

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY COMMENTS REGARDING THE IN-STATE ALTERNATIVE ENERGY
REQUIREMENT FOR 2014
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Ohio law requires electric companies to use renewable energy sources for a portion of the companies' generation offered to customers.¹ Currently, R.C. 4928.64(B)(3) and Ohio Adm. Code 4901:1-40-03(A)(2)(a) require electric companies to purchase at least one-half of their alternative energy resources through facilities located in the state of Ohio. That is about to change.

Substitute Senate Bill 310 ("Sub. S.B. 310") was enacted in June 2014. Among other things, Sub. S.B. 310 eliminates the requirement in R.C. 4928.64(B)(3) that electric companies purchase at least one-half of their alternative energy resources through facilities located in Ohio. Sub. S.B. 310 will become effective on September 12, 2014.

Because current R.C. 4928.64(B)(3) is in effect for most, but not all, of calendar year 2014, the Public Utilities Commission of Ohio ("PUCO") seeks comment on how it should apply Ohio Adm. Code 4901:1-40-03(A)(2)(a) in reviewing electric companies' alternative energy purchases for 2014. The PUCO has asked interested persons to respond to two specific questions:

¹ R.C. 4928.64(B)(2). In these Reply Comments, the term "electric companies" includes both "electric distribution utilities" and "electric services companies," as the terms are used in R.C. 4928.64(B)(2).

- (A) Does the General Assembly’s amendment to R.C. 4928.64(B)(3) by Sub. S.B. 310 require the Commission to amend Ohio Adm. Code 4901:1-40-03 to eliminate the in-state requirement in its entirety, including the portion of 2014 prior to the effective date of Sub. S.B. 310?
- (B) Does the General Assembly’s amendment to R.C. 4928.64(B)(3) by Sub. S.B. 310 require the Commission to amend Ohio Adm. Code 4901:1-40-03 to prorate the in-state requirement for 2014 based upon the effective date of Sub. S.B. 310 and to eliminate the requirement thereafter?²

By July 31, 2014, ten interested persons filed Comments in response to the Entry.

Some of the commenters recommended that, to fulfill the terms of the new law, the PUCO should not change the in-state alternative energy purchase requirement of Ohio Adm. Code 4901:1-40-03(A)(2)(a) for 2014. Other commenters argued that the PUCO should eliminate the rule.

The Office of the Ohio Consumers’ Counsel (“OCC”) files these Reply Comments.³ OCC is replying to one of the Comments, in which several points are advocated that, if adopted, could affect the future implementation of Ohio law. The Industrial Energy Users-Ohio (“IEU-Ohio”) claims that there is no annual in-state requirement under current law.⁴ This interpretation is mistaken.

IEU-Ohio’s assertion is contradicted by R.C. 4928.64(D)(1)(a), which requires the PUCO to report annually on “[t]he compliance of electric distribution utilities and electric services companies with division (B) of this section.” The annual report provision applies to *all* of 4928.64(B), including the in-state requirement. Thus, the law requires electric utilities to comply with the in-state requirement annually. In addition,

² Entry (July 11, 2014) at 2.

³ If OCC does not address a particular issue raised by other commenters, that fact should not be construed to mean that OCC acquiesces to the commenters’ positions.

⁴ IEU-Ohio Comments (July 30, 2014) at 2-4.

the PUCO's annual report to the General Assembly includes data regarding the in-state requirement for each compliance year.⁵

IEU-Ohio also claims that “any annual compliance quantity is an installment towards the total compliance quantity required for the entire compliance period. Over-compliance in any particular year is bankable for use in future years.”⁶ These claims are not grounded in the law for two reasons. First, the annual compliance quantities are not “installments” toward the overall compliance quantity that electric utilities must achieve by 2026 under SB 310. Instead, each year's compliance benchmark is distinct from every other year's benchmark, because the benchmarks are percentages of the amount of generation the electric company provides each year. The amount of generation a company provides will vary from year to year. Whether an electric company meets the benchmark for 2014 has no bearing on the company's obligation to have 12.5% of its generation come from renewable resources by 2026.

Second, over-compliance in any particular year is not bankable for use in future years. Over-compliance for one year has no effect on the amount of generation from renewable energy resources that a utility must provide the next year. The utility still must meet the next year's benchmark of generation from renewable resources the utility uses in that year.⁷

OCC appreciates the PUCO's invitation to comment on these matters affecting Ohio consumers.

⁵ See, e.g., *In the Matter of the Commission's Alternative Energy Portfolio Standard Report to the General Assembly for the 2012 Compliance Year*, Case No. 13-1909-EL-ACP, Staff's Draft Alternative Energy Portfolio Standard Report to the General Assembly for the 2012 Compliance Year (January 14, 2014) at 11.

⁶ IEU-Ohio Comments at 3.

⁷ Further, an electric utility must use renewable energy credits within five years after they are obtained by the utility. See R.C. 4928.645.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Reply Comments were served upon the persons listed below via electronic service this 12th day of August 2014.

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Summary: Comments Reply Comments Regarding the In-State Alternative Energy Requirement for 2014 by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.