

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

INDUSTRIAL ENERGY USERS-OHIO'S REPLY COMMENTS

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Pursuant to the Public Utilities Commission of Ohio's ("Commission") March 7, 2014 Entry in the above-captioned matter, Industrial Energy Users-Ohio ("IEU-Ohio") hereby files its Reply Comments. IEU-Ohio's failure to address any issues raised by another party should not be interpreted as support for that issue.

I. GENERAL OBSERVATIONS FROM THE COMMENTS

In total, 19 sets of comments were filed totaling 312 pages. Despite the diversity of parties and breadth of the comments, the comments contained many common themes and arguments. One such theme was that the Commission should adopt processes that limit the administrative burden and costs of compliance with the energy efficiency and peak demand reduction ("EE/PDR") portfolio benchmarks (the "energy usage reduction mandate") and the alternative energy resource mandate. For example, there was near unanimous support for the Commission Staff's ("Staff") proposal to

modify the rules to incorporate the current process adopted by the Commission in Case No. 10-834-EL-POR¹ through which a mercantile customer commits its energy usage reduction attributes to count towards an electric distribution utility's ("EDU") compliance with the energy usage reduction mandate. There was similar broad opposition to Staff's proposal to require a new portfolio plan to be submitted each year, which would consume significant Commission and stakeholder resources. Instead, the comments largely urged the Commission to retain a portfolio plan approval process similar to what is currently in place in which three-year plans are submitted and ultimately approved with any modifications deemed necessary by the Commission.

Collectively, the comments further identify continuing problems with the Technical Reference Manual ("TRM"); specifically, the lack of due process regarding Staff's proposed process for updating the TRM and the lack of detail in Staff's proposed rules regarding how and when the TRM will be relied upon to guide measurement and verification ("M&V") efforts. The comments also collectively recognize that the Commission needs to adopt a reasonable and administratively workable methodology for calculating the EE/PDR savings associated with combined heat and power ("CHP") systems and waste energy recovery ("WER") systems that are permitted to be counted towards satisfaction of the energy usage reduction mandate. Finally, many parties urged the Commission to reject Staff's proposed rule that would require the statewide independent evaluator to perform redundant verification of energy savings already subject to independent evaluators retained by EDUs.

¹ *In the Matter of the Mercantile Customer Pilot Program for Integration of Customer Energy Efficiency or Peak-Demand Reduction Programs*, Case No. 10-834-EL-POR, Finding and Order (July 17, 2013) (hereinafter "*Pilot Program Case*").

IEU-Ohio urges the Commission to weigh the actual administrative burdens and costs that will be imposed on customers through the Commission's revised rules and adopt rules that allow for compliance with Ohio's portfolio obligations at the lowest reasonable cost to customers.

II. RECOMMENDATIONS

A. The Commission should adopt Staff's proposed rule defining the process for a mercantile customer's self-directed energy savings to be committed to its EDU towards compliance with the energy usage reduction mandate

The comments largely support Staff's recommendation to incorporate the current mercantile customer EE/PDR commitment process adopted by the Commission in its July 17, 2013 Finding and Order in the *Pilot Program Case*.² IEU-Ohio supports Staff's recommendation but also urges the Commission to adopt the four recommendations related to the incorporation of the Pilot Program that IEU-Ohio made in its Comments. Again, these recommendations were that the Commission: (1) clarify that customers seeking rider exemptions or a cash refund payment qualify under the automatic approval template; (2) revise Staff's proposed rules to provide that the duration of a mercantile customer's rider exemption or magnitude of a cash refund payment under Section 4928.66(A)(2)(c), Revised Code, would be calculated based upon actual savings; (3) modify Staff's proposed ongoing reporting requirements for mercantile customers with rider exemptions longer than a year; and (4) direct Staff to update the standard application template to reflect the final rules adopted by the Commission in this proceeding.³ IEU-Ohio believes that these four recommendations will help streamline

² *Pilot Program Case*, Finding and Order (July 17, 2013).

³ IEU-Ohio's Comments at 4-9.

this process and achieve compliance with the energy usage reduction mandate at the lowest reasonable cost.⁴

Duke Energy Ohio, Inc.'s ("Duke") Comments mirror IEU-Ohio's recommendation to simplify the annual reporting requirement in proposed Rule 4901:1-39-07(C)(3), Ohio Administrative Code ("O.A.C."), based upon the conclusion that Staff's proposed process is unnecessarily cumbersome.⁵ As IEU-Ohio discussed in its Comments, a mercantile customer with an EE/PDR rider exemption already reports its EE/PDR savings to its EDU on an annual basis and, therefore, these savings are accurately reflected in the EDU's annual compliance report.⁶

Finally, while a few parties expressed opposition to the continued use of the as-found methodology for calculating a mercantile customer's EE/PDR savings, the Commission must, again, reject this argument because Section 4928.66(A)(2)(c), Revised Code, explicitly requires the Commission to count "all" of a mercantile customer's EE/PDR savings for compliance purposes.⁷ As discussed later in these Reply Comments, the question of what mercantile customer energy savings are eligible

⁴ IEU-Ohio's Comments at 4-9.

⁵ Duke's Comments at 9.

⁶ IEU-Ohio's Comments at 8-9.

⁷ Joint Comments of the Environmental Law and Policy Center, Ohio Environmental Council, Sierra Club, Natural Resources Defense Council, Environmental Defense Fund and Citizens Coalition (collectively, "Environmental Advocates") at 38-39; Ohio Manufacturers' Association Energy Group's ("OMA-EG") Comments at 6. In instances where an EE/PDR project complies with an applicable energy efficiency benchmark contained in a law or regulation, OMA-EG argues that the Commission should count the actual savings achieved by mercantile customers but discount the actual savings achieved by non-mercantile customers. OMA-EG's Comments at 5-6. OMA-EG also argues that the Commission should not count the actual savings by a mercantile customer when the mercantile customer replaces failed equipment based on an outdated and reversed Commission order. OMA-EG's Comments at 6. OMA-EG relies upon the Commission's September 15, 2010 Entry in the *Pilot Program Case*; however, the Commission explicitly reversed its position in its July 17, 2013 Finding and Order in that case: "Accordingly, we adopt the "as-found" method for measuring savings even in the case of replacement of failed equipment." *Pilot Program Case*, Finding and Order at 5 (July 17, 2013) (emphasis added).

by law for counting purposes is separate and apart from the question of what discretion the Commission may decide to apply when considering whether to exempt a mercantile customer from its obligation to pay an EE/PDR rider in exchange for its commitments.

B. The Commission should adjust the energy usage reduction mandate and alternative energy resource mandate compliance baselines to remove the energy usage characteristics of customers with reasonable arrangements

IEU-Ohio's Comments demonstrate that the Commission has the statutory authority to exclude the load associated with a customer who has a reasonable arrangement with its EDU from the compliance baseline for the energy usage reduction mandate.⁸ Similarly, Ohio Power Company's ("AEP-Ohio") Comments demonstrate that the Commission has the statutory authority to exclude the load associated with a customer that has a reasonable arrangement with its EDU from the compliance baseline for the alternative energy resource mandate.⁹ Accordingly, IEU-Ohio urges the Commission to use its statutory authority to promote economic growth while reducing the overall cost of the mandates by excluding the energy usage characteristics of customers with reasonable arrangements from the compliance baseline of the energy usage reduction mandate and the alternative energy resource mandate.

C. Portfolio Plans

Collectively, the comments conveyed unanimous opposition to Staff's proposed rule that would modify the process for approving an EDU's EE/PDR portfolio plan and shorten the duration of the plans to one year.¹⁰ The comments identified that Staff's proposal would be administratively burdensome and expressed a strong preference to

⁸ IEU-Ohio's Comments at 3-4.

⁹ AEP-Ohio's Comments at 15.

¹⁰ See, e.g., OPAE's Comments at 6-9; OMA-EG's Comments at 3-5.

retain a review and approval process similar to the process specified in the Commission's current rules, where interested parties are afforded due process before such plans are approved.¹¹ IEU-Ohio supports continuing an approval process similar to the current practice that allows stakeholder participation and substantial input on the content of proposed EE/PDR portfolio plans prior to Commission approval.

The comments also opposed Staff's proposed plan duration of one year, instead suggesting that the Commission retain the current three-year duration or, alternatively, expand the duration to five years. IEU-Ohio believes that the current three-year cycle of portfolio plans has worked well and should be continued. Additionally, IEU-Ohio urges the Commission to adopt rules that provide flexibility, given the potential for technological advances (a reason prompting Staff to propose shorter duration plans)¹² and the possibility for legislative changes. Part of this regulatory flexibility should provide for the possibility to reopen portfolio plans to address significant technological advances or legislative changes that may occur in the future.

D. TRM

The comments express near unanimous opposition to Staff's proposed process to update the TRM. The comments also express an overall concern with the lack of detail specifying how and when the TRM will be utilized.¹³ The comments identify that if the TRM is going to be relied upon at all, it needs to be substantially updated and much more thorough. The comments further recommend that: (1) the changes to the TRM should not occur until after parties have an opportunity to provide substantive input on

¹¹ See, e.g., DP&L's Comments at 2; see also OPAE's Comments at 6-9; OMA-EG's Comments at 3-5.

¹² Entry at 3 (Jan. 29, 2014).

¹³ See, e.g., AEP-Ohio's Comments at 12; Duke's Comments at 7-8.

the proposed changes; (2) any TRM changes should be prospectively applied; (3) ample lead time is necessary for the EDUs to implement any changes; and (4) the changes to the TRM cannot be effective without Commission approval.¹⁴ IEU-Ohio and others also identified that the Commission previously held that reliance on the TRM would be optional, but that any party relying on the TRM for the purpose of M&V would do so under an assumption of reasonableness.¹⁵

Practically speaking, the TRM cannot address each and every EE/PDR project that may be implemented by an EDU or mercantile customer and, therefore, the TRM can never be a one-stop-shop for guiding the M&V of EE/PDR savings. Therefore, mercantile customers and EDUs cannot be confined to the methodologies defined in the TRM for M&V and must continue to be provided the opportunity to independently provide the M&V of actual energy savings achieved by customer projects.

Accordingly, IEU-Ohio urges the Commission to: (1) again adopt the TRM as a set of guidelines rather than a mandate; (2) specify that changes to the TRM apply prospectively only; (3) require Commission approval before changes to the TRM become effective; and (4) provide mercantile customers and EDUs the option to independently provide the M&V of actual energy savings.

E. Calculating compliance toward the energy usage reduction mandate and the alternative energy resource mandate

1. The Commission is required to count all EE/PDR savings

Staff's proposed Rules 4901:1-39-05(A)(1)(b) and 4901:1-39-07(B)(3), O.A.C., appropriately recognize that the Commission must count all EE/PDR savings towards

¹⁴ Duke's Comments at 7-8; AEP-Ohio's Comments at 9; Ohio Edison's, The Cleveland Electric Illuminating Company's and The Toledo Edison Company's (collectively, "FirstEnergy") Comments at 20-22.

¹⁵ IEU-Ohio's Comments at 14-17; Duke's Comments at 7.

compliance with Ohio law.¹⁶ Practically speaking, counting all of the energy usage reductions actually achieved by an EDU's customers reduces the number and cost of additional projects that would otherwise be required. Despite the legal requirement and practical benefits of counting all savings achieved by an EDU's customers, various parties continue their objections.

The Environmental Advocates, OMA-EG, and Ohio Partners for Affordable Energy ("OPAE") argue that the Commission should not count all of the actual savings achieved by customers toward an EDU's compliance with the energy usage reduction mandate.¹⁷ Their arguments take several forms. These parties argue that the Commission should discount the actual savings achieved by customers in instances where the customer's EE/PDR project complies with an energy efficiency standard in an applicable building code, law, or regulation.¹⁸ The Environmental Advocates argue that the Commission should discount the actual savings achieved by customers based on the assumption that certain customers would have undertaken energy efficiency projects without a government mandate (a net savings approach).¹⁹ Finally, the Environmental Advocates and OMA-EG argue, contrary to the plain language of this statute, that the Commission should not count all of the savings achieved by mercantile

¹⁶ Section 4928.66(A)(2)(c), Revised Code; see *also* Section 4928.66(A)(1), Revised Code (does not provide the Commission with any authority to count less than the actual EE/PDR savings achieved by customers).

¹⁷ OMA-EG's Comments at 5-6; OPAE's Comments at 10-11; Environmental Advocates' Joint Comments at 21-27; 38-39.

¹⁸ Environmental Advocates' Joint Comments at 21-24; OMA-EG's Comments at 5-6.

¹⁹ Environmental Advocates' Joint Comments at 25-27.

customers.²⁰ These arguments must be rejected because they conflict with Section 4928.66, Revised Code.

Section 4928.66, Revised Code, does not provide the Commission with any authority to count less than the actual EE/PDR savings achieved by customers. Further, Section 4928.66(A)(2)(c), Revised Code, explicitly states that an EDU's compliance with the energy usage reduction mandate:

shall be measured by including the effects of **all** demand-response programs for mercantile customers of the subject electric distribution utility, **all** waste energy recovery systems and **all** combined heat and power systems, and all such mercantile customer-sited energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs, adjusted upward by the appropriate loss factors. (emphasis added).

Additionally, the Commission has already rejected the net savings argument, holding that “the gross savings methodology should continue to be employed for purposes of determining the electric utilities' compliance with Section 4928.66, Revised Code.”²¹

Further, these parties seem to confuse two separate issues. First, the Commission must determine the magnitude of EE/PDR savings that have been achieved. Ohio law does not provide the Commission with any authority to count less than all savings, and it is clear that the Commission must count all savings achieved by mercantile customers.²² Second, the Commission has discretion to determine whether a customer should be granted an exemption from an EDU's rider to collect its EE/PDR

²⁰ Environmental Advocates' Joint Comments at 38-39; OMA-EG's Comments at 6 (Commission should not count actual savings achieved by mercantile customers in situations where the mercantile customer replaces failed equipment).

²¹ *In the Matter of the Annual Verification of the Energy Efficiency and Peak Demand Reductions Achieved by the Electric Distribution Utilities Pursuant to Section 4928.66, Revised Code*, Case No. 12-665-EL-UNC, Finding and Order at 6 (Aug. 7, 2013).

²² Section 4928.66, Revised Code.

compliance costs if the exemption “reasonably encourages” a mercantile customer to commit its EE/PDR savings to its EDU and has discretion to authorize customer rebates as part of an EDU’s portfolio plan.²³ In arguing that the Commission should not count “all” savings, these parties argue that unfair benefits flow to customers and EDUs. For example, OMA-EG argues that the Commission should only count the savings that exceed any energy efficiency standard required by a law, regulation, or building code, because no incentive is required to persuade customers to install equipment that complies with these standards.²⁴ Because the basis for not counting all savings is largely based upon arguments about customers or EDUs receiving unfair incentives, their arguments are meritless.

Instead of adopting an unlawful and unreasonable approach to counting an EDU’s compliance towards the energy usage reduction mandate, the Commission should adopt Staff’s proposed rules that provide that all savings will be counted toward compliance with the energy usage reduction mandate. The Commission should also adopt IEU-Ohio’s proposed methodology for measuring the output of any CHP, WER, geothermal energy, solar thermal energy, or water usage reduction system.²⁵ Further, the Commission should approve the recommendation made by AEP-Ohio and FirstEnergy to modify Staff’s proposed rules to explicitly provide that savings will continue to be measured on a gross savings methodology.²⁶ This recommendation is lawful and reasonable and should therefore be adopted.

²³ Section 4928.66(A)(2)(c), Revised Code.

²⁴ OMA-EG’s Comments at 5-6.

²⁵ IEU-Ohio’s Comments at 10-13.

²⁶ AEP-Ohio’s Comments at 3; FirstEnergy’s Comments at 28.

In sum, the Commission should adopt the portions of Staff's proposed Rules 4901:1-39-05(A)(1)(b) and 4901:1-39-07(B)(3), O.A.C., related to counting all EE/PDR savings, and should adopt the recommendations in IEU-Ohio's, AEP-Ohio's, and FirstEnergy's Comments referenced above.

2. The Commission is required to count savings that result from upgrades to the transmission system

The Commission must reject OPAE's argument that the Commission should not allow an EDU to count EE/PDR savings that result from upgrades to transmission systems.²⁷ OPAE bases its argument on its claim that there is no guarantee that transmission upgrades will directly affect Ohio customers. Section 4928.66(A)(2)(d), Revised Code, however, provides that an EDU's portfolio plan "may include demand-response programs, smart grid investment programs, provided that such programs are demonstrated to be cost-beneficial, customer-sited programs, including waste energy recovery and combined heat and power systems, and transmission and distribution infrastructure improvements that reduce line losses." (emphasis added). Because Ohio law explicitly allows an EDU to count savings from upgrades to the transmission system, OPAE's argument is contrary to law and must be rejected.

3. Ohio law allows resources to count towards both the energy usage reduction mandate and the alternative energy resource mandate

As identified by IEU-Ohio in its Comments and FirstEnergy in its Comments, Staff's proposed Rule 4901:1-40-01(M), O.A.C., is contrary to law and should be rejected.²⁸ This proposed rule provides that a specific resource cannot count towards an EDU's

²⁷ OPAE's Comments at 12-13.

²⁸ IEU-Ohio's Comments at 19; FirstEnergy's Comments at 30-31.

compliance with both the energy usage reduction mandate and the alternative energy resource mandate. Ohio law, however, specifies that resources may count towards both mandates.

Section 4928.64(A)(1), Revised Code, provides:

As used in sections 4928.64 and 4928.65 of the Revised Code, "alternative energy resource" means an advanced energy resource or renewable energy resource, as defined in section 4928.01 of the Revised Code that has a placed-in-service date of January 1, 1998, or after; a renewable energy resource created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998; or a mercantile customer-sited advanced energy resource or renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under division (A)(2)(c) of section 4928.66 of the Revised Code ... (emphasis added).

Section 4928.01(A)(34)(g), Revised Code, also defines advanced energy resource to include "[d]emand-side management and any energy efficiency improvement." These two provisions of Ohio law plainly contradict Staff's proposal to limit resources from counting towards both the energy usage reduction mandate and the alternative energy resource mandate. Accordingly, the Commission should delete Staff's proposed Rule 4901:1-40-01(M), O.A.C.

4. Counting CHP/WER

The comments collectively recognize that the Commission needs to clearly articulate in its rules the methodology for counting CHP and WER projects towards compliance with the energy usage reduction mandate and the alternative energy

resource mandate.²⁹ IEU-Ohio urges the Commission to adopt the methodology IEU-Ohio proposed in its Comments.³⁰

5. **The Commission should count all energy usage reductions that occur outside of an EDU's portfolio plan including, but not limited to, reductions achieved under programs funded by the Universal Service Fund, EE/PDR attributes that are bid into PJM's wholesale capacity market, and energy intensity savings achieved by upgrades to a generating unit**

IEU-Ohio agrees with FirstEnergy that the Commission should count all energy usage/intensity reductions achieved in an EDU's territory regardless of how the reduction was implemented.

FirstEnergy's Comments request that the Commission adopt rules that allow EDUs to count:

- (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.³¹

Currently, the Universal Service Fund ("USF") Rider collects approximately \$14.9 million for EE/PDR projects.³² These customer-funded EE/PDR projects, however, are not currently being counted towards an EDU's compliance with the energy usage reduction mandate.

FirstEnergy also proposed that the Commission should adopt rules that allow an EDU to count:

²⁹ See, e.g., Alliance for Industrial Efficiency's Comments at 2; FirstEnergy's Comments at 26; AEP-Ohio's Comments at 6.

³⁰ IEU-Ohio's Comments at 11-12.

³¹ FirstEnergy's Comments at 28.

³² *In the Matter of the Application of the Ohio Development Services Agency for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 13-1296-EL-USF, Application at 6 (Nov. 8, 2013).

(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.³³

IEU-Ohio supports FirstEnergy's recommendation that any EE/PDR attributes bid into PJM Interconnection, L.L.C.'s ("PJM") capacity market should be eligible to be counted towards an EDU's peak demand compliance obligation. However, if the Commission adopts this recommendation, it should also specify that allowing an EDU to count savings associated with a mercantile customer bidding its capabilities into PJM's capacity market does not foreclose the mercantile customer from seeking an exemption from the EDU's EE/PDR rider or a commitment payment.

FirstEnergy's Comments further request that the Commission's rules provide the EDU with the ability to count:

(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.³⁴

Accordingly, IEU-Ohio urges the Commission to adopt a rule that allows an EDU to count all verifiable energy intensity reductions in its territory, including the three specific areas mentioned by FirstEnergy, regardless of how the energy intensity reduction was achieved.

³³ FirstEnergy's Comments at 29.

³⁴ FirstEnergy's Comments at 29.

6. The Commission may classify any new technology as a renewable energy resource or an advanced energy resource

The Commission should reject OPAE's request to delete Staff's proposed Rule 4901:1-40-04(G), O.A.C. OPAE argues that this proposed rule would give the Commission broad discretion to define what constitutes a renewable or advanced energy resource and further argues that this is not authorized by statute.³⁵ Contrary to OPAE's arguments, Staff's proposed rule tracks the language in Section 4928.64(A)(2), Revised Code, which provides:

For the purpose of this section and as it considers appropriate, the public utilities commission may classify any new technology as such an advanced energy resource or a renewable energy resource.

Because Staff's proposed Rule 4901:1-40-04(G), O.A.C., is consistent with Section 4928.64(A)(2), Revised Code, the Commission should adopt it.

7. The Environmental Advocates request an unlawful and unreasonable limitation of the definition of advanced energy resource in Section 4928.01(A)(34)(h), Revised Code

The Environmental Advocates argue that the Commission should add a restriction regarding the placed-in-service date of qualified advanced energy resources defined in proposed Rule 4901:1-40-04(B)(8), O.A.C., which is contrary to Ohio law.³⁶ This proposed rule currently mirrors the definition in Section 4928.01(A)(34)(h), Revised Code, which provides that an advanced energy resource includes: "[a]ny new, retrofitted, refueled, or repowered generating facility located in Ohio, including a simple or combined-cycle natural gas generating facility or a generating facility that uses biomass, coal, modular nuclear, or any other fuel as its input." The Environmental

³⁵ OPAE's Comments at 15.

³⁶ Environmental Advocates' Joint Comments at 51-52.

Advocates request the Commission add a placed-in-service date of September 10, 2012 (the effective date of Amended Substitute Senate Bill 315) to Rule 4901:1-40-04(B)(8), O.A.C.³⁷

Section 4928.64(A)(1), Revised Code, however, already provides an in-service date:

As used in sections 4928.64 and 4928.65 of the Revised Code, "alternative energy resource" means an advanced energy resource or renewable energy resource, as defined in section 4928.01 of the Revised Code **that has a placed-in-service date of January 1, 1998, or after** ... (emphasis added).

Thus, Ohio law provides a "placed-in-service date of January 1, 1998, or after"³⁸ in regards to "[a]ny new, retrofitted, refueled, or repowered generating facility located in Ohio."³⁹ Because the Environmental Advocates' proposed in-service date is contrary to the plain language of Ohio law, it must be rejected.

F. CHP and WER Projects

Many of the comments urged the Commission to adopt rules that require higher levels of payments to CHP and WER projects than the payments proposed by Staff.⁴⁰ These comments reflect a self-serving interest for specific technologies and should be afforded little or no weight by the Commission. CHP and WER projects should be entitled to no greater reliance than any other technology in selecting measures to achieve compliance with Ohio's portfolio obligations. CHP and WER projects should only be pursued when they offer the lowest cost option to achieve compliance with

³⁷ *Id.*

³⁸ Section 4928.64(A)(1), Revised Code.

³⁹ Section 4928.01(A)(34)(h), Revised Code.

⁴⁰ See, e.g., Alliance for Industrial Efficiency's Comments at 2-5; Ohio Coalition for Combined Heat and Power's Comments at 2-6; Midwest Cogeneration Association's Comments at 2-7.

Ohio's portfolio obligations. The Commission should not be tasked with picking winning and losing compliance options by providing one technology with preferential benefits over other technologies. Rather, the market should dictate what energy efficiency projects can produce the greatest amount of savings at the lowest overall cost.⁴¹ Accordingly, IEU-Ohio urges the Commission to adopt rules that allow EDUs the ability to incorporate CHP and WER projects in their compliance plans when such projects are demonstrated to be cost effective relative to other compliance options.

G. The statewide independent evaluator should not perform redundant work

The comments also identify that Staff's proposed scope for the statewide independent evaluator is largely duplicative of measures currently performed by each EDU's independent program evaluator and would only serve to further increase the compliance cost of the EE/PDR requirements.⁴² IEU-Ohio recommends that the Commission retain the current scope of work for the statewide independent evaluator to prevent the incurrence of unnecessary costs that will ultimately be borne by customers.

H. Cost-Effectiveness Tests

Staff proposed that in determining whether an EE/PDR measure is "cost-effective" EDUs should rely on the Total Resource Cost ("TRC") test or the Utility Cost Test ("UCT") where applicable.⁴³ Many of the comments also identify that only the TRC test is defined in the proposed rules and request that a definition of UCT be added.⁴⁴

⁴¹ The Midwest Cogeneration Association agrees that only "economically viable" CHP and WER projects should be pursued. Midwest Cogeneration Association's Comments at 5.

⁴² See, e.g., Duke's Comments at 2-4.

⁴³ Rule 4901:1-39-01(H), O.A.C.

⁴⁴ See, e.g., Ohio Hospital Association's Comments at 2; Duke's Comments at 4.

In defining the UCT, the Commission should not adopt Ohio Advanced Energy Economy's ("OAE") request that the Commission account for price suppression effects as part of the UCT. The Commission recently concluded that price suppression analyses were overly subjective, difficult to calculate, and did not belong in an objective test.⁴⁵ For these reasons, the Commission should reject OAE's request to add in a price suppression component to the UCT.

OAE also requests that the Commission adopt a third cost-effectiveness test, the Resource Value Framework ("RVF"). According to OAE, the RVF is a subjective test based upon "policy goals."⁴⁶ OAE does not provide any details on how the mechanics of this test would work and there is no practical way to implement a subjective test to objectively measure cost-effectiveness. Therefore, the Commission should not adopt the RVF as a method to calculate the cost-effectiveness of an EE/PDR project.

I. Shared Savings

IEU-Ohio continues to oppose Staff's proposal to allow the inclusion of an EDU's shared savings in the revenue requirement to be collected through EE/PDR riders. However, as identified in the comments, if the final rules allow an EDU's shared savings to be part of the revenue collected through an EE/PDR rider, the Commission needs to clearly specify the methodology that will be used to calculate the shared savings revenue requirement than can be collected through an EDU's EE/PDR rider.⁴⁷ Further,

⁴⁵ *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison, Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 11-5201-EL-RDR, Opinion and Order at 33-34 (Aug. 7, 2013).

⁴⁶ OAE's Comments at 3.

⁴⁷ See, e.g., Office of the Ohio Consumers' Counsel's ("OCC") Comments at 13-15.

the Commission's rules should not provide blanket authority or preauthorization of the collection of any shared savings; rather, to the extent the Commission provides EDUs any opportunity to request any shared savings by rule, the availability and magnitude of and shared savings request should be reviewed as part of an EDU's portfolio plan application.

J. Cost Shifting

OPAE argues that the Commission should continue to allocate revenue responsibility on cost causation, but also seeks a rate redesign unrelated to the issues presented in this rulemaking proceeding. IEU-Ohio agrees with OPAE that the Commission should continue its policy of collecting an EDU's portfolio plan compliance costs from those customer classes contributing to the costs.⁴⁸ OPAE, however, raises issues not relevant to the EE/PDR rules, and argues for a rate redesign for the EDUs' generation rates (interruptible credits) and for economic development riders.⁴⁹ These issues are not within the scope of the EE/PDR rules and OPAE's concerns with these items should be raised in other proceedings.

K. PJM Bidding

As identified in IEU-Ohio's and OMA-EG's Comments, the Commission has previously held that a mercantile customer that self-funds its EE/PDR project and commits its EE/PDR savings to its EDU pursuant to Section 4928.66(A)(2)(c), Revised Code, retains its ownership rights to energy attributes eligible to be bid into PJM's

⁴⁸ See OPAE's Comments at 10. More specifically, EDUs should continue to collect the compliance costs associated with residential customers from residential customers, and the compliance costs associated with non-residential customers from non-residential customers.

⁴⁹ *Id.* at 10-11.

wholesale markets.⁵⁰ While various parties filed comments urging the Commission to require each EDU to bid the permanent energy efficiency savings related to projects in the EDUs' portfolio plans into PJM's wholesale capacity markets, none of the comments addressed mercantile self-directed customer projects or urged the Commission to reverse its prior decision.⁵¹

Accordingly, the Commission should adopt a rule that provides that a mercantile customer retain its attributes of an EE/PDR project which are eligible to be bid into PJM's wholesale markets and is not required to transfer these attributes to its EDU as part of the commitment process set forth in Section 4928.66(A)(2)(c), Revised Code.

L. OPAE's request to mandate that all reasonable arrangement information be made public is contrary to Ohio law

OPAE requests that the Commission add a sentence to Staff's proposed Rule 4901:1-39-07(A), that provides, "[t]he delta revenue associated with the reasonable arrangement shall not be considered confidential and shall be reported as a part of the filing made pursuant to 4901:1-39-06."⁵² Trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure.⁵³ Further, Rule 4901-1-24(D), O.A.C., provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal law prohibit the release of such information and

⁵⁰ *In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015*, PUCO Case Nos. 12-2190-EL-POR, *et al.*, Entry on Rehearing at 10-11 (July 17, 2013); IEU-Ohio's Comments at 18-19; OMA-EG's Comments at 9-10.

⁵¹ See, *e.g.*, Environmental Advocates' Joint Comments at 29-31; OCC's Comments at 20-23.

⁵² OPAE's Comments at 13 (emphasis omitted).

⁵³ Section 149.43(A)(1)(v), Revised Code; *State ex rel. The Plain Dealer v. Ohio Dept. of Insurance*, 80 Ohio St.3d 513, 530 (1997).

where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. The determination of whether a particular piece of information qualifies as a trade secret under Ohio law and is exempt from public disclosure must be made on a case-by-case basis. Accordingly, the Commission should reject OPAE's proposal and should allow any party to seek protective treatment of trade secrets on a case-by-case basis.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Reply Comments* was served upon the following parties of record this 24th day of March 2014 via electronic transmission, hand-delivery or first class mail, U.S. postage prepaid.

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