the statutory provision set forth in R.C. 4928.66(A)(2)(b) that allows an EDU to seek an amendment to its benchmark requirements under certain specific circumstances. This section of the rule carries over from the current rule the following provision: "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." The Companies propose that this provision be removed from the rule because the reference is irrelevant to actual events. R.C. 4928.66(A)(1)(b) only requires an EDU to develop programs that are "designed to achieve" reductions in peak demand. Therefore, if an EDU has an approved plan that includes peak demand reduction provisions that are designed to achieve the benchmarks, references to "actual performance", "forecasted peak demand" and "forecasted peak prices" are each irrelevant to actual compliance results, which can be counted regardless of any of these factors, provided that the DR programs are *designed to achieve* reductions in peak demand should conditions warrant. In other words, based upon the plain language of the statute related to peak demand reduction benchmarks, particularly when compared to the statutory language for energy efficiency benchmarks, if an EDU has an approved plan that includes peak demand reduction provisions that are designed to achieve the benchmarks, no waiver is needed. In light of this, Rule 4901:1-39-05(A)(1)(e) should be modified as follows:

> 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. Subparagraph (A)(2)(c)

In the proposed rule, Staff removed the following provision from Section (A)(2):

> (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 percent 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.

The Companies recommend that this provision be reinserted with minor modifications. While the program assessment provision may not be necessary if portfolio plans are filed on an annual basis, it is certainly necessary if the Commission adopts the recommendation to retain the three year plan cycle, so that plans for programs during the interim can be assessed and any modifications that may be necessary during the interim periods can be identified for consideration. Further, regardless of the length of the effective period of the portfolio plan, there may be a need to transfer funds due to unanticipated changes in demands for various programs. Therefore, the provision that allows for budget transfers within classes should be reinstated, so as to allow a streamlined process for minor changes to budgets. However, because such transfers only occur intra-class, thus having no impact on rider rates, the Companies believe that the rule should be further modified to remove the percentage cap on the amount of funds that can be transferred through this process to provide more flexibility to achieve the benchmarks in the most efficient and effective manner. If these recommendations are adopted the portion of the rule dealing with budget transfer requests should be modified as follows:

> 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.~~

3. Subparagraph (B)

Subparagraph (B) of this proposed rule addresses the content of the independent program evaluator report. The Companies believe that the scope of this report, as well as the scope of duties of the IPE are overly broad and unnecessarily increase costs of compliance through the duplication of efforts already being undertaken by others. Accordingly, the Companies believe that this section of the rule, as well as the definition of the IPE as set forth in proposed Rule 4901:1-39-01(O), should be revised consistent with the comments set forth below.

The Companies file EEPDR portfolio plans that are evaluated not only by the Commission but also by other interested parties through either litigation or, if the modifications to Rule 4901:1-39-04 are adopted, a comment period. The Companies implement all of the major programs through third party administrators who regularly evaluate the programs and provide suggestions for improvements to these programs. The Companies submit annual reports, pursuant to this rule (Rule 4901:1-39-05(A)), in which they are required to submit an evaluation, measurement and verification ("EM&V") 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." Rule 4901:1-39-05(A)(2)(b). The EM&V report must also 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." *Id.* As evidenced in each of the State's EDU annual status report filings, each EDU hires an independent consultant to perform the required analyses and prepare the EM&V report. Specifically, the Companies retained ADM Associates, Inc. to do these tasks on their behalf.

Under proposed Rule 4901:1-39-05(B)(3), the IPE is to submit a report on, among other things, "[a]n evaluation of the [EDU'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". Inasmuch as an independent third party already performs each of these tasks, other than evaluating the appropriateness of all costs included in the EDU's rider, there is no need for the IPE to re-perform identical evaluations. Instead the IPE's role should be to verify the results as reported by the EDUs. Accordingly, its work should be done after the EDUs file their annual performance reports.

Moreover, it is the Commission's role to determine the justness and reasonableness of an EDU's costs included in its rider – a role that should not, and cannot, be delegated to a third party consultant. Even assuming that this was not the case, there would be no need for such a review through a docket in which the EDU reports the results of its energy efficiency and peak demand reduction programs, because cost issues are addressed through other dockets. For example, budgets for all EEPDR programs are included in the portfolio plan at the time it is filed. These plans and, thus, the proposed program budgets, are subject to review by both the Commission as well as other interested parties. The EDU is also required to submit an application to change the rider charge on a periodic basis. Accordingly, any review of an EDU's compliance costs by the IPE would not only be improper, but also redundant.

In order to minimize compliance costs, redundant activities should be eliminated. Therefore, the IPE's scope of responsibility, as well as its report, should be limited to the verification function wherein it verifies the accuracy of the information provided by the EDUs and their independent consultants in the portfolio status reports. This approach is consistent with the Commission's responsibility as set forth in R.C. 4928.66(B) which provides in pertinent part: "... the public utilities commission shall produce and docket at the commission an annual report containing the results of its *verification* of the annual *levels* of energy efficiency and peak demand reductions *achieved by each electric distribution utility ....*" (Emphasis added.)

4. Subparagraphs (B)(4) and (E)

Rule 4901:1-39-05(B)(4) also empowers the IPE to recommend revisions to the technical reference manual ("TRM"), while Subparagraph (E) authorizes the Staff to order the IPE to submit a revised TRM. Again, a docket in which the focus is on the historic results of an EDU's EEPDR programs is not the place to amend the TRM. This is a subject totally different from historic EEPDR results and, accordingly, it should be addressed in a separate docket in which any interested party has the opportunity to participate in workshops, provide comments, and focus on issues specific to the TRM. As evidenced by the comments received in Docket No. 09-512-GE-UNC ("the TRM Docket"), the TRM involves complex issues with a number of viewpoints. In order to give it its proper due, it should not be buried as an appendix to a report in which the EDU's annual EEPDR results are verified. Accordingly, Subparagraph (B)(4) and related Subparagraph (E) should be deleted in their entirety.

Notwithstanding the foregoing, and regardless of where the TRM is addressed, any changes to the TRM should be applied on a prospective basis only. Reviews of the TRM should coincide with the period of time that the portfolio plans should be in effect, given that these plans are based on the TRM values in effect at the time the plans are designed, and should remain unchanged for the duration of the time that the then current portfolio plan is in effect. If changes are made to TRM values and required to be applied after the portfolio plans are approved and implemented, the portfolio program mix and budgets may have to be rebalanced, which may require an amended plan to be filed and approved through the standard approval process. Such a significant change could affect the EDU's ability to comply with the statutory EEPDR requirements and could raise due process concerns.

In light of the foregoing, proposed Rule 4901:1-39-05 should be modified as follows:

(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 <u>the following information:</u>~~, but not limited to the following~~:

(1) A description of the independent program evaluator's activities, analyses, and conclusions in the ~~monitoring, verifying, and evaluating~~ <u>verification of</u> 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.~~

(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.~~

5. Subparagraph (O) of Rule 4901:1-39-01

The definition of the Independent Program Evaluator incorporates many of the activities included in Rule 4901:1-39-05(B)(3). It also allows for a member of the Commission staff to be the IPE. If the changes to Rule 4901:1-39-05(B)(3) are adopted, then the definition of the IPE must be modified to be consistent with the new scope of the IPE's duties. The Companies also recommend that the provision allowing a member of the Commission staff to be the IPE be removed. If the IPE is truly to be independent, then the IPE cannot be an employee of the Commission. To do otherwise negates the concept of independence.

Based on the foregoing, the Companies recommend that Rule 4901:1-39-01(O) be modified as follows:

(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.

~~(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.[9]

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

F. Rule 4901:1-39-06 Recovery Mechanism

The Companies have no comments on this proposed rule.

G. Rule 4901:1-39-07 Historic Mercantile Customer Programs, Combined Heat and Power or Waste Energy Recovery Systems

This rule addresses the mercantile self direct program, with modifications to accommodate CHP and WER projects consistent with S.B. 315. The Companies recognize that the Commission Staff attempted to codify through this rule the mercantile customer pilot program established in Case No. 10-834-EL-POR. (Entry, p. 3). Generally, the Companies agree with the proposed rule. However, as more fully discussed below, several of the provisions included in this rule apply universally and, accordingly, they should not be housed in proposed

[9] The Companies do not oppose this task being within the scope of the IPE's duties. However, the Companies submit that such a task should be performed in a separate docket.

Rule 4901:1-39-07 -- a rule that is specific to mercantile self direct projects, CHP projects and WER projects. The Staff also designed two application templates -- one for CHP projects; the other, for WER projects which, as also discussed below, are somewhat premature in their development.

1. Subparagraph (B)

Subparagraph (B) provides:

(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 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 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.

This provision was originally included in Rule 4901:1-39-05 under the current EEPDR rules, but applied not only to mercantile customer self direct projects, but also to non-mercantile, utility sponsored programs.[10] It is unclear why this provision was modified to only allow mercantile customer programs to count towards both the energy efficiency and peak demand

[10] Original Rule 4901:1-39-05(E) provides in pertinent part: "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."

reduction benchmarks set forth in R.C. 4928.66. Nothing in R.C. 4928.66 precludes one program from counting towards both benchmarks and, accordingly, the Commission rule should not do so either. Therefore, this provision must either be left in tact consistent with the current rule and moved back under Rule 4901:1-39-05, or, this portion of the rule should be left under proposed Rule 4901:1-39-07, with a similar rule for non-mercantile customer projects being added to proposed Rule 4901:1-39-05.

2. Subparagraph (C)(2)

Subparagraph (C)(2) addresses the treatment of behavioral energy efficiency projects and allows counting of the results of such programs for one year, unless subsequent applications for continuation are submitted. This provision also allows the savings to be rendered permanent after five consecutive years of approved applications, with the amount of savings determined based on the lowest level reported during the five years. The Companies generally agree with the concept, but suggest that the filing requirement be limited to only three years, rather than five, with the amount of savings, once rendered permanent, being determined based on the average reported savings during the annual reporting period. The use of a three year period is consistent with the Commission's requirement for an EDU to determine its baseline using a rolling three year average, and, three years should be a sufficient time frame in which to demonstrate that the behavior has been entrenched in normal daily routines and processes. Moreover, the use of an average smoothes out any anomalies that may occur during the reporting periods. Accordingly, Rule 4901:1-39-07(C)(2) should be modified as follows:

> (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~~ <u>three</u> 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 three ~~five~~ year period, the ~~lowest~~ average of the energy savings levels reported during the three years shall be counted as permanent by the electric utility, and no additional payments will be made to the customer.

3. CHP And WER Templates

The Commission Staff developed two standard templates for use with applications involving CHP and WER systems. The Companies commend the Staff's efforts, but are concerned that Rule 4901:1-39-07 does not recognize the differences between basic mercantile self direct programs and the CHP and WER technology. At a minimum, the Companies believe that provisions surrounding the calculation of efficiency savings and incentive levels should be added. These, along with suggested modifications to the templates themselves are more fully discussed below.

a. Savings Determination

While Rule 4901:1-39-07 generally addresses the processes and procedures to be followed when submitting a mercantile self direct program, including those related to either CHP or WER technology, the rule has no provisions specific to these technologies even though they differ in several distinct ways from other mercantile self direct projects subject to the rule. For example, mercantile self direct projects usually involve a reduction in energy consumption. Yet, both the CHP and the WER technology primarily displace other energy. In a Commission workshop, the Natural Resources Defense Council ("NRDC") proposed a methodology to determine savings created through CHP and WER projects. It is unclear whether Staff is contemplating using such a methodology for these types of projects, but because of the aforementioned distinction, the Companies submit that the NRDC's proposed methodology is not applicable for CHP and WER projects. Accordingly, a new provision should be added to the rule that describes how savings levels are to be determined for these technologies. Because a

CHP system mostly displaces energy, rather than actually reduces customer energy consumption, the Companies suggest that the savings be derived from the difference in efficiency of the combined heat and power system vis-à-vis the grid generating source that is being displaced, after factoring in transmission and distribution losses. The grid supplied electricity should be based on the annual average heat rate of generation units supplying power and should be regularly updated, no less than annually, to account for fundamental differences resulting from factors such as coal plant retirements or the addition of new gas and other generation. The efficiency of the combined heat and power system should also take into account the addition of any auxiliary equipment requirements.

Savings for a WER system should be determined based on the electrical energy converted from the waste heat recovered net of any additional power required to run auxiliary support systems.

b. Incentive Levels

The template must be revised to indicate the length of time during which the cash option is to be paid. The Companies recommend that if the "not to exceed $0.005" level is used, then the payment of this incentive should be limited to a specific number of years. Otherwise, a situation similar to that created through PURPA, where utilities paid for generation in excess of market prices for prolonged periods, may occur. Additionally, a provision should be added to the rule that expressly states that no incentive payments will be made until the CHP or WER project is certified, fully operational and committed to the EDU.

c. Template Structure

Below are specific suggestions for the templates themselves:

- <u>Section 3:</u> There is a reference to a reasonable arrangement and an exemption from paying the rider charges. This presumes that the customer is familiar with the statutes, which may or may not be the case. The template should make reference to the statutory provisions giving rise to these options.

- Section 4: This provision gives a choice of calculating the project's cost effectiveness under either the TRC test or UCT. In order to evaluate all projects consistently, only one test should be designated. Further, both of the designated tests require utility cost information and avoided cost information, neither of which is generally readily available to customers. Therefore, for both practical and consistency reasons, a rule should be put in place to indicate the test to be used and the nature and vintage of information that should be provided by the EDU.

- General: There is no reference in Rule 4901:1-39-07 that references the templates.

- General: Nowhere on the application template is there a space to indicate the level of kWh or kW savings anticipated from the project. This should be in the summary information.

H. Additional Rule Language Needed to Clarify What May Be Counted for Benchmark Purposes

While the rules as proposed set forth in Chapter 4901:1-39 provide several specific examples of how savings should be determined in certain circumstances, the Companies do not believe that the rules go far enough. Therefore, the Companies recommend that the Commission include in its rules a listing of the mechanisms and approaches that may be relied upon by the Companies and other EDUs when attempting to determine if they have met the EEPDR benchmarks, which is even more critical should the Commission adopt the approach recommended by Staff and eliminate the need for pre-approval of the proposed EEPDR portfolio plans. More specifically, the Companies recommend that new rule language be included in Chapter 4901:1-39 to clarify that the following provisions shall apply for purposes of measuring compliance with the energy efficiency and peak demand reduction requirements regardless of the intent or origin of the improvement: (i) energy efficiency savings and peak demand reduction that are achieved, in whole or in part, as a result of funding provided from the universal service fund established by section 4928.51 of the Revised Code shall count; (ii) energy efficiency savings and peak demand reductions shall be measured on the higher of an as found or deemed basis; (iii) both the energy efficiency savings and peak demand reduction shall be counted on a gross savings basis; (iv) for purposes of measuring compliance, energy efficiency and peak demand reduction requirements may be met on an aggregated basis for electric distribution utilities in the same holding company system; (v) energy efficiency savings and peak demand reduction amounts approved in a plan shall continue to be counted toward achieving the energy efficiency and peak demand reduction requirements as long as the requirements remain in effect; (vi) energy efficiency savings and peak demand reduction that are physically located within the certified territory of the electric distribution utility and are bid into the capacity auctions, as energy efficiency resources and demand response resources, of a regional transmission organization operating in Ohio in compliance with section 4928.12 of the Revised Code shall count toward the peak demand reduction requirements; and, (vii) if proposed by the EDU, energy efficiency savings and peak demand reductions associated with heat rate and other efficiency or energy intensity improvements achieved from electric generating plants that existed as of January 1, 2013, and are either located within an electric distribution utility's certified territory, or owned and operated by an affiliate of the electric distribution utility as long as the generation plant was previously owned, in whole or in part, by an electric distribution utility whose certified territory is in this state. The Commission should also clarify in its rules that it will not require an electric distribution utility to achieve energy efficiency savings or peak demand reduction in excess of the energy efficiency and peak demand reduction requirements in R.C. 4928.66.

IV. <u>CHAPTER 4901:1-40: ALTERNATIVE ENERGY RULES</u>

A. Rule 4901:1-40-01: Definitions

1. Subparagraph (I): Definition of "Deliverable into this state"

Proposed Rule 4901:1-40-01(I) defines "deliverable into this state" as:

> the electricity originates from a facility within a state contiguous to Ohio. It may also include electricity originating from other locations, pending a demonstration that the electricity ~~could be~~ is physically delivered ~~deliverable~~ to the state.

The Companies recommend revising "Deliverable into this state" to make the definition more efficient to include electricity "originating from a source located in MISO or PJM." Both PJM and MISO require a study to be performed prior to the interconnection of any generation source they operate. Those Regional Transmission Organizations ("RTOs") work as a coordinated system and serve load from a large pool of resources across their systems in the most economic way available while accounting for transmission or other operational issues. It is unnecessary for other studies to be done if it satisfies MISO and PJM's requirements. This will reduce administrative costs for potential suppliers, remove a potential barrier to entry and streamline the process for generators to enter the Ohio market. For those reasons, the Companies recommend that the Commission amend Rule 4901:1-40-01(I) to read:

> the electricity originates from a facility within a state contiguous to Ohio. It may also include electricity ~~originating from other locations, pending a demonstration that the electricity could be is physically delivered deliverable to the state~~ interconnected with an electric transmission company or electric utility that is a member of the PJM Interconnection, LLC, or the Mid-West Independent Transmission System, Inc.

2. Subparagraph (M): Definition of "Double-counting"

The Companies recommend deletion of Subparagraph (M)(2) in the definition of "Double-counting." First, there is no statutory authorization to prohibit using a single resource (such as a solar panel) to meet more than one requirement (such as those pertaining to energy efficiency and renewable energy). Double-counting cannot be defined in such a way that will create a requirement not authorized by the controlling statute. Second, notwithstanding the lack of statutory authority, no justification has been provided to support this limitation. The statutory goals are not mutually exclusive but support one another, and if more requirements can be satisfied with less investment and therefore less costs to the customer, that should be encouraged, not discouraged.

Third, this rule prevents the inclusion of energy savings to meet the goals of R.C. 4928.66, if the energy efficiency savings arose from an advanced energy resource under R.C. 4928.64. This rule directly contradicts R.C. 4928.64 because the definition of "advanced energy resource" in R.C. 4928.01(A)(34)(g) specifically includes "demand-side management and energy efficiency improvements", which clearly demonstrates a legislative intent to include energy efficiency savings for both energy efficiency and advanced energy benchmarks. The Commission cannot, by rule, ignore these statutory mandates. In fact, S.B. 221 includes goals for electric utilities to incorporate different types of energy resources into their portfolios. Therefore, the Commission's rule that precludes inclusion of projects for both energy efficiency/demand reduction and advanced energy resources is contrary to the plain language of the statute and the clear intent of the legislature, especially since customers would benefit by the reduced costs to achieve the benchmarks under both R.C. 4928.64 and R.C. 4928.66 goals. For all of these reasons, Subparagraph (M)(2) should be removed.

B. Rule 4901:1-40-03(B)(3): Definition of New Economic Growth

Staff requested comments on adding a definition of "new economic growth" in terms of Rule 4901:1-40-03(B)(3). Staff specifically wanted to know what should constitute "economic growth" and for what duration should it be considered "new." The Companies do not believe a definition for new economic growth is necessary. In an application to adjust the baseline as indicated in Rule 4901:1-40-03(B)(3), an EDU can provide justification for its adjustment including what constitutes the new economic growth that required an adjustment of the baseline. What is considered new economic growth should be determined on a case by case basis as each

EDU's service territory is different. As such, a "one-size-fits-all" definition would not be feasible. For those reasons, the Companies do not believe a definition of "new economic growth" is necessary.

C. Rule 4901:1-40-04: Qualified Resources

1. Subparagraph (C)

Proposed Subparagraph (C) places a limitation on the mercantile customer sited resources that an EDU may count for purposes of complying with the 25% statutory alternative energy requirement. Thus, if a resource has attributes that satisfy the prerequisites for counting towards multiple benchmarks - those found in R.C. 4928.66 and those found in R.C. 4928.64 – Subparagraph (C) requires the utility to choose only one of the benchmarks for which the resource will count. Not only is this arbitrary restriction contrary to the plain meaning of both R.C. 4928.64 and R.C. 4928.66, as discussed above, but it also unnecessarily increases the costs of compliance, which in turn unnecessarily increases customer rates. This proposed rule, which seeks to implement a universal double counting restriction on all mercantile customer projects, technologies and processes, should be rejected as contrary to the statute and legislative intent. For those reasons, the Commission should delete the following language from Subparagraph (C): "provided that it does not constitute double-counting for any other regulatory requirement…"

2. Subparagraph (D)(2)

Staff reorganized Rule 4901:1-40-04(D) and added Subparagraph (D)(2) to outline the requirements a facility must meet to become certified. The Companies recommend deleting the words "at least" because this phrase is vague and ambiguous as to what other conditions the Commission may require for a facility to become certified. As long as a facility meets the requirements contained in Subparagraph (D)(2), it should be certified and further requirements should not be required.

3. Subparagraph (D)(4)

Staff amended Subparagraph (D)(4) to clarify that 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. In the Entry, Staff also requested feedback as to if this change would warrant any consideration of grandfathering. As an initial matter, the Companies agree that this Subparagraph needed improvement. However, the Companies believe that this Subparagraph should be clarified to include the compliance year that the renewable energy is actually generated and the five calendar years after the REC is created by the applicable attribute tracking system.

Regarding Staff's inquiry about grandfathering, the Companies believe that the rule should include a grandfather clause in that the new rule does not apply until the year after the compliance year in which the rule comes into effect. Given that the current rule allows EDUs to use the REC for compliance "any time in the five calendar years following the date of its initial purchase or acquisition," some discrepancy may exist on what RECs may count after the rule comes into effect. Allowing a one year "grace period" will allow EDUs to utilize for compliance purposes RECs that may no longer qualify under amended Subparagraph (D)(4) rather than wasting those RECs. Therefore, the Companies recommend that the Commission amend Subparagraph (D)(4) as follows:

> 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~~ in the year that the renewable energy is actually generated and anytime in the five calendar years following the date of the REC's creation by the applicable attribute tracking system. This provision does not apply until the compliance year following the compliance year in which this rule goes into effect.

4. Subparagraph (D)(5)

For the reasons discussed in Section (A)(2) above, the Commission should delete the prohibition against double-counting.

D. Rule 4901:1-40-05(A)(4): Alternative Energy Status Reports

1. Confidentiality of Information

Staff has proposed amending Rule 4901:1-40-05 to include several new items in an alternative energy status report. Staff also is seeking comments on whether to include the average cost information per REC in this rule to assist Staff in its annual report to the General Assembly as required by R.C. 4928.64(D)(1)(b). Staff indicates that the proposed language in this rule is intended to protect confidential information. However, the language of Subparagraph (A)(4) indicates that the information shall be made publicly available. While the Companies do not believe that Subparagraphs (A)(4) (a), (c), (d), (e) and (f) must be confidential, the Companies strenuously urge the Commission to maintain confidentiality of Subparagraph (A)(4)(b) as it has historically done.

For example, in Case Nos. 12-2668-EL-ACP and 13-1909-EL-ACP, the Attorney Examiner directed EDUs and electric services companies to file average cost data for RECs retired in a particular year and invited parties to file that information with a motion for protective order if warranted.[11] Subsequently, the motions for protective order were granted and confidential status was given to that information.[12] Moreover, this type of information was protected from disclosure in Case No. 11-5201-EL-RDR. The Companies believe that average

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[11] Case No. 13-1909-EL-ACP, Entry at ¶5 (October 29, 2013); Case No. 12-2668-EL-ACT, Entry at ¶4 (October 18, 2012).

[12] Case No. 13-1909-EL-ACP, Entry at ¶¶ 4-5 (January 14, 2014); Case No. 12-2668-EL-ACP, Entry at ¶¶ 6-8 (October 29, 2013).

REC cost data and REC cost data should be protected from public disclosure as a trade secret.[13] The cost data would reveal the Companies' purchase information (and the pricing information of third party suppliers) which they consider proprietary and confidential. Further, some third party suppliers may not participate in the Ohio market if their pricing information is disclosed to the public. Reducing the number of suppliers in the Ohio market could lead to higher prices for customers. Public disclosure of this average cost data information is not likely to assist the Commission in carrying out its duties under R.C. 4928.64(D)(1)(b). For those reasons, the Commission should modify proposed Subparagraph (A)(4) to read:

> The alternative energy portfolio status reports filed by each electric utility and electric services company shall include at least the following content, and, with the exception of sections (b) below, ~~that~~ shall be made publicly available, for the applicable compliance year. Electric utilities and electric services companies should redact the information requested in section (b) and submit the information requested in section (b) to the Staff on a confidential basis.

2. Subparagraph (A)(4)(b): Cost information

In Subparagraph (A)(4)(b), Staff has proposed that EDUs and electric services companies provide in their annual status report:

> a quantification in dollars per megawatt-hour of all applicable alternative energy portfolio standard compliance requirements, including the in-state minimums.

It is unclear what Staff is requesting in this Subparagraph. For the information required for the report to the General Assembly required by Rule 4901:1-40-09, is Staff requesting the average cost per REC/megawatt-hour for each category of REC – Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar? Or, is Staff requesting the cost for each specific REC/megawatt-

[13] The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act: "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, patter, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. R.C. § 1333.61(D).

hour? Given that Staff has inquired whether or not it should include the average cost information per REC in this report in order to assist Staff in its annual report to the General Assembly, the EDUs believe that that Subparagraph (A)(4)(b) should be modified to read:

> ~~a quantification in dollars per megawatt-hour of all applicable alternative energy portfolio standard compliance requirements, including the in-state minimums.~~ <u>Average cost per REC or megawatt hour for all applicable alternative energy portfolio standard compliance requirements – Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar.</u>

And, as discussed above, at a minimum, this information should be redacted from the public filing and provided to Staff separately.

3. Subparagraph (A)(4)(d)

In Subparagraph (A)(4)(d), Staff has proposed that EDUs and electric services companies provide in their annual status report:

> Demonstration of status relative to the statutory three percent cost provision(s), pursuant to the calculation methodology described in rule 4901:1-40-07.

Rule 4901:1-40-07(A) provides that by April 15, EDUs and electric service companies "shall calculate their maximum recoverable compliance funds to be used during that compliance year" and "provide...to the commission pursuant to any cost cap requirements provided for in rule 4901:1-40-05 of the Administrative Code." That rule appears to request a prospective review of the three percent cost provision. It is unclear what Staff is requesting in Subparagraph (A)(4)(d). For example, if the Companies file a report on April 15, 2014, the information therein could be retrospective in nature for compliance year 2013, or, Staff could be requesting a *prospective* review of the statutory three percent cost provision for the 2014 compliance year.

The Companies believe that Subparagraph (A)(4)(d) should be clarified to indicate that the annual report only requires a *prospective* review of the status relative to the statutory three percent cost provision for informational purposes. And, as will be mentioned below, Rule 4901:1-40-07(A) should also be revised accordingly. A retrospective review of the status relative to the statutory three percent cost provision is not appropriate given that, as discussed in detail below, R.C. 4928.64 does not allow the Commission to disallow costs on the basis of an EDU exceeding the three percent provision contained in R.C. 4928.64(C)(3). A *prospective* review of the status relative to the statutory three percent cost provision is consistent with the Commission's Order in Case No. 11-5201-EL-RDR whereby the Companies were ordered to perform a prospective analysis of the three percent cost provision "early in each compliance" year and "not incur any additional compliance costs for that year absent Commission direction."[14] As discussed below, however, R.C. 4928.64(C)(3) does not relieve an EDU from compliance if it does meet the three percent cost threshold. Other than Staff's general supervision of an EDU's compliance with alternative energy mandates, information related to the three percent cost provision is informational only and cannot serve as a means to disallow recovery of costs to an EDU or as a means to determine that an EDU is not in compliance with R.C. 4928.64. For those reasons, the Companies request that the Commission clarify that Subparagraph (A)(4)(d) only requires a *prospective* review of the three percent cost provision and amend the Subparagraph as follows:

> Demonstration of status relative to the statutory three percent cost provision(s) <u>prospectively for the year in which the report is filed</u>, pursuant to the calculation methodology described in rule 4901:1-40-07.

E. Rule 4901:1-40-07: Cost Cap

1. Subparagraph (A)

Staff's proposed Subparagraph (A) provides:

[14] Case No. 11-5201-EL-RDR, Opinion and Order at 34 (August 7, 2013). The Companies will comply with the Commission's Order pending further direction from the Supreme Court of Ohio in Case No. 2013-2026, where the issue of whether R.C. 4928.64(C)(3) sets a limit on funds that can be used to comply with the mandates is pending.

> 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 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 service 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.

As an initial matter, the proposed rule is not correct in that there are no "cost cap requirements provided for in Rule 4901:1-40-05." That provision should be revised to indicate that Rule 4901:1-40-05 only requires that the information be provided.

Second, this rule is inconsistent with Rule 4901:1-40-05 in that it appears to require a *prospective* three percent calculation while Rule 4901:1-40-05 does not indicate which type of calculation it requires. As discussed in Section (D)(3) above, both Rule 4901:1-40-05 and Rule 4901:1-40-07 need to clarify that the rules only require a *prospective* calculation.

Third, the terms "maximum recoverable funds" and "cost cap" should be completely removed from the rule because they contradict the plain language of R.C. 4928.64(C)(3).[15] This rule effectively states that the three percent cost provision creates a mandatory limit on the amount of costs that an EDU may incur without additional Commission approval to comply with R.C. 4928.64. The plain language of R.C. 4928.64(C)(3) provides that an electric utility "***need not comply***" with a statutory benchmark if a company's cost of complying with the statutory requirements exceeds three percent of "its reasonably expected cost of otherwise producing or acquiring the requisite electricity." The statute does not provide that a company "shall not" comply with the statutory benchmarks, or that it will be denied cost recovery, if its costs exceed the three percent provision. The provision here is discretionary to the EDU. The three percent provision gives an EDU subject to the alternative energy mandates another avenue of potential

[15] As discussed above, this issue is the subject of an appeal at the Supreme Court of Ohio.

relief. It is the only mechanism in the statute that allows an EDU to not comply with the otherwise obligatory mandates on the basis of cost. But the statute does not compel a company to seek this relief.

While providing a prospective review of the three percent mechanism for informational purposes is not unreasonable, the Commission does not have authority to disallow an EDU cost recovery for costs incurred to comply with the statutory requirements on the sole basis that the EDU's costs exceed the three percent threshold. Proposed rule Subparagraphs 4901:1-40-07(A)(1)-(5), when read together, imply that an EDU is prohibited from exceeding the three percent in compliance costs, and if it does so such costs above the three percent threshold will be disallowed. And, while proposed Rule 4901:1-40-07(4) and (5) do contemplate the potential for some form of relief if those costs exceed three percent, the manner in which those rules were drafted implies that the Commission may not grant the relief if an EDU did not use "all reasonable compliance options." The prospective review of the three percent calculation in the second quarter of a compliance year will not give the EDU enough information to determine whether it will exceed the three percent threshold as an EDU could be buying RECs through the end of the compliance year. It is not clear how a company could successfully show that it had pursued "all reasonable compliance options: if the compliance year had not lapsed and there was time to pursue such options.

Last, proposed Subparagraph (A)(5) is not accurate. As discussed in Case No. 11-5201-EL-RDR, the three percent cost provision is calculated on an aggregate basis and not on a separate basis for each benchmark - Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar. Subparagraph (A)(5) implies that each benchmark has a separate three percent cost provision, which is not accurate. For all of those reasons, the Companies recommend that the Commission adopt the following new proposed Subparagraph (A):

> By no later than April fifteenth of each year, electric utilities and electric services companies shall calculate the 3 percent cost provision provided for in section 4928.64 (C)(3) of the Revised Code ~~their maximum recoverable compliance funds to be used for compliance with (A)(1) and (A)(2) as applicable,~~ prospectively for ~~during~~ that year pursuant to rule 4901:1-40(A)(4) of the Administrative Code~~. The calculations shall be provided to the commission pursuant to any cost cap requirements provided for in rule 4901:1-40-05of the Administrative Code.~~ Alternatively, an electric utility or electric service company may file an application with the commission for review of the 3 percent cost provision ~~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.~~
>
> (1) An electric utility or electric services company may not be required to comply with the alternative energy resource requirements contained in section 4928.64(B)(2) of the Revised Code to the extent its cost of complying with those requirements exceeds 3 percent of its reasonably expected cost of otherwise producing or acquiring the requisite electricity.

(2) An electric utility or electric services company shall pursue all reasonable compliance options to comply with the alternative energy resource requirements contained in section 4928.64(B)(2) of the Revised Code prior to requesting relief from compliance with alternative energy resource requirements based on the 3 percent cost provision provided for in section 4928.64(C)(3) of the Revised Code.

(3) In the case that the commission makes a determination that an electric utility or electric services company's compliance costs exceed the 3 percent cost provision provided for in section 4928.64(C)(3) of the Revised Code, the electric utility or electric services company may not be required to fully comply with the renewable energy benchmarks specified in division (B)(2) of section 4928.64 of the Revised Code

2. Subparagraph (B)

As an initial matter, for the reasons stated above, Subparagraph (B) needs to be revised to remove reference to "maximum recoverable compliance funds" and recovery thereof. As discussed above, the Commission does not have statutory authority to mandate a cost cap or disallow recovery of costs incurred to comply with R.C. 4928.64 simply because the costs exceeded the three percent threshold:

> The calculation of the 3 percent cost provision provided for in section 4928.64(C)(3) of the Revised Code ~~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.~~

3. Subparagraph (B)(1)

Staff proposed Subparagraph (B)(1) reads:

> 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.

In Case No. 11-5201-EL-RDR, the Commission articulated how the three percent cost provision should be calculated. The first step is to "determine the sales baseline in MWhs for the applicable compliance year."[16]

The Companies believe that there is an error in Staff proposed Subparagraph (B)(1) in that "dollars per megawatt-hour" should only read "megawatt-hours." That way, an EDU is calculating: i) the baseline in megawatt-hours in Subparagraph (B)(1); then, ii) the reasonably expected dollars per megawatt hour in Subparagraph (B)(2); then, iii) multiplying Subparagraph (B)(1) by Subparagraph (B)(2) to determine the total cost. For those reasons, the Commission should amend Subparagraph (B)(1) as follows:

> Determine the compliance baseline in ~~dollars per~~ megawatt-hours for the compliance year consistent with the applicable section of paragraph (B) of rule 4901:1-40-03 of the Administrative Code.

4. Subparagraph (C)

Staff proposed Subparagraph (C) reads:

> 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.

The Companies recommend that the Commission delete this provision for several reasons. First, as discussed in Case No. 11-5201-EL-RDR[17], the three percent cost provision is calculated on an aggregate basis and not on a separate basis for each benchmark - Ohio Solar, Other Solar, Ohio Non-Solar and Other Non-Solar. Requiring a separate three percent cost provision for each category of RECs would be problematic because depending on price, certain categories of RECs may meet the threshold sooner than other categories of RECs. Subparagraph (C) states that each benchmark has a separate three percent cost provision, which is not accurate. Second, as

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16 Case No. 11-5201-EL-RDR, Opinion and Order at 34 (August 7, 2013).

17 *Id.*

discussed above, R.C. 4928.64(C)(3) does not provide for a mandatory cost cap. Therefore, it is discretionary whether the EDU complies with the benchmark or not if costs exceed the three percent cost provision. Subparagraph (C) is contradictory to the plain statutory language. Third, in Subparagraph (B), the Commission provides a process for an EDU to seek relief, if it elects to, from complying with the statutory benchmarks if the three percent cost provision is triggered. However, the proposed language of Subparagraph (B) makes it discretionary on whether the Commission will grant such relief. Proposed Subparagraph (B)(5) states:

> [i]n 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.

Subparagraph (C) is inconsistent to that provision in that it states that if the three percent cost provision is triggered the EDU "shall" not comply with each benchmark. For all of those reasons, the Commission should delete Subparagraph (C).

V. <u>CONCLUSION</u>

Based upon the foregoing, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company respectfully request that the modifications to

Chapters 4901:1-39 and 4901:1-40, Ohio Admin. Code, as proposed by Staff, be further modified consistent with the comments set forth herein.

Respectfully submitted,

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On behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

Exhibit A
Proposed changes to Proposed Rule 4901:1-39-04

(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 will cost-effectively achieve the statutory benchmarks for energy efficiency and peak-demand reduction. the September 15 in the last year of an 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.~~ <u>Unless otherwise directed by the Commission, an electric utility shall file its energy efficiency and peak demand reduction program portfolio plan no later than April 30th of the year in which the electric utility's then current portfolio plan is scheduled to expire. The portfolio plan shall be in effect for the three calendar years following expiration of the then current plan.</u>

<u>(B) At least thirty days prior to the filing of the portfolio plan with the commission, the electric utility shall host a special meeting for interested parties in which (i) the public utility shall provide at a minimum relevant program, measure and financial information pertaining to the portfolio plan; (ii) afford interested parties the opportunity to provide input into the program mix and design of the proposed plan; and (iii) answer any questions on the proposed portfolio plan. Additional meetings may be scheduled prior to filing of the plan as agreed in the special meeting. Within fifteen days after the filing of the portfolio plan, the public utility, in an effort to facilitate discovery, shall host a technical conference in which interested parties may ask questions about the filed portfolio plan.</u>

(B) Each electric utility's program portfolio plan shall be cost-effective on a portfolio basis, <u>based on the total resource cost test.</u> 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 non-energy 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 <u>4901:1-39-03</u> 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) A description of existing programs. The electric utility shall provide a description of each existing program, and measures within the program, including an analysis of 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 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.~~ electric utility's technical conference contemplated in Paragraph (B) of this rule. 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. Nothing in this rule requires the electric utility to adopt any of the recommendations being proposed.

(F) If the Commission has not issued an order, or set the matter for hearing within sixty days after the submission of electric utility's reply comments as allowed in Paragraph (E), the portfolio plan shall be automatically approved. If the Commission sets the matter for hearing, the scope of such hearing shall be limited to only those issues raised either in the comments submitted pursuant to paragraph (D) of this rule, or raised *sua sponte* by the Commission in its Entry in which the matter is set for hearing. Should a hearing be necessary and a new plan cannot be approved prior to the expiration of the then current portfolio plan, the electric utility shall continue programs in the then current plan that are retained in the new plan until the new plan is approved. The electric utility shall recover through its then current recovery mechanism all reasonable program costs incurred during the period between the scheduled expiration of the then current plan and the approval of a new plan. There shall be a rebuttable presumption that all program costs incurred during this period were reasonably incurred by the electric utility. If a hearing is deemed necessary, the hearing shall, unless otherwise ordered by the Commission, commence within thirty days of the issuance of the Entry requiring the hearing.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Initial Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company was electronically filed with the Public Utilities Commission of Ohio through its Docketing Information System on this 3rd day of March, 2014.

Kathy J. Kolich, Attorney