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

REPLY COMMENTS OF THE OMA ENERGY GROUP

I. INTRODUCTION

The Ohio Manufacturers' Association Energy Group (OMAEG) respectfully submits these comments in reply to other interested parties' concerns and suggested revisions to certain proposed Public Utilities Commission of Ohio (Commission) rules to be included in Chapter 4901:1-39, Ohio Administrative Code (O.A.C.) (EE Rules). OMAEG appreciates the opportunity to respond to other interested parties' comments, and will largely express its responses on a rule-by rule basis, as follows.

II. REPLY COMMENTS

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

A number of parties commented on Proposed Rule 4901:1-39-01, which provides several of the operative definitions in the EE Rules.

Several parties commented[1] on Proposed Rule 4901:1-39-01(H), which defines the term "cost-effective" as meaning that the measure, program, or portfolio being evaluated satisfies the total resource cost test or utility cost test, as applicable.[2] Many parties cited this definition as problematic because it includes the term "utility cost test," which is not defined in the rules. OMAEG is likewise concerned about the lack of a definition of the term "utility cost test," and believes a definition of the term should be added as a new paragraph in Proposed Rule 4901:1-39-01.

A number of parties have likewise expressed concerns about Proposed Rule 4901:1-39-01(O), which defines "independent program evaluator." As the Environmental Law & Policy Center, Ohio Environmental Council, Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, and Citizens Coalition (collectively, the Environmental and Consumer Advocates) contend in their joint comments, the proposed language is unclear about whether utilities must retain a qualified entity capable of conducting program evaluation.[3] Clarification regarding this requirement, both in this paragraph and other applicable portions of the rules, is necessary.

The Dayton Power and Light Company (DP&L), Ohio Power Company (AEP Ohio), and Duke Energy Ohio, Inc. (Duke) question the authority given to the statewide evaluator in Proposed Rule 4901:1-39-01(O)(4) to determine the "appropriateness and reasonableness of all costs included in any riders designed to recover the costs of energy efficiency portfolio plan implementation from ratepayers" should be removed from the language of the proposed rule, as

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[1] All references to "Comments" in this document refer to comments filed on or about March 2, 2014, in the above-captioned matters.
[2] See, e.g., Comments of Ohio Hospital Association (OHA) at 3; Comments of Ohio Advanced Energy Economy (OAEE) at 4.
[3] Comments of Environmental and Consumer Advocates at 42.

it is beyond the purview of the statewide evaluator's responsibility and expertise.[4] OMAEG shares their concern to the extent that the final determination of the appropriateness and reasonableness of rider costs resides with the Commission. However, OMAEG believes that it is within the purview of the evaluator to opine upon the appropriateness and reasonableness of costs to be recovered through utilities' energy efficiency riders, in an effort to provide the Commission with an independent evaluation of the necessity of certain costs.

The definition of "shared savings" in Proposed Rule 4901:1-39-01(X) likewise elicited numerous initial comments. AEP Ohio contended in its comments that shared savings should apply to savings achieved by meeting or exceeding the benchmarks.[5] OMAEG strongly disagrees with AEP Ohio's comments on this issue. Utilities should not be rewarded for simply meeting the requirements of the law. As such, OMAEG contends that the language included in Proposed Rule 4901:1-39-01(X) is appropriate and should not be changed.

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

Numerous commenters expressed concern regarding the September 15 filing date for updated program portfolio plans included in Proposed Rule 4901:1-39-04(A).[6] The various parties' concerns stem from the fact that the September 15 date is too late a date for the electric utilities to file such a plan and resolve interested parties' concerns about the plans prior to their intended implementation dates. Another concern, raised by the Office of the Ohio Consumers' Counsel (OCC) in its comments, is that all the electric utilities will eventually be filing annual updates on September 15, expecting to implement their updated program portfolio plans on January 1 of the following year.[7] Thus, during the three and a half month time period allotted by

[4] See Comments of DP&L at 1-2; Initial Comments of AEP Ohio at 2-3; Comments of Duke at 2-4.
[5] See Initial Comments of AEP Ohio at 3.
[6] See, e.g., Id. at 6; Comments of Ohio Edison Company, The Cleveland Electric Utility Company, and The Toledo Edison Company (FirstEnergy) at 10-11.
[7] Comments of OCC at 7.

the September 15 deadline in the proposed rule, interested parties will be expected to resolve issues relating to all electric utilities' updated plans. Given the significant discussion and negotiation required in the context of the approval of previous program portfolio plans, the time period afforded by the September 15 date in the proposed rule is unreasonable, in that it will not provide interested parties the ability to adequately express their concerns and negotiate with each electric utility to achieve better outcomes within the narrow time constraints provided. Accordingly, OMAEG recommends that the Commission revise the proposed deadline for filing updated program portfolio plans to no later than July 15 in order to provide interested parties and the electric utilities ample time to resolve issues prior to the implementation date of the plans.

Proposed Rule 4901:1-39-04(C)(2) requires each electric utility to conduct quarterly stakeholder meetings in which updates on energy efficiency and peak demand reductions, program costs, and potential new measures must be discussed, and input from stakeholders on these issues will be solicited. Despite negative comments by the electric utilities about imposing a quarterly requirement for stakeholder meetings,[8] OMAEG is supportive of this provision. Any diminished scheduling flexibility on the part of the utilities by imposition of this requirement is outweighed by the assurance of regularly scheduled opportunities for stakeholders to gain information about the program portfolio plans and express any concerns they may have to the utilities directly.

One of OMAEG's most significant concerns in the context of this proceeding is transparency throughout the EE rules. The current EE Rules are, in a number of cases, more transparent than the proposed rules. The hallmarks of a transparent administrative process include providing interested parties with the opportunity to actively participate in proceedings, contest issues or positions, and, if necessary, participate in hearings on disputed matters.

[8] See, e.g., Comments of FirstEnergy at 11-12; Comments of AEP Ohio at 6; Comments of DP&L at 3-4.

Proposed Rule 4901:1-39-04(D), without explanation, shortens the review period pertaining to an electric utility's program portfolio plan from 60 days to 30 days, changes the format in which interested parties may express concerns about a plan from objections to comments, and does away with the opportunity for a hearing on the contents of a program portfolio plan. Each of these changes reduces opportunities that interested parties have to meaningfully participate in the program portfolio plan proceedings.

The EE Rules were designed, in part, to engage parties in the fundamental use of EE methods and programs, and to encourage widespread use of these methods. Judging from the number of commenters in these proceedings, the rules have achieved that and more. As the Environmental and Consumer Advocates pointed out in their comments, in the two latest POR proceedings, the Duke Energy Ohio and Dayton Power and Light POR cases (respectively, Case Nos. 13-431-EL-POR and 13-833-EL-POR), numerous parties have been represented and have actively contributed to resolution of the matters.[9] The EE Rules have been extremely successful in bringing potentially interested parties to the table and have significantly contributed to the development of innovative solutions that are being implemented in a number of program portfolio plans. Eliminating the opportunity for meaningful, productive participation by parties at this stage would be a step in the wrong direction, and would deprive interested groups of the process that should be afforded to them. Although we recognize the Commission's effort to streamline the process by shifting from a pre-approval analysis to a "post-approval scenario," it is imperative that interested parties maintain the ability to contest disputed issues prior to the implementation of program portfolio plans and the imposition of related costs.

In the same vein, while permitting comments on proposed program portfolio plans, Proposed Rule 4901:1-39-04(E) leaves the decision about which recommendations to accept for

[9] Comments of Environmental and Consumer Advocates at 4-6.

inclusion into its program portfolio plan entirely up to the electric utility. There is no opportunity provided to interested parties to later challenge the validity of the program offerings once the utility has responded to the parties' comments. As an outcome of this proposed procedure, many interested parties will be left essentially spinning their wheels: although they will still express their concerns with the plans by means of comments, those comments may permissibly be brushed aside by the utility without any recourse. As OCC argues in its comments, "[t]he proposed rule is unlawful, abrogates the [Commission]'s responsibility to oversee electric utilities' energy efficiency programs[,] and is manifestly unfair to person interested in such programs. Electric utilities should not be allowed to dictate which programs will be included in their portfolio plans."[10] The ability of electric utilities, under the proposed rule, to make the ultimate determination on the program components of its portfolio plan offends notions of due process. OMAEG therefore recommends that the Commission maintain the process contained in the current EE Rules for purposes of evaluating proposed program portfolio plans.

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

Proposed Rule 4901:1-39-05(A)(1)(b) permits electric utilities to count, in meeting any statutory benchmark, the adoption of measures required to comply with energy performance standards set by law or regulation. OMAEG strongly supports Ohio Partners for Affordable Energy's (OPAE) and Ohio Advanced Energy Economy's (OAEE) comments and positions on this particular provision.[11] As OPAE noted in its comments, counting these types of savings permits electric utilities to take credit for savings for something in which they have had no

[10] See Comments of OCC at 8.
[11] See Comments of OPAE at 10-11; Comments of OAEE at 8-9.

involvement.[12] This is particularly troublesome given that the proposed rules also permit shared savings. Permitting electric utilities to count these "savings" carries them further to achievement of their benchmarks and shared savings rewards without any necessary action from the utilities. OPAE also notes that another important concern with counting these "savings" is the significant potential for lax enforcement of these standards.[13] Thus, energy reductions from these regulations may not actually be occurring. However, these savings may be counted by matter of course in the proposed rule without any necessary measurement or verification. Further, as OAEE aptly stated in its comments, counting these types of "savings" significantly diminishes energy efficiency benchmarks and represents a drastic reversal from previous Commission orders. The recent requirements established by the Commission or settlements for utilities to bid energy efficiency savings into the PJM market weighs strongly against such a reversal, as many of the "savings" achieved through the adoption of measures required to comply with energy performance standards set by law or regulation will not qualify to be bid into PJM auctions because of PJM's eligibility standards, which do not allow savings from measures already required by other laws or regulations to count (as they are required anyway). Thus, as explained in OMAEG's initial comments,[14] OMAEG recommends removing permission to count these measures as savings from Proposed Rule 4901:1-39-05(A)(1)(b).

Proposed Rule 4901:1-39-05(D) provides the Commission with the ability to either "hold a hearing on [an] electric utility's performance in meeting its annual statutory requirements for energy efficiency and peak demand reduction" or issue an opinion and order. As discussed above in the context of Proposed Rule 4901:1-39-04, the elimination of the opportunity for interested parties, in certain provisions in the proposed rules, to participate in a hearing on

[12] Comments of OPAE at 10.
[13] Id. at 11.
[14] Comments of OMAEG at 6.

disputed issues, raises grave concerns about due process. In its comments, OPAE has recommended that the rule should require "that a hearing will be held absent a unanimous agreement of the parties."[15] OMAEG believes that taking this approach will assuage due process concerns while providing administrative expediency. The Commission should therefore eliminate its ability, as delineated in Proposed Rule 4901:1-39-05(D), to issue an opinion and order without conducting a hearing, unless interested parties unanimously agree that no hearing is necessary.

Proposed Rule 4901:1-39-05(E) relates to the filing of an updated technical reference manual (TRM) by the independent program evaluator. In its initial comments, DP&L argues that the docket(s) containing an IPE's report on each utility's portfolio program should not also address changes to the TRM; changes to the TRM should arguably be contained in a separate docket.[16] OMAEG is supportive of placing recommended TRM updates in a separate docket. The separation brought about by this proposal will provide all interested parties with clarity and a specific docket to reference for all TRM-related issues. DP&L also recommended in its comments that any revisions to the TRM should be completed well in advance of the date on which utilities must file their updated program portfolio plans.[17] Like DP&L, OMAEG believes that a reasonable amount of time between TRM updates and utility program portfolio plan filing dates will bring about further clarity and predictability in the program portfolio plan process.

D. Proposed Rule 4901:1-39-06 Recovery Mechanism

Under Proposed Rule 4901:1-39-06, an electric utility must file a rate adjustment mechanism for recovery of all costs incurred in implementing its program portfolio plan with the filing of its updated plan on September 15 of each year. The rule does not require the filing in

[15] Comments of OPAE at 13.
[16] Comments of DP&L at 4.
[17] Id. at 4-5.

which the utility seeks recovery of portfolio program plan costs to include **only** those costs that were reasonable, prudently incurred, or associated with cost-effective programs. OMAEG recommends that the proposed rule be changed to require that only reasonable, prudently incurred costs associated with cost-effective programs be included in any such request for recovery. Additionally OMAEG recommends that the proposed rule be changed to permit, not demand, utilities to file a rate adjustment mechanism with their annual updated plan filing.

Proposed Rule 4901:1-39-06 also seemingly guarantees recovery of lost distribution revenue and shared savings incentives for the electric utilities. By guaranteeing recovery of lost distribution revenue and the collection of shared savings, the proposed rule thwarts the ability of parties to negotiate and/or litigate these issues on a case-by-case basis upon an electric utility's application to the Commission for approval. As noted by OCC in its comments, a mechanism to recover lost distribution revenues will "allow the utility to collect distribution revenues that are otherwise not collected from customers because of the electricity savings resulting from the utility's energy efficiency programs."[18] This outcome is counterintuitive and renders an important result of energy efficiency, lowered customer bills, irrelevant, effectively neutralizing one of the main drivers of energy efficiency programs.

Authorizing the recovery of all costs associated with the program portfolio plan, including the recovery of lost distribution revenue and shared savings, in one brushstroke, as the language of Proposed Rule 4901:1-39-06 does, presents grave concerns, given the elimination of the program portfolio plan pre-approval process which is also included in the proposed rules. If no approval process with interested parties' involvement is required before the program is approved, these costs will be automatically included in the program and recovered by the electric utilities. In essence, customers' concerns and interests will be dismissed out of hand. This

[18] Comments of OCC at 12.

outcome is unreasonable and unacceptable. Thus, as recommended by the Office of the Ohio Consumers' Counsel in its comments,[19] OMAEG recommends revision of Proposed Rule 4901:1-39-06 such that the process set forth in current Rule 4901:1-39-07, O.A.C., will be retained.

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

Proposed Rule 4901:1-39-07 incorporates into the rules the mercantile customer pilot program established by the Commission in Case No. 10-834-EL-POR. The Industrial Energy Users-Ohio (IEU-Ohio) recognized in its initial comments that the Commission recently held that mercantile customers are not required to transfer ownership rights to energy efficiency attributes eligible to be bid into PJM's wholesale markets as a condition of receiving a commitment payment or an exemption from an applicable energy efficiency rider from an electric utility when committing energy efficiency savings to a utility pursuant to Section 4928.66(A)(2)(c), Revised Code.[20] Unfortunately, this important concept has not been included in the proposed rules. OMAEG agrees with IEU-Ohio that the Commission should adopt a rule in Chapter 4901:1-39, O.A.C., which provides that mercantile customers retain their ownership rights to the EE attributes of their self-direct projects when committing the savings therefrom to an electric utility.

F. Incentives for Combined Heat and Power and Waste Energy Recovery Projects

Staff's proposed mercantile CHP application indicates that incentives will be based on the kWh generation associated with a combined heat and power (CHP) plant. This implies that the energy savings committed to an electric utility's annual benchmarks will be equivalent to the generation output of the system. The Alliance for Industrial Efficiency (Alliance) and Midwest

[19] Id. at 12-13.
[20] Comments of IEU-Ohio at 18-19.

Cogeneration Association (MCA) supported this approach in their initial comments.[21] Several other parties recommended different approaches to incentivizing CHP, including tiered approaches and conversion of fuel and/or heat savings.[22] For the following reasons, OMAEG joins the Alliance and MCA in supporting Staff's suggestion that 100% of the CHP plant electric generation should be counted as energy savings.

First, when installed, the full kWh and kW generation output of a CHP plant will be taken off the electric grid. Thus, from the electric ratepayer's perspective, universal benefits from CHP efficiency arise from 100% of the generation output. Counting electric savings on a lesser basis than the electric generation of the system would improperly diminish system benefits.

Second, none of the kWh and kW savings arising from an installed CHP system would be otherwise achieved using standard business practices. To date, there has been very little market penetration of CHP in Ohio, and no alternative code, standard, or business practice has previously existed from which a baseline has been established. Thus, there are presently no circumstances requiring an adjusted baseline.

Third, with the installation of CHP systems, there is no increase, but rather, an overall decrease in necessary fuel consumption. Other technologies that displace electricity from the grid, such as replacing a heat-pump with a gas-fired furnace, are properly excluded from being counted in electric efficiency programs because they necessitate "fuel switching;" that is, the costs to the electric grid and ratepayer are merely shifted to the natural gas grid and ratepayer. In contrast, CHP does not follow the fuel switching paradigm. In nearly every instance, the installation of effective CHP systems simultaneously produces an overall reduction in fuel consumption.

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[21] See Comments of Alliance at 2; Comments of MCA at 7.
[22] See, e.g., Comments of Environmental and Consumer Advocates at 14; Comments of FirstEnergy at 27; Comments of IEU-Ohio at 12.

Finally, counting savings as 100% of CHP electric generation is the simplest, most easily understood method. OMAEG does not believe it is necessary to tier either the savings counted, or incentive level, based on CHP plant efficiency. As stated previously, the market penetration of CHP in Ohio right now is very low. Lower-efficiency CHP plants are already burdened by an inherent savings disincentive. Thus, OMAEG opposes the implementation of tiered incentives at this point. OMAEG does not, however, oppose reconsidering the tiered incentive approach once the CHP market has developed in Ohio, and CHP implementation costs and trends are better established.

OMAEG notes the broad agreement from the Energy Resources Center (ERC), the Alliance, Ohio Coalition for CHP, the MCA, and the Environmental and Consumer Advocates that Staff's suggested performance incentive of $0.005/kWh generated is too low to sufficiently move the market.[23] There also appears to be broad agreement from these parties that the fundamental barrier to CHP installation is the significant initial cost associated with a project.[24] Given these circumstances, an up-front cash incentive will be necessary to increase CHP installations.

OMAEG also supports the ERC's recommendation that the Commission order all electric utilities to accept CHP and waste energy recovery systems as custom measures in their existing custom measure programs. Currently, certain custom programs explicitly prohibit CHP technology. As a result, consumers interested in installing CHP technology have no program choices, barring the Commission's program, available to them. Allowing CHP to count as a custom measure in electric utility programs will serve as a simple stop-gap solution until all electric utilities are able to develop CHP-specific programs or measures.

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[23] See Comments of ERC at 3-4; Comments of Ohio Coalition for CHP at 6; Comments of MCA at 4; Comments of Environmental and Consumer Advocates at 16-18.
[24] Id.

III. CONCLUSION

OMAEG submits the foregoing comments and suggestions regarding the proposed rule changes to Chapters 4901:1-39, O.A.C., to the Commission for consideration. OMAEG appreciates the opportunity to comment on Ohio's energy efficiency rules, and recommends that the Commission adopt the recommendations included herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on March 24, 2014.

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