

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. 12-2156-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. 13-651-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. 13-652-EL-ORD

FINDING AND ORDER

Entered in the Journal on December 19, 2018

I. SUMMARY

{¶ 1} The Commission adopts the proposed amendments to Ohio Adm.Code Chapters 4901:1-39 and 4901:1-40 regarding the Commission's rules for energy efficiency and renewable energy portfolio standards.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules.

{¶ 3} On January 10, 2011, the Governor of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule

has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and 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.

{¶ 4} In addition, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Further, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 5} The Commission held a workshop in this proceeding on April 23, 2013, pursuant to Entry issued on March 15, 2013, in order to elicit feedback on Ohio Adm.Code Chapters 4901:1-39 and 4901:1-40. The purpose of the workshop was to allow stakeholders to propose their own revisions to the rule for consideration.

{¶ 6} By Entry issued on January 29, 2014, the Commission requested comments and reply comments from Staff's proposed revisions to Ohio Adm.Code Chapters 4901:1-39 and 4901:1-40.

{¶ 7} Pursuant to the Entry issued on January 29, 2014, written comments were filed on February 28, 2014, by Interstate Gas Supply, Inc. (IGS), Ohio Advanced Energy Economy (OAEE), The Dayton Power and Light Co. (DP&L), FirstEnergy Solutions Corp. (FES), the Ohio Hospital Association (OHA), Duke Energy Ohio, Inc. (Duke), Energy Resources Center (ERC), the Heat is Power Association, the Alliance for Industrial Efficiency, Nucor Steel Marion (Nucor), Industrial Energy Users - Ohio (IEU-Ohio), Ohio Power Co. (AEP Ohio), The Ohio Manufacturers' Association Energy Group (OMAEG), the Ohio Coalition for Combined Heat & Power (CHP Coalition), Ohio Edison Co., The

Cleveland Electric Illuminating Co., and The Toledo Edison Co. (collectively, FirstEnergy), Ohio Partners for Affordable Energy (OPAE), the Environmental Law and Policy Center, the Ohio Environmental Council, Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, and Citizens Coalition (collectively, ECA), the Ohio Consumers' Counsel (OCC), the Midwest Cogeneration Association (Midwest Cogen). Reply comments were then filed on March 24, 2014, by IEU-Ohio, ERC, Duke, IGS, AEP Ohio, OMAEG, FirstEnergy, DP&L, Midwest Cogen, CHP Coalition, OCC, ECA, and Nucor.

{¶ 8} Sub.S.B. No. 310 of the 130th General Assembly (SB 310), which became effective September 12, 2014, amended R.C. 4928.64 and 4928.65 to eliminate the in-state renewable benchmarks and advanced energy component and freeze renewable energy benchmarks for 2015 and 2016 at the 2014 baseline level. SB 310 further required the benchmarks to resume in 2017, beginning at the 2015 baseline levels. R.C. 4928.645, formerly R.C. 4928.65 prior to the enactment of SB 310, provides that an electric distribution utility (EDU) or electric services company (ESC) may use renewable energy credits (RECs)¹ and solar energy credits (SRECs) to meet its respective renewable energy and solar benchmarks. Where appropriate, the Commission has modified Ohio Adm.Code Chapters 4901:1-39 and 4901:1-40 to align the rules' language with the statutory changes. For brevity, amendments prompted by SB 310 are not specifically identified in the attached rules. In addition, the Commission is revising other portions of the rules to ensure an efficient and thorough review of the filings discussed in these chapters, as well as continuing to afford interested parties due process in these matters.

{¶ 9} Lastly, before addressing the individual rules, we would like to thank all participants for their contributions toward the development of these rules and the

¹ Ohio Adm.Code 4901:1-40-01(BB) defines a REC as the environmental attributes associated with one megawatt hour (MWh) of electricity generated by a renewable energy resource, except for electricity generated by facilities as described in Ohio Adm.Code 4901:1-40-04(E).

insightful comments and reply comments submitted in this proceeding. In some instances, we will be making substantial changes to the structure and content of the rules proposed by Staff, often at the suggestion of the comments that we have received. However, due to the volume of materials and time constraints, we will not attempt to address every issue or suggestion raised. In certain instances, we may have incorporated suggested changes into our rules or addressed concerns without expressly acknowledging the source of the suggestion in this Finding and Order. To the extent that a comment is not specifically addressed in this Finding and Order, it has been rejected.

III. COMMENTS ON OHIO ADM.CODE CHAPTER 4901:1-39

A. Ohio Adm.Code 4901:1-39-01 - Definitions

{¶ 10} OAEE, DP&L, OHA, Duke, ECA, IEU-Ohio, AEP Ohio, OMAEG, FirstEnergy, OP&E, and OCC each filed comments specifically regarding proposed rules in Ohio Adm.Code 4901:1-39-01. The majority of the comments are directed towards the definitions of “cost-effective” in subsection (H), “independent program evaluator” in subsection (O), “shared savings” in subsection (X). Additionally, various parties comment on whether a definition for “utility cost test” should be added.

{¶ 11} Duke argues in its comments that the Commission should clarify the definition of “benchmark comparison method” in Ohio Adm.Code 4901:1-39-01(D), for purposes of mercantile exemptions. Duke asserts that there may be some disconnect between the current definition and the manner in which the rules are applied. (Duke Comments at 1-2.)

{¶ 12} The Commission disagrees with Duke’s comments and finds that the proposed definition of “benchmark comparison method” sufficiently explains the method utilized to determine the length of the rider exemption that the customer may receive for dedication of its energy efficiency savings to the electric utility. Accordingly, Duke’s recommendation is denied.

{¶ 13} Duke and FirstEnergy comment that the reference in Ohio Adm.Code 4901:1-39-01(E) to summer on-peak as 3:00 p.m. to 6:00 p.m. should be deleted or revised, arguing that, given the summer peak period may vary over time, the definition is not consistent with the definition of “peak demand” in proposed Ohio Adm.Code 4901:1-39-01(T), or PJM’s definition of summer on-peak as 2:00 p.m. to 6:00 p.m. (Duke Comments at 2; FirstEnergy Comments at 3). In its reply, FirstEnergy recommends including a reference to specific hours for coincident peak demand savings, such as adopting PJM’s 2:00 p.m. start time or modifying the period to reflect “hours ending.” FirstEnergy alleges that such a change would allow EDUs to count coincident peak demand savings from energy efficiency programs using a defined period consistent with industry and PJM standards. (FirstEnergy Reply Comments at 2-3.) Similarly, OPAE asserts the Commission should adopt PJM’s peak period, but notes that the system is now also experiencing substantial peaks in the winter. OPAE also states the term should be “peak demand savings,” rather than “coincident peak-demand savings,” and should specify the demand savings resulting from energy efficiency as measured against PJM’s peak because the capacity resources created by energy efficiency investments is bid into PJM. (OPAE Comments at 2.) In its reply, AEP Ohio agrees with OPAE and FirstEnergy that the time period should match the PJM demand response period (AEP Reply Comments at 2).

{¶ 14} The Commission agrees with the submitted comments and finds that Ohio Adm.Code 4901:1-39-01(E) should be revised to state the summer on-peak period should begin at 2:00 p.m., consistent with PJM’s demand response period, rather than Staff’s proposed 3:00 p.m. time. Further, in order to provide additional clarification, the Commission notes that the definition of “peak demand” in Ohio Adm.Code 4901:1-39-01(S) will similarly mean the usage that would be expected to occur during the time periods covered in the peak demand baseline. Lastly, we find that OPAE’s additional comments are unnecessary and, thus, should be rejected.

{¶ 15} Duke and AEP Ohio comment that proposed Ohio Adm.Code 4901:1-39-01(F) should be revised to clarify whether the Commission intends that a combined heat and power (CHP) system should be designed to achieve thermal efficiency or actually operate at thermal efficiency. Further, AEP Ohio supports requiring these systems to operate at or above the minimum statutory requirement, and adds that any available utility incentives should be based on their efficiency and production over time. (Duke Comments at 2; AEP Ohio Reply Comments 3.)

{¶ 16} The Commission directs the parties to R.C. 4928.01(A)(40), which specifies that a CHP system should be designed to achieve thermal efficiency. Therefore, the Commission rejects AEP Ohio's and Duke's comments.

{¶ 17} Regarding the definition of "cost-effective" in proposed Ohio Adm.Code 4901:1-39-01(H), Staff suggests language to allow the possibility of using the utility cost test, as applicable. However, Duke, FirstEnergy, OAEE, OHA, and OPAE note that the proposed rule neither defines the term utility cost test nor establishes the parameters for when the test could be applied. (Duke Comments at 2; FirstEnergy Comments at 4; OAEE Comments at 4; OHA Comments at 3; OPAE Comments at 3-4.) In their replies, AEP Ohio, DP&L, FirstEnergy, and OMAEG again urge the Commission to add a definition for the utility cost test (AEP Ohio Reply Comments at 3-4; DP&L Reply Comments at 2; FirstEnergy Reply Comments at 5-6; OMAEG Reply Comments at 2). FirstEnergy further recommends that the Commission clarify that the utility cost test should be applied to the mercantile customer self direct programs, in accordance with current industry practice (FirstEnergy Comments at 4).

{¶ 18} OAEE further recommends clarifying the definition of "utility cost test" to account for all relevant utility system costs avoided by efficiency resources, including: generation costs, transmission costs, distribution costs, environmental compliance costs, the price suppression effects in wholesale markets, and utility-perspective non-energy benefits (OAEE Comments at 4). In its reply, IEU-Ohio disagrees with OAEE's request

because the Commission recently concluded that price suppression analyses were overly subjective, difficult to calculate, and did not belong in an objective test (IEU-Ohio Reply Comments at 18).

{¶ 19} Upon consideration of the submitted comments, the Commission agrees that the proposed rule should include a definition for the term “utility cost test,” meaning a benefit-cost test where benefits are avoided utility costs resulting from the demand-side management program, and costs are those incurred by the EDU, including incentive costs and excluding any direct customer costs. We also recognize that the utility cost test is also known as the program administrator cost test. We have added this definition in proposed Ohio Adm.Code 4901:1-39-01(DD). Further, the Commission directs the parties to review Ohio Adm.Code 4901:1-39-04(B), in which the applicability of the utility cost test or the total resource cost test is further described. Additional instruction is more appropriate in future proceedings in which the Commission may review program portfolio plans and provide additional clarification on the cost-effectiveness of specific programs or the two aforementioned tests, if necessary.

{¶ 20} Furthermore, the Commission specifically rejects OAEE’s comment requesting that the definition for utility cost test account for all relevant utility system costs avoided by efficiency resources. The definition adopted by the Commission is a readily-accepted, industry-wide definition, as indicated in the comments submitted by OHA and OPAE (OHA Comments at 4; OPAE Comments at 4). Moreover, IEU-Ohio correctly points out that price suppression analyses are overly subjective and difficult to calculate. The Commission specifically discussed this in *In re FirstEnergy*, Case No. 11-5201-EL-RDR, Opinion and Order (Aug. 7, 2013), at 32-33. As such, the proposed language in this definition provides sufficient clarity for EDUs.

{¶ 21} With regard to proposed Ohio Adm.Code 4901:1-39-01(L), FirstEnergy requests that the Commission restore the statement “the total kilowatt-hours sold shall equal the total kilowatt-hours delivered by the electric utility” in the definition of “energy

baseline.” It explains that, because long-term forecast reports are provided at both the customer and generation level, it is unclear which forecast report should be used for purposes of this rule. The Commission rejects FirstEnergy’s recommendation, noting that it failed to sufficiently explain issues posed with providing long-term forecast reports at both the customer and generation levels.

{¶ 22} ECA recommends deleting the words “producing electricity from” the definition of “energy efficiency” in Ohio Adm.Code 4901:39-01(N) and substituting the words “through the use of.” In support of its recommendation, ECA states that 100 percent of the electrical output from waste energy recovery (WER) systems or CHP systems should not count as energy saved. (ECA Comments at 41-42.) Upon review, the Commission rejects ECA’s suggestion. R.C. 4928.66(A)(1)(a) specifically indicates that WER and CHP systems can be utilized to achieve energy efficiency savings. Moreover, usage of these systems decreases the total amount of energy an EDU’s customers utilize from the electric grid. This approach is also consistent with past Commission practice. *See In re Jay Plastics Division of Jay Industries, Inc.*, Case No. 13-2440-EL-EEC, Finding and Order (Feb. 11, 2015), at 5; *see also In re Solvay Advanced Polymers, L.L.C.*, Case Nos. 14-2296-EL-EEC, 14-2304-EL-EEC, Finding and Order (Nov. 18, 2015), at 12-13. Consequently, it is logical to count the entire output from WER and CHP systems as energy efficiency savings.

{¶ 23} AEP Ohio proposes a new definition for the term “gross savings,” noting that the Commission’s current rules allow gross savings to count towards an EDU’s benchmarks. AEP Ohio further contends that gross savings would provide the EDUs more clarity in planning, reduce future plan costs and impacts, and avoid the ongoing arguments of a very few stakeholders over a position that has been accepted in Ohio by most stakeholders. (AEP Ohio Comments at 4.)

{¶ 24} The Commission agrees with AEP Ohio’s recommendation and, thus, has revised the attached rules to include a definition for “gross savings” under proposed

Ohio Adm.Code 4901:1-39-01(O), consistent with the Commission's existing rules and practices.

{¶ 25} Regarding the definition of "independent program evaluator" (IPE) in proposed Ohio Adm.Code 4901:1-39-01(P), ECA initially recommends that the Commission clarify that EDUs will still retain their own independent evaluators (ECA Comments at 42). FirstEnergy, Duke, and AEP Ohio recommend modifying the IPE definition to clarify that the IPE's role should be limited to the verification of activities and recommendations for updates to the Ohio technical reference manual (TRM) and, thus, suggest that the Commission incorporate language that more accurately reflects this verification role of the IPE (FirstEnergy Comments at 22-23; AEP Ohio Comments at 2-4; Duke Reply Comments at 3). DP&L and AEP Ohio also note that the duties listed in proposed Ohio Adm.Code 4901:1-39-01(P)(4) are beyond the purview of the IPE's responsibilities and likely beyond his or her level of expertise. Moreover, AEP Ohio adds that Staff is capable of reviewing submitted rate filings. (DP&L Comments at 2; AEP Ohio Reply Comments at 5.) AEP Ohio also suggests that, in the event an entity other than Staff is chosen to act as the IPE, the Commission should utilize a competitive bidding process for its selection (AEP Ohio Reply Comments at 5). Finally, Duke suggests that subsections (2) and (3) will increase costs and provide little value (Duke Comments at 3; Duke Reply Comments at 3). Contrarily, OMAEG believes that it is within the purview of the IPE to opine upon the appropriateness and reasonableness of costs to be recovered through the EDU's energy efficiency riders, in order to provide the Commission with an evaluation of the necessity of costs (OMAEG Reply Comments at 3).

{¶ 26} With regard to proposed Ohio Adm.Code 4901:1-39-01(P)(3), AEP Ohio suggests that updates to the TRM be made every three to five years (AEP Ohio Comments 4). IEU-Ohio and Duke recommend adding language explaining that reliance on the TRM is not mandatory and its use only provides for a presumption of reasonableness (IEU-Ohio Comments at 16; IEU-Ohio Reply Comments at 7; Duke Reply Comments at

6). Additionally, in its reply comments, IEU-Ohio suggests the Commission do the following: specify that changes to the TRM only apply prospectively; require Commission approval before changes to the TRM become effective; and provide mercantile customers and EDUs the option to independently provide the measurement and verification of actual energy savings (IEU-Ohio Reply Comments at 7). OMAEG supports adoption of the TRM, while also recommending biannual updates to the TRM resulting from a stakeholder process for suggesting revisions and additions (OMAEG Comments at 10).

{¶ 27} Initially, with regard to the various comments presented by the parties about the definition of the statewide IPE chosen by the Commission, the Commission clarifies that the purpose of this definition is to describe the IPE's role and the various activities the evaluator may undertake to measure the results of a utility's energy efficiency and peak demand reduction program portfolio, pursuant to the Commission's direction. As such, the Commission rejects changes proposed by parties. For further clarification, the Commission notes that while each utility has its own IPE, the Commission will maintain review authority over implementation of the utilities' portfolio plans. Staff can be chosen to act as the statewide IPE; however, the Commission, at its sole discretion, can also choose qualified third parties to conduct the evaluation. In the event a third party IPE is chosen by the Commission, we will take appropriate steps to ensure that the IPE possesses the requisite skills and expertise, comparable to the level of competency expected from Staff, to complete the required review and evaluation, in accordance with our direction. Accordingly, we find that the enumerated activities listed are appropriate and no further revision is necessary.

{¶ 28} Furthermore, we disagree with the varying timeframes to implement updates to the TRM, as suggested by OMAEG and AEP Ohio, and note that it is reasonable that the TRM be updated periodically as it is a resource utilized by all utilities. Lastly, while the TRM is an available resource and its application presumed to be

reasonable, the Commission agrees with IEU-Ohio and clarifies that it is not a mandatory resource and a utility may rely on any justifiable resource of its choosing. Parties will note that the definition for “verified savings” in proposed Ohio Adm.Code 4901:1-39-01(E) further demonstrates that utilities may utilize any reasonable statistical and engineering method to calculate reductions in energy usage or peak demand as a result of energy efficiency programs.

{¶ 29} FirstEnergy suggests revising the definition of “peak demand” in proposed Ohio Adm.Code 4901:1-39-01(T) by adopting the PJM performance hours, which includes the time “during the summer peak period which is defined as June through August on weekdays between 2:00 p.m. to 6:00 p.m.” (FirstEnergy Comments at 4). Duke also suggests that this definition should be consistent with the proposed definition of “coincident peak demand” (Duke Comments at 4).

{¶ 30} As the Commission revised the definition of “coincident peak demand” in Ohio Adm.Code 4901:1-39-01(E) to reflect PJM performance hours, we find it unnecessary to revise the proposed definition of “peak demand” in Ohio Adm.Code 4901:1-39-01(T), as suggested by FirstEnergy.

{¶ 31} OPAE requests clarification⁹ to the definition of “program” in proposed Ohio Adm.Code 4901:1-39-01(X) and asserts that the proposed language mischaracterizes what is included in a cost-effective weatherization program (OPAE Comments at 2). The Commission agrees with OPAE’s comments and consequently eliminates the second sentence of the definition, which listed examples of measures that could be included within a cost-effective weatherization program.

{¶ 32} Regarding the definition of “shared savings” in proposed Ohio Adm.Code 4901:1-39-01(Y), OHA and AEP Ohio support the inclusion of the definition because it memorializes the “as-found” method of calculating program savings for the

purposes of mercantile rider exemptions or the dedication of program savings to EDU portfolio programs (OHA Comments at 3-4; AEP Ohio Reply Comments at 5).

{¶ 33} However, AEP Ohio requests clarification regarding whether Commission-ordered programs that are not cost-effective count toward compliance but are excluded from shared savings. AEP Ohio also suggests clarifications to thoroughly explain how net benefits are calculated. (AEP Ohio Comments at 4.) Similarly, FirstEnergy requests clarification such that the savings are based on the kilowatt hours as reported for compliance purposes in the EDU's annual portfolio status report (FirstEnergy Comments at 6). ECA and OMAEG support the current proposed language, while ECA adds that AEP Ohio's modification to the definition of shared savings would only encourage utilities to meet benchmarks, instead of exceeding compliance with benchmarks (ECA Reply Comments at 25-26; OMAEG Reply Comments at 3).

{¶ 34} OPAE and OCC argue the definition should be modified to eliminate the word "distribution" from the definition of avoided costs used to determine the incentive. OPAE notes that EDUs recover lost distribution revenues from ratepayers, so those costs are not avoided and should not be included in the calculations. OCC also asserts that the proposed definition is inadequate because it does not reflect consistent Commission precedent holding that mercantile program savings and transmission project savings may be counted toward compliance, but should not be included in any shared savings calculations. Further, OCC argues that the Commission should incorporate a three-year measure life for all measures that are included in a shared savings calculation. (OPAE Comments at 3; OCC Comments at 16-17.)

{¶ 35} In its reply, FirstEnergy argues that OCC's proposed modification would not take into account FirstEnergy's shared savings mechanism already approved in *In the Matter of the Application of the Cleveland Electric Illuminating Company, Ohio Edison Company, and the Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, 12-

2191-EL-POR, 12-2192-EL-POR, Opinion and Order (Mar. 13, 2013) (*FirstEnergy EE/PDR*). Further, FirstEnergy disagrees with OPAE's suggestion to delete the word "distribution" from the definition, noting that lost distribution revenue and avoided distribution costs are separate concepts and should be treated as such. FirstEnergy and AEP Ohio also agree that measure lives should not be limited to three years. (FirstEnergy Reply Comments 3-4; AEP Ohio Reply Comments at 16.)

{¶ 36} The Commission agrees that further clarification is required for the definition of "shared savings" in proposed Ohio Adm.Code 4901:39-01(Y). We have included a sentence to reflect that net savings should not include any savings related to historical mercantile programs, transmission and distribution infrastructure projects, customer action programs, special improvement districts, or banked savings. The Commission notes that this revised definition is consistent with prior Commission rulings on the subject. *FirstEnergy EE/PDR* Order at 16. However, the Commission finds that it would be premature to act on AEP Ohio's suggestion and, thus, declines to delineate whether Commission-ordered programs which are not cost-effective count toward compliance but are excluded from shared savings. The Commission finds that the more appropriate forum for EDUs to address this issue is through the collaborative process required under Ohio Adm.Code 4901:1-39-04(C)(2). The Commission also disagrees with OCC's recommendation for a three-year measure life as such a timeframe does not accurately reflect the life span of all measures that may be approved by the Commission. Lastly, we thoroughly address OPAE's comment regarding the inclusion of the word "distribution" in the discussion for Ohio Adm.Code 4901:39-01(AA) below.

{¶ 37} OAEE notes that Staff proposes to remove tax credits from the list of benefits to be netted out against the costs of a utility's demand-side measure or program in proposed Ohio Adm.Code 4901:1-39-01(BB) within the definition of "total resource cost test," adding that excluding a tax credit to the participant would be inconsistent with the nature of the test (OAEE Comments at 5). Duke requests clarification as to whether

the Commission intends for the total resource cost test to be an ex ante analysis or an ex post analysis (Duke Comments at 4). In response to Duke's comment, AEP Ohio and FirstEnergy support the inclusion of an ex ante analysis under the total resource cost test. Additionally, while AEP Ohio notes that tax credits are included as a benefit in the industry-wide standard definition, it urges the Commission to omit them because it is very difficult to determine which customers have actually taken tax credits. (AEP Ohio Reply Comments at 6; FirstEnergy Reply Comments at 4.) OPAE again argues that the word "distribution" should be removed from the definition, as including distribution in the test is inconsistent with current utility and consumer practices (OPAE Comments at 3). FirstEnergy reiterates its disapproval for the deletion of the word "distribution" from this definition (FirstEnergy Reply Comments at 4).

{¶ 38} The Commission agrees with AEP Ohio and finds it appropriate to remove tax credits from the list of benefits included in the definition of "total resource cost test," as set forth in proposed Ohio Adm.Code 4901:1-39-01(BB). As AEP Ohio notes, it is difficult to determine and track whether customers have taken tax credits. The Commission also clarifies, in response to Duke's comments, that the total resource cost test will involve an ex ante analysis. As explained further below in the discussion for proposed Ohio Adm.Code 4901:1-39-05, the Commission is implementing a post-approval annual performance verification process for portfolio plans. Lastly, the Commission rejects OPAE's recommendation because avoided distribution costs remain relevant to the total resource cost test even though utilities are no longer vertically-integrated. As such, OPAE's comment is rejected.

{¶ 39} Regarding the definition of "verified savings" in proposed Ohio Adm.Code 4901:1-39-01(EF), Duke requests clarification as to whether the frequency of the reports provided by its program evaluator will need to be increased to an annual basis (Duke Comments at 4). OCC asserts that the TRM should be updated and adopted as the standard for determining verified savings and the rule be redrafted to reflect the new

standard. Doing so, OCC alleges, would protect electric customers by ensuring consistency for determining energy savings among Ohio electric utilities. (OCC Comments at 17-18.) FirstEnergy disagrees with OCC's proposal to limit savings to only what is provided for in the TRM, as there could be other appropriate methods available for verifying savings (FirstEnergy Reply Comments at 5).

{¶ 40} With respect to Duke's comment regarding frequency of reports, the Commission clarifies that each EDU should properly verify savings achieved on an annual basis. Next, the Commission agrees with FirstEnergy and has revised the definition to include the TRM as an option for determining verified savings. As noted before in this Finding and Order and expressly provided for in the definition, while use of the TRM will be presumed to be reasonable, and EDU may also use any other justifiable method of its choosing for determining verified savings.

{¶ 41} Lastly, both ECA and ERC recommend adding a definition for "useful thermal energy" as it pertains to the definition of a "CHP system."

{¶ 42} The Commission agrees with the parties' comments and adds a definition of "useful thermal energy" in Ohio Adm.Code 4901:1-39-01(CC).

B. Ohio Adm.Code 4901:1-39-02 - Purpose and Scope

{¶ 43} OAEE opposes the Staff's proposed revisions to the purpose and scope of the rules, as they are defined in Ohio Adm.Code 4901:1-39-02(A). OAEE notes that the purpose was formerly "to establish rules for the implementation of electric utility programs that will encourage innovation and market access for cost-effective energy efficiency and peak-demand reduction, achieve the statutory benchmark for peak-demand reduction, meet or exceed the statutory benchmark for energy efficiency, and provide for the participation of stakeholders in developing energy efficiency and peak-demand reduction programs for the benefit of the state of Ohio." OAEE states that these are policy objectives worth preserving and promoting and that it is opposed to their

removal from the current version of the rule. (OAEE Comments at 6.) The Commission rejects OAEE comment and notes that the language of Ohio Adm.Code 4901:1-39-02(A) has been amended for consistency with current statutory language and the current established nature of these programs.

{¶ 44} Next, OCC opposes Staff's proposed revisions to Ohio Adm.Code 4901:1-39-02(B), which provides that the Commission may sua sponte waive any requirement of Ohio Adm.Code Chapter 4901:1-39, other than a requirement mandated by statute, for good cause shown. OCC and ECA assert that the Commission should not waive a rule upon its own motion, which could remove interested stakeholders and transparency from the waiver process. (OCC Comments at 18-19; ECA Comments at 43.) In its reply, FirstEnergy disagrees with OCC and ECA's opposition to this change (FirstEnergy Reply Comments at 6-7). The Commission agrees with FirstEnergy and notes that, consistent with the administrative authority conferred upon us, we should maintain the ability to waive rules, upon motion filed by a party or upon our own motion, except for those rules required by statute, in order to effectively and efficiently oversee the proceedings before us.

C. Ohio Adm.Code 4901:1-39-03 - Program Planning Requirements

{¶ 45} OCC requests that the Commission clarify whether Ohio Adm.Code 4901:1-39-03(A) intends to implement assessments of the potential energy savings and peak-demand reduction from adoption of energy efficiency and demand-response measures within the utilities' certified territories every five years. OCC believes that the proposed rule is confusing because under Ohio Adm.Code 4901:1-39-04, program portfolio plans are implemented every year, which obviates the need for an assessment once every five years. (OCC Comments at 19-20.)

{¶ 46} OMAEG recommends that the Commission reserve flexibility to order EDUs to update their assessments inside of the five-year time period in the event market

conditions or technologies change, as well as retain the authority to oversee the programs and reserve the right to adjust program terms. Further, OMAEG recommends adoption of a five-year program approval, with biannual renewals that extend program approval for another five years, in order to have the approved programs coincide with the timing of PJM auctions. (OMAEG Comments at 3-4.)

{¶ 47} Duke, FirstEnergy, and AEP Ohio support the five-year interval and the five-year amendment (Duke Comments at 5; FirstEnergy Comments at 7; AEP Reply Comments at 7-8). While AEP Ohio and Duke agree that the five-year program approval should align with PJM capacity auctions, they are opposed to OMAEG's suggestion to reserve flexibility in the event market conditions or technologies change (AEP Reply Comments at 7-8; Duke Comments at 7).

{¶ 48} Initially, the Commission once again notes that we envision a post-approval process for utilities' portfolio plans, departing from the previous pre-approval process for such plans. As such, maintaining our broad authority over these portfolio plans while transitioning from a pre-approval process to a post-approval process is of paramount importance. Consequently, the Commission agrees with OMAEG's comment regarding flexibility and notes that the Commission will retain oversight authority over portfolio planning despite transitioning to a post-approval process. The parameters of the post-approval process are further explained in our discussion surrounding Ohio Adm.Code 4901:1-39-04 below. Additionally, to prepare for these portfolio plans, the Commission will require utilities to conduct an assessment of potential energy savings and peak demand reduction from adopting energy efficiency and peak demand response programs at least once every five years, but may order EDUs to update their assessments within that five year timeframe. Accordingly, the attached rules have been updated to include these changes.

{¶ 49} With regard to OMAEG's comment requesting a five-year program approval which coincides with the PJM auctions, the Commission again reiterates that

the proposed rules no longer include a pre-approval process. However, the Commission expects the EDUs to prudently manage their programs and to balance the risks associated with bidding into the PJM auctions with the benefits derived from them. Moreover, the EDUs' actions in this regard would be subject to review and evaluation by the IPE designated by the Commission. As such, we reject OMAEG's comment.

{¶ 50} Regarding Ohio Adm.Code 4901:1-39-03(A)(1), OP&E supports Staff's recommendation to substitute "commercially available" for "alternative." However, it also suggests retaining the current wording in this rule, which refers to "capital stock," as it is consistent with industry practice and preferable to the phrase "electricity-consuming facilities." (OP&E Comments at 3.) ECA recommends requiring EDUs to incorporate more innovative measures and emerging technologies in their market potential studies, including retro-commissioning and continuous commissioning, which are valuable approaches to identifying deep energy savings in commercial buildings. Finally, ECA suggests adding the words "including operational practices and design improvements" at the end of Ohio Adm.Code 4901:1-39-03(A)(1) to reflect this incorporation. (ECA Comments at 32-33.)

{¶ 51} FirstEnergy disagrees with ECA's suggestions to incorporate innovative measures and emerging technologies as the proposed rule is already written with sufficient flexibility (FirstEnergy Reply Comments at 7-8).

{¶ 52} Upon review, the Commission agrees with FirstEnergy and rejects OP&E and ECA's recommendations. As FirstEnergy notes, the rule language as proposed by Staff is sufficiently flexible and allows utilities to identify energy savings in commercial buildings within its certified territory. The additional suggested revisions are unnecessary at this time.

{¶ 53} OP&E and O&EE support using the utility cost test as the threshold test for program approval and cost recovery in Ohio Adm.Code 4901:1-39-03(A)(2). However,

both request that the Commission define the utility cost test. (OPAE Comments at 4; OAEE Comments at 2.) OPAE also recommends language in subsection (A)(2) indicating that alternative cost tests may also be included in the plan (OPAE Comments at 4). OAEE notes that Ohio Adm.Code 4901:1-39-03(A)(2) requires an assessment of cost-effectiveness using either the utility cost test or the total resource cost test, adding that it strongly opposes such a granular cost-effectiveness analysis as part of an EDU's program planning requirements because it may eliminate energy efficiency measures that would otherwise result in a better customer experience and more significant energy savings (OAEE Comments at 6-7).

{¶ 54} In its reply, FirstEnergy argues that OPAE fails to explain why the utility cost test is superior to the total resource cost test that is currently used (FirstEnergy Reply Comments at 7-10). Duke seeks additionally clarification from the Commission to explain which cost test to apply in determining relative cost-effectiveness and who is permitted to make that determination (Duke Comments at 5).

{¶ 55} As noted above, the Commission has already added a definition for the utility cost test in Ohio Adm.Code 4901:1-39-01(DD). Moreover, with regard to Duke's comment, an explanation of when to apply the total resource cost test and the utility cost test is contained within Ohio Adm.Code 4901:1-39-04(B). However, the Commission rejects the comments of OPAE and OAEE insofar as their requests for establishing the utility cost test as the threshold test for program cost-effectiveness, consistent with the comments of FirstEnergy and Duke. We agree with OAEE's comment that comprehensive programs which include an array of energy efficiency measures, whether or not cost-effective, may provide a better customer service experience or yield greater energy savings. Nevertheless, the Commission finds that measure-level applications of the utility cost test or the total resource cost test should be retained in this subsection because utilities' portfolio plans have to be cost-effective on a program level. Such applications utilized in the analysis of economic potential allow the Commission to

quickly identify problems and propose feasible solutions to utilities. Consequently, the Commission rejects OAEE's comment.

{¶ 56} ECA recommends modifying Ohio Adm.Code 4901:1-39-03(A)(3) to ensure that each market potential study explains, in detail, the EDU's methodology for determining achievable potential from economic potential, including a description of key parameters and input data, with formal citations of all references to supporting data and methodology validation (ECA Comments at 33). The Commission rejects ECA's recommendation because the Commission finds that the language in this subsection is sufficiently flexible to allow utilities to determine the best methodology in analyzing its achievable potential. Further, the Commission retains the ability to require additional information from the EDU to evaluate and confirm the level of achievable potential.

{¶ 57} OPAE avers that the rules, and specifically Ohio Adm.Code 4901:1-39-03(A)(4), should also require utilities to evaluate cost-effectiveness based on the lifecycle savings of a particular measure. OPAE believes this will reduce the current emphasis on low-cost measures that have a quick payback but are short-lived and reinforce the focus on measures with longer lives. According to OPAE, this will also assist utilities in reducing the need to acquire efficiency in the future when policymakers are concerned that utilities cannot meet the benchmarks. (OPAE Comments at 5-6.) The Commission rejects OPAE's suggestions as utilities will have the opportunity to argue for the inclusion of more cost-effective measures in portfolio plan proceedings.

{¶ 58} ECA recommends clarity on the definition of "anticipated impacts on new construction" in Ohio Adm.Code 4901:1-39-03(B)(7) (ECA Comments at 33). Duke also requests clarity because EDUs have no control over generating facilities (Duke Comments at 5). ECA also seeks clarity on how Staff will minimize lost opportunities by capturing the maximum potential for energy efficiency measures and design improvements in new construction (ECA Comments at 33). OPAE suggests retaining the current language in Ohio Adm.Code 4901:1-39(B)(7), as it provides a more accurate description (OPAE

Comments at 6). In response to ECA and Duke's comments regarding "anticipated impacts," the Commission directs the parties to the language contained in R.C. 4928.662(B), where the criteria is further explained. Moreover, we note that Duke takes this subsection out of context and that while, the Commission agrees that EDUs have no control over construction of new facilities or replacement facilities, EDUs are still required to consider the impact of such changes in designing its program portfolio plan. As such, ECA's, Duke's, and OPAE's comments are summarily rejected.

{¶ 59} In reference to Ohio Adm.Code 4901:1-39-03(B)(8), ECA suggests that gas utilities be included as explicit potential partners for energy efficiency programs (ECA Comments at 33; ECA Reply Comments at 22). FirstEnergy, in its reply, believes ECA's suggestion is unnecessary because the rule, as proposed, already encompasses all utilities (FirstEnergy Reply Comments at 8). ECA also suggests including a requirement that EDUs identify new opportunities in emerging technologies and fast-growing electric uses and quantify if any have become significantly large or promising since the previous market potential study (ECA Comments at 33). Duke contends that requiring coordination with other EDUs would be counter-productive (Duke Comments at 5).

{¶ 60} The Commission declines to include language in Ohio Adm.Code 4901:1-39-03(B)(8) directing electric utilities to consider their gas counterparts as potential partners for energy efficiency programs, as these rules are related to energy efficiency programs for electric utilities. Additionally, the Commission retains the language in this subsection as it is sufficiently flexible for utilities to identify emerging technologies for inclusion in its portfolios. Lastly, the Commission notes that there is no explicit requirement for a utility to partner with other utilities, but it may do so if there are efficiencies to be gained. Consequently, the Commission rejects the suggestions proposed by ECA.

{¶ 61} OPAE suggests retaining current Ohio Adm.Code 4901:1-39-03(B)(13) because market transformation is a primary goal of energy efficiency programs. As noted

above, OPAE also believes that using efficiency programs to leverage market transformation can potentially obviate the need for efficiency programs in the future. (OPAE Comments at 5-6.) ECA also suggests retaining the current language and additionally proposes adding language for on-bill financing and the potential for energy efficiency and demand response resources created by EDU programs to be bid into the PJM capacity auction to the list of program portfolio design criteria (ECA Comments at 34-35). In reply to ECA's proposals, FirstEnergy and AEP Ohio recommend rejection of the on-bill financing additions (FirstEnergy Reply Comments at 8-9; AEP Reply Comments at 9).

{¶ 62} The Commission disagrees with the comments of OPAE and ECA and finds that the proposed language of Ohio Adm.Code 4901:1-39-03(B) aligns this rule with the current statutory language and established nature of these programs. Moreover, the Commission declines to adopt on-bill financing at this time, as incorporating the recommended language would unnecessarily shift risk to ratepayers in the event of loan default. The Commission also clarifies that EDUs are expected prudently bid its energy efficiency resources into the PJM capacity auction. Consequently, the Commission declines to put language regarding the PJM capacity auction into the rule language. As such, the Commission accepts comments by FirstEnergy and AEP Ohio and rejects comments by OPAE and ECA.

D. Ohio Adm.Code 4901:1-39-04 - Program Portfolio Plan and Filing Requirements

{¶ 63} FirstEnergy asserts that with the proposed changes to the rest of the rules, Ohio Adm.Code 4901:1-39-04 is no longer necessary and should be removed. FirstEnergy asserts that Staff has proposed to move from a pre-approval process for portfolio plans to a post-approval process which allows the utilities flexibility to make changes in accordance with technologies and market conditions. However, FirstEnergy contends that the required annual filings should be unnecessary if the Commission moves to a post-approval process. (FirstEnergy Comments at 7.) Further, FirstEnergy asserts that if

the Commission adopts a pre-approval process, it should be modified to streamline the process (FirstEnergy Reply Comments at 10-12).

{¶ 64} ECA objects to FirstEnergy's suggestion that utilities not be required to make any filings with the Commission prior to implementing programs if the Commission moves to a post-approval process (ECA Reply Comments at 5).

{¶ 65} With regard to the comments above, the Commission recognizes that Staff is moving from a pre-approval process to a post-approval process. However, the Commission disagrees with FirstEnergy regarding its suggestion that Ohio Adm.Code 4901:1-39-04, as proposed, should be removed in its entirety. The Commission finds that the annual filings remain necessary as they provide notification about EDUs' proposed programs. The Commission notes that interested parties can provide input about EDUs' program portfolio plans during the collaborative process outlined in Ohio Adm.Code 4901:1-39-03(D). If parties identify continuing issues with an EDU's portfolio plan, such issues can be addressed during the performance verification process outlined in proposed Ohio Adm.Code 4901:1-39-05, which may include the opportunity for a hearing. Consequently, the Commission rejects FirstEnergy's recommendation to eliminate this language.

{¶ 66} OPAE believes that the proposed rules fail to resolve the difficulties that have emerged regarding the bidding of capacity into the PJM base residual auction (PJM BRA), and, thus, recommends that the provision as proposed be deleted (OPAE Comments at 8-9). Duke does not agree with OPAE and contends that it is neither in Duke's nor the customer's interest to offer more capacity than feasible into the PJM BRA (Duke Reply Comments at 8).

{¶ 67} ECA recommends adding an additional provision under Ohio Adm.Code 4901:1-39-04 to require EDUs to bid at least 85% of existing and projected energy

efficiency and peak demand response resources that are eligible under PJM rules into the PJM BRA (ECA Comments at 31; ECA Reply Comments at 20-21).

{¶ 68} As noted above in the discussion for Ohio Adm.Code 4901:1-39-03, the Commission again emphasizes that bidding into the PJM BRA is a management decision for EDUs. EDUs should prudently bid energy efficiency and peak demand reduction resources into the PJM BRA. To alert interested parties, EDUs may include bid details in their annual portfolio plan. This will allow interested parties to bring up any issues regarding the bid details during the performance verification process. For further guidance, the Commission directs parties to review previous Commission cases addressing bidding into the PJM BRA.² As such, the Commission agrees with Duke's comment and rejects the recommendations proposed by OPAE and ECA.

{¶ 69} IGS argues that R.C. 4928.66 allows for CHP systems to be included in the EDUs' energy efficiency and peak demand reduction programs. However, IGS points out that the wording of proposed Ohio Adm.Code 4901:1-39-04 may allow EDUs to ignore the intent of the Ohio legislature and leave CHP systems out for project funding. IGS suggests language to modify the rule to ensure that funds available from the EDUs' energy efficiency and peak demand reduction programs are available to CHP systems on an equal and non-discriminatory basis. (IGS Comments at 2-4.)

{¶ 70} The Commission rejects IGS's comment and declines to include the suggested language regarding CHP systems. The Commission notes that it is the EDUs' responsibility to weigh the risks of adopting certain programs, including CHP systems, and manage their portfolio plans in the most cost-effective and efficient manner. The Commission believes that EDUs should be able to design their own programs, with any

² Such an example includes *First Energy EE/PDR*, Opinion and Order (March 13, 2013).

issues noted by interested parties to be later resolved during the performance verification process outlined in Ohio Adm.Code 4901:1-39-05.

{¶ 71} DP&L, OAEE, ECA, AEP Ohio, and Duke are concerned about the requirement for EDUs to annually file updated energy efficiency program portfolio plans pursuant to Ohio Adm.Code 4901:1-39-04(A). While they are generally supportive of the Commission's efforts to minimize the expense for all stakeholders in the portfolio planning process, they assert that requiring EDUs to file a new portfolio plan annually will prove costly, time-consuming, and unduly burdensome on all parties involved. Additionally, DP&L, ECA, OCC, and OAEE support the existing three-year program portfolio plan, while Duke, AEP Ohio, and OPAE suggest extending the three-year timeframe to five years. (DP&L Comments at 2; OAEE Comments at 7; AEP Ohio Comments at 5; Duke Comments at 6; OPAE Comments at 8-9; DP&L Reply Comments at 4; Duke Reply Comments at 2, 5; AEP Ohio Reply Comments at 9-12; OCC Reply Comments at 10-12; ECA Reply Comments at 5-8.) OCC specifically requests clarification in the rule that each EDU must file a portfolio plan annually (OCC Comments at 9). Alternatively, if the five year plan is implemented, the OCC suggests that EDUs file for approval in the third year of the cycle, which would allow for ample opportunity for review of the portfolio program (OCC Reply Comments at 10-12).

{¶ 72} Furthermore, AEP Ohio and ECA note that the new portfolio plan process does not provide EDUs with any assurance of cost recovery. ECA further adds that moving Commission review of program spending to the end of each program year puts ratepayers at risk of uncertain or shifting costs associated with the energy efficiency and peak demand reduction rider. (AEP Ohio Comments at 5; ECA Reply Comments at 5-8.) Duke requests clarification that existing cost recovery mechanisms are also extended along with the portfolio of programs (Duke Comments at 5-6). In its reply, AEP Ohio agrees with Duke that it would be appropriate to clarify that existing cost recovery

mechanisms are extended along with the portfolio of programs where appropriate. (AEP Reply Comments at 9-12).

{¶ 73} OMAEG, Duke, OCC, and OPAE argue that the September 15 date for filing an updated program portfolio plan each year is too late, as it leaves little time for the Commission to attempt to issue a ruling on the plan prior to its effective date, implementation, and corresponding cost recovery. They add that the proposed timing affords interested parties a mere four months to resolve concerns related to the EDU's proposed program portfolio plan prior to implementation. (OMAEG Comments at 4; OCC Comments at 9; OPAE Comments at 7; Duke Reply Comments at 3.) DP&L and OMAEG request that utilities should file portfolios no later than July 15, in order to provide interested parties and EDUs ample time to resolve issues prior to the implementation date of the plans (DP&L Reply Comments at 4; OMAEG Reply Comments at 4).

{¶ 74} In response to the various comments regarding the annual filing, the Commission finds that, while EDUs are required to annually file updated energy efficiency program portfolio plans pursuant to proposed Ohio Adm.Code 4901:1-39-04(A), in practice such filings are unlikely to be unduly burdensome. Moreover, we note that an in-depth filing is required only when there are significant changes to an EDU's plan. The Commission again emphasizes that the annual filings are meant to inform interested parties of an EDU's portfolio plan and in fact, this is simply a continuation of Commission practice. If an EDU does not incorporate input suggested by interested parties, then any outstanding issues can be addressed during the performance verification process outlined in Ohio Adm.Code 4901:1-39-05. As such, the Commission rejects the submitted comments in opposition to the proposed annual filing. However, the September 15 filing date is changed to September 1 to allow interested parties additional time to review an EDU's program portfolio plan.

{¶ 75} FirstEnergy contends that Ohio Adm.Code 4901:1-39-04(B) should be revised to specify that only the total resource cost test should be used for purposes of determining cost effectiveness under the rule. Alternatively, FirstEnergy proposes that the definition of cost-effectiveness as proposed be modified to clarify exactly when the utility cost test should be utilized for purposes of determining cost-effectiveness. (FirstEnergy Comments at 11.)

{¶ 76} The Commission agrees with FirstEnergy's recommendation that an EDU's program portfolio must be cost-effective based on the total resource cost test. However, with regard to each program within the portfolio, we note that a program that is not cost-effective pursuant to the total resource cost test may, nonetheless, be included if it provides substantial non-energy benefits. Where appropriate, the EDU can demonstrate that the specific program in question is cost-effective utilizing another cost test. Ohio Adm.Code 4901:1-39-04(B) has been revised, accordingly.

{¶ 77} ECA, with regard to Ohio Adm.Code 4901:1-39-04(C), contends that EDUs should be required to provide some summary of proposed programs to stakeholders before filing and allow for a collaborative process between stakeholders and EDUs to improve program offerings (ECA Comments at 37). OAEE and IGS support Staff's proposal to require EDUs to conduct quarterly meetings with stakeholders and assert that broader stakeholder involvement is a welcomed improvement (OAEE Comments at 7; IGS Comments at 5). However, DP&L, Duke, and AEP Ohio argue that requiring such meetings by rule is unnecessary and will impose a rigid, mandatory structure to a process that is currently well-functioning, voluntary, and collaborative (DP&L Comments at 3-4; AEP Ohio Comments at 6; Duke Reply Comments at 2). AEP Ohio suggests replacing the term "conduct" with "schedule" for additional flexibility (AEP Ohio Comments at 6). FirstEnergy contends that requiring these meetings exceeds PUCO authority and interferes with daily management of the EDU; however, FirstEnergy suggests modifying the rule to require EDUs to host special meetings no later

than 30 days prior to the filing of the portfolio plan during which the EDUs will provide parties information related to the plan and one technical conference to be held within 15 days after such filing (FirstEnergy Comments at 12-13). ECA disagrees with FirstEnergy and states that requiring only two meetings is insufficient and would not even guarantee annual meetings under the three-year filing interval. ECA, OCC, and OMAEG support the requirement that utilities hold collaborative stakeholder meetings on at least a quarterly basis. (ECA Reply Comments at 8-9; OCC Reply Comments at 7-10; OMAEG Reply Comments at 4.)

{¶ 78} While ECA requests a summary of proposed programs to be provided to stakeholders before the annual filing for the purposes of collaboration, the Commission points out that the quarterly stakeholder meetings ensure that there is sufficient ongoing collaboration throughout the year. Moreover, with regard to the proposed quarterly meeting requirement in Ohio Adm.Code 4901:1-39-04(C)(2), Staff emphasizes that stakeholder meetings are already conducted by EDUs and the Commission is merely codifying this practice. The Commission understands that such meetings are sometimes not possible and, in the event an EDU fails to conduct a quarterly meeting, the EDU will have an opportunity to explain the reasons behind this omission in its performance verification report. Moreover, stakeholder meetings can be conducted via conference call when needed. As such, the Commission disagrees with ECA as to the summary of proposed programs. However, the Commission agrees with the comments of ECA, OAEE, IGS, OCC, OMAEG regarding Staff's proposal for quarterly stakeholder meetings and finds that this would be an appropriate method to ensure ongoing stakeholder collaboration.

{¶ 79} OCC suggests that the Commission require that portfolio plans include a cost-effectiveness analysis in Ohio Adm.Code 4901:1-39-04(C)(4) (OCC Comments at 9).

{¶ 80} The Commission clarifies that cost-effectiveness of an EDU's program portfolio plan is addressed in Ohio Adm.Code 4901:1-39-04(B). Again, as noted earlier in

this Finding and Order, as the Commission is moving away from a pre-approval process, review of the cost effectiveness of program portfolio plan, as well as review of the utility's performance in implementing the plan, will be conducted during the performance verification process contained within Ohio Adm.Code 4901:1-39-05.

{¶ 81} AEP Ohio suggests deleting the phrase "including rebates or incentives offered through each program" in Ohio Adm.Code 4901:1-39-04(C)(5)(g) (AEP Ohio Comments at 7). The Commission agrees that EDUs should not be required to disclose the amount of rebates or incentives offered through each of its programs. Thus, the Commission rejects AEP Ohio's recommendation and revises the attached rules to reflect that the annual filing will only needs to list whether the EDU is utilizing rebates and incentives.

{¶ 82} OPAE suggests that the Commission should revise Ohio Adm.Code 4901:1-39-04(C)(5)(i) such that EDUs are required to lay out customer class allocations when costs are shared among customer classes, rather than directing that such information be required only if deemed appropriate (OPAE Comments at 9-10). The Commission agrees with OPAE's comment and revises the rule language accordingly.

{¶ 83} Several parties comment that the replacement of the current litigation process with a comment and response period in Ohio Adm.Code 4901:1-39-04(D) and (E) reduces Commission oversight of energy efficiency programs. OCC specifically contends that this provision is unlawful because it violates R.C. 4928.66(D), transfers final authority to EDUs, abrogates the PUCO's responsibility to oversee energy efficiency programs, and is unfair to persons interested in such programs. OCC urges the Commission to not adopt a process that gives EDUs the final authority as to the elements of their portfolio plans. (OCC Comments at 7-8; OCC Reply Comments at 3-7.) Duke disagrees and notes that the Commission has not indicated that it will be relinquishing any of its existing authority (Duke Reply Comments at 10). OAEE, OHA, and Nucor oppose Staff's proposal to limit the comment period on an EDU's energy efficiency and peak-demand reduction program

from 60 days to 30 days and request the Commission maintain the current 60-day comment period. (Nucor Comments at 4-5; OAEE Comments at 8; OHA Comments at 4.) ECA, OCC, and OPAE are concerned that the proposed rules would eliminate the ability of rate payers, customers, and stakeholders to provide meaningful input regarding an EDU's portfolio plan because it cuts in half the time available to review the plan (ECA Comments at 6-9; OCC Comments at 6; OCC Reply Comments 3-7; OPAE Comments at 7-8). FirstEnergy contends that such a short comment period is impractical and unnecessary and increases the cost of compliance (FirstEnergy Comments at 13).

{¶} 84 Nucor is concerned that the proposed changes may not provide sufficient Commission oversight or time for review, yet recognizes that a hearing requirement for all portfolio plan filings is not necessary. Moreover, Nucor suggests that the hearing should be discretionary, regardless if the Commission retains the three-year portfolio period or transitions to a one-year period, but adds that parties should have an opportunity to review the plan prior to it taking effect if the one-year period is adopted. (Nucor Comments at 4-5; Nucor Reply Comments at 2). OAEE, similarly concerned about sufficient Commission oversight, requests the Commission continue its process of conducting hearings on proposed energy efficiency and peak demand reduction plans (OAEE Comments at 8). FirstEnergy contends that, if the three-year plan cycle is maintained, a discretionary hearing process should be established, following the submission of stakeholder comments. Additionally, FirstEnergy suggests that if there is a pre-approval process, at a minimum, there should be a hearing, and in the event there is no pre-approval process, there should be no filing requirement. (FirstEnergy Comments at 13-14.) If contested issues remain following the submission of comments, OMAEG recommends that a hearing be held prior to the implementation of the plan and collection of charges from customers. Thus, OMAEG suggests retaining the existing Ohio Adm.Code 4901:1-39-04(E). (OMAEG Comments at 5.) Contrarily, AEP Ohio supports Staff's proposal to eliminate the existing Ohio Adm.Code 4901:1-39-04(E) and further contends that the Commission will continue to provide ample opportunity for

stakeholder involvement through quarterly collaborative meetings and other measures (AEP Ohio Reply Comments at 9-12).

{¶ 85} In response to the various parties' comments regarding the replacement of the current litigation period with a comment and response period, the Commission reiterates that the annual filing provides interested parties information regarding the parameters of an EDU's portfolio plan. After reviewing an EDU's portfolio plan, if interested parties wish particular changes to be made to an EDU's portfolio plan, then they can raise those issues during the performance verification process contained within Ohio Adm.Code 4901:1-39-05. As such, the submitted comments regarding due process are rendered moot and no comment and response period is necessary in Ohio Adm.Code 4901:1-39-04. Moreover, as mentioned above, the Commission generally anticipates annual filings to be a continuation of prior year programs with minor revisions and does not foresee the need for EDUs to file a completely different plan every year. Based on these reasons, the Commission agrees with AEP Ohio and Duke and finds that the rule language as proposed by Staff is reasonable.

{¶ 86} Lastly, AEP Ohio suggests adding a subsection providing for automatic approval if no Commission decision is issued within 60 days of the comment cycle being completed (AEP Ohio Comments at 7).

{¶ 87} The Commission declines to adopt such a provision at this time and, consequently, rejects AEP Ohio's comment. As indicated above, the Commission is moving away from a pre-approval of the EDUs' portfolio plans and such an automatic approval process is consequently unnecessary at this time.

E. Ohio Adm.Code 4901:1-39-05 - Annual Performance Verification

{¶ 88} Initially, as indicated earlier in this Finding and Order, we are accepting Staff's recommendation to transition to a post-approval annual performance verification process for portfolio plans. Such an approach promotes efficiency, reduces regulatory

delay, and minimizes administrative costs because EDUs will avoid the need to extensively litigate their portfolio plans prior to implementing them. Furthermore, post-approval verification process is in line with other, similar verification processes currently in place at the Commission, such as the Distribution Investment Rider and the Alternative Energy Rider.

{¶ 89} OAEE, OP AE, and OMAEG oppose Staff's proposal to allow the EDUs to count energy savings from legal appliance standards and building codes to satisfy the statutory benchmarks. OMAEG and OAEE further argue that these energy savings are already built into the marketplace. OP AE states that this provision allows an EDU to take credit for savings from something it did not have any involvement in, and will minimize the level of programming available to customers and undermine the purpose of the statutory benchmarks, which is to provide for additional energy efficiency and demand response above and beyond transformations that occur in the market. OP AE further asserts that if the Commission does adopt Staff's proposal, the Commission should require that an EDU undertake a measurement and verification program to determine if the standard is actually implemented and if it is having an impact on energy use within the EDU's service territory. (OMAEG Comments at 6; OAEE Comments at 11; OP AE Comments at 10- 11.)

{¶ 90} Duke requests clarification on Ohio Adm.Code 4901:1-39-05(A)(1)(b), specifically regarding whether only a mercantile customer is eligible to contribute to savings and whether the utility is required to actively offer or promote commitment payments for the measures (Duke Comments at 6).

{¶ 91} In reply comments, FirstEnergy agrees with Staff's proposed revision to Ohio Adm.Code 4901:1-39-05(A) and rejects the arguments made by OAEE, OP AE, and OMAEG. FirstEnergy urges the Commission to apply the "as-found" methodology in Ohio Adm.Code 4901:1-39-05, consistent with Ohio Adm.Code 4901:1-39-07. (FirstEnergy Comments at 14-18.)

{¶ 92} Regarding Ohio Adm.Code 4901:1-39-05(A)(1)(b), the Commission revises the language to mirror the requirements of SB 310. Specifically, the Commission replaces “Energy Independence and Security Act of 2007” with “federal standards.” With that change, the Commission retains the remainder of this provision as proposed, as R.C. 4928.662 allows an EDU to count savings from “programs that comply with federal standards.”

{¶ 93} The Commission also clarifies that the rule relates to all customers, not exclusively mercantile customers. Furthermore, we note that the rule prohibits EDUs from giving an incentive for compliance with laws and regulations.

{¶ 94} IEU-Ohio argues that the Commission should adjust each EDU’s compliance baseline to remove the effects of the energy usage characteristics of reasonable arrangement customers from the energy usage reduction mandate. IEU-Ohio suggests adding the following language to Ohio Adm.Code 4901:1-39-05(A)(1)(c): “An electric distribution utility shall modify its baseline to exclude load and usage characteristics of the customers in its certified distribution territory with a reasonable arrangement authorized pursuant to section 4905.31 of the Revised Code.” (IEU-Ohio Comments at 3-4.)

{¶ 95} The Commission finds IEU-Ohio’s proposed language allowing the EDU to modify its baseline to exclude the load and usage characteristics of customers with a reasonable arrangement under R.C. 4905.31 to be reasonable. Moreover, we note that this language is consistent with R.C. 4928.66(A)(2)(a)(i), which provides for the exclusion from the baseline of “a customer for which a reasonable arrangement has been approved under section 4905.31 of the Revised Code.” The rule language has been revised, accordingly. However, the Commission determines that modification of baselines should be included as a part of program design under Ohio Adm.Code 4901:1-39-04. Accordingly, this language has been added as Ohio Adm.Code 4901:1-39-04(D).

{¶ 96} OMAEG argues that proposed Ohio Adm.Code 4901:1-39-05(A)(1)(c) should allow EDUs the flexibility to apply banked savings as needed. OMAEG suggests that such a decision be made in collaboration with stakeholders, particularly when applying banked savings could be used to reduce compliance costs. (OMAEG Comments at 7.) In its reply comments, AEP Ohio supports OMAEG's argument, but only to the extent that the EDU has discretion in applying its banked savings due to the EDU's unique ability to project the need for the use of banked savings (AEP Ohio Reply Comments at 14).

{¶ 97} Under SB 310, the General Assembly eliminated the advanced energy requirement. In compliance with SB 310, therefore, the Commission revises Ohio Adm.Code 4901:1-39-05(A)(1)(c) to eliminate the option of applying surplus energy savings to an EDU's advanced energy requirement. The Commission also clarifies in the rule that banked surplus savings cannot be applied above and beyond the benchmark in order to trigger the EDU's shared savings incentive. Further, the Commission rejects the arguments made by OMAEG and AEP-Ohio and retains the authority to dictate the appropriate application of banked savings.

{¶ 98} FirstEnergy contends that, based upon the language of R.C. 4928.66(A)(1)(b) related to peak demand reduction benchmarks, if an EDU has an approved plan that includes peak demand reduction provisions that achieve the benchmarks, no waiver is needed. FirstEnergy requests that the Commission eliminate the second sentence of proposed Ohio Adm.Code 4901:1-39-05(A)(1)(d), which reads, "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." (FirstEnergy Comments at 16-17.)

{¶ 99} The Commission agrees with FirstEnergy regarding its suggestion that language be eliminated from Ohio Adm.Code 4901:1-39-05(A)(1)(e). The Commission, therefore, has eliminated the designated provision from the rule.

{¶ 100} AEP Ohio argues that, in a year in which an EDU does not count a mercantile customer-sited project for compliance purposes and that mercantile customer specific account is qualified as an economic development load, the EDU should be able to exclude that load from its baseline. AEP Ohio suggests adding subsection (f) to Ohio Adm.Code 4901:1-39-05(A)(1), which reads, "At the sole discretion of the utility, any exclusion from the baseline calculation for economic development customer accounts shall also exclude any energy and demand savings from that economic development customer account but only in the year in which the economic development customer account is excluded from the baseline." (AEP Ohio Comments at 7-8.)

{¶ 101} The Commission disagrees with AEP Ohio concerning the need to address the exclusion of savings from an economic development customer's account in any year in which that customer is excluded from the baseline. Cost-effective energy savings which has actually been implemented should always count towards the benchmarks.

{¶ 102} OP&E proposes that the Commission delete "transmission of" from Ohio Adm.Code 4901:1-39-05(A)(2)(a)(iii). OP&E asserts that there is no guarantee that investments in transmission upgrades undertaken by an EDU affiliate will directly affect Ohio customers. OP&E further adds that the Commission does not have jurisdiction over transmission as it is overseen by the Federal Energy Regulatory Commission. (OP&E Comments at 12-13.)

{¶ 103} IEU-Ohio and FirstEnergy urge the Commission to reject OP&E's argument because R.C. 4928.66(A)(2)(d) explicitly allows an EDU to count savings from upgrades to the transmission system and the Commission has already held that these

types of programs may be counted for energy efficiency purposes.³ (IEU-Ohio Reply Comments at 11; FirstEnergy Reply Comments at 19.)

{¶ 104} The Commission agrees with IEU-Ohio and FirstEnergy, and rejects OP&E's request, given that R.C. 4928.66(A)(2)(d) indeed allows an EDU to count savings from transmission infrastructure improvements.

{¶ 105} AEP Ohio argues that utility distribution energy efficiency programs that occur on the utilities' distribution facilities that directly reduce energy and demand usage, and are clearly not loss reductions, should be treated in the same manner as other customer energy efficiency and peak demand reduction programs. AEP Ohio further states that mechanisms for the recovery of lost distribution revenue and shared savings apply to these programs. AEP Ohio suggests that the following language be adopted as Ohio Adm.Code 4901:1-39-05(A)(2)(a)(iv): "A description of all other applicable energy efficiency and peak demand reduction activities that the electric utility proposes, including programs that are implemented on the utilities' distribution facilities that directly reduce energy and demand usage exclusive of loss reduction improvements, to count toward its applicable benchmarks." (AEP Ohio Comments at 8.)

{¶ 106} The Commission rejects AEP Ohio's suggested revision to Ohio Adm.Code 4901:1-39-05(A)(2)(a)(iv). Each EDU is responsible for maintaining its distribution facilities to perform optimally, the expense of which is recovered in base rates. The Commission does not intend for these rules to provide additional incentives for an EDU to sufficiently maintain its distribution facilities.

{¶ 107} FirstEnergy suggests reinstating Ohio Adm.Code 4901:1-39-05(C)(2)(c), which has been deleted from the proposed rules. However, FirstEnergy suggests

³ *In re Application of [the Companies] to Include Transmission and Distribution Projects in their Energy Efficiency and Peak Demand Reduction Program Portfolios*, Case Nos. 10-3023-EL-POR, et al., Finding and Order (August 7, 2013).

modifying the original language to remove the percentage cap on the amount of funds that can be transferred through the staff approval process to provide more flexibility to achieve the benchmarks in the most efficient and effective manner. (FirstEnergy Comments at 18.)

{¶ 108} The Commission denies FirstEnergy's request, noting that Ohio Adm.Code 4901:1-39-05(C)(2)(c) was removed from the rule because the Commission is no longer utilizing a pre-approval process for an EDU's program portfolio plan.

{¶ 109} FirstEnergy, Duke, and DP&L contend that the scope of the report in Ohio Adm.Code 4901:1-39-05(B), as well as the scope of duties of the IPE, are overly broad and duplicate efforts already being undertaken by others (FirstEnergy Comments at 19; Duke Comments at 7; DP&L Comments at 4). Duke suggests that the IPE's report should be used as an evaluation of the EDU's energy efficiency portfolio plan's program and measures solely for the purpose of determining its annual achievement for measuring compliance and the cost-effectiveness of the program offerings (Duke Comments at 7.) AEP Ohio suggests eliminating the language that allows the IPE to conduct its report-related activities during the implementation of the electric utility's program portfolio plan and directing the IPE to file its report "no later than December 31 in the year the EDU's portfolio status report is filed." Further, AEP Ohio suggests revising Ohio Adm.Code 4901:1-39-05(B)(1) to limit the IPE's focus to only verifying the gross savings and gross peak demand reductions of an EDU's programs. (AEP Ohio Comments at 10.) The OCC opposes AEP Ohio's latter suggestion because the OCC believes the Commission should retain the flexibility to use net savings (OCC Reply Comments at 12-17).

{¶ 110} In reply comments, IEU-Ohio recommends that the Commission retain the current scope of work for the IPE to prevent the incurrence of unnecessary costs that will ultimately be borne by customers (IEU-Ohio Reply Comments at 17). In its reply, ECA disagrees with AEP Ohio, Duke, FirstEnergy, and DP&L's comments and notes that

the role of the IPE is to ensure objective compliance determinations and verification of the utilities' energy efficiency program performance data. Further, ECA urges the Commission to include a provision that each utility is still responsible for retaining its own portfolio plan evaluator. (ECA Reply Comments at 18-20.)

{¶ 111} Concerning the EDUs' arguments opposing the role of the IPE as proposed in the Ohio Adm.Code 4901:1-39-05(B), the Commission finds that the IPE's role is essential to the performance verification process. The IPE's evaluation may overlap with that of the EDU's evaluator, but the Commission requires a review independent from the EDU's evaluator. Furthermore, the Commission finds it reasonable to retain the elements in subsections (B)(1)-(3), which detail the role of the IPE and are consistent with the definition of IPE found in Ohio Adm.Code 4901:1-39-01. As noted before, the Commission may choose one or more entities, including Staff, to conduct the review required by Ohio Adm.Code 4901:1-39-05(B).

{¶ 112} DP&L, AEP Ohio, and FirstEnergy recommend removing Ohio Adm.Code 4901:1-39-05(B)(4) and 4901:1-39-05(E), arguing that the TRM presents a different topic and should, therefore, be handled in a separate docket, rather than included in an appendix to a report (DP&L Comments at 4; FirstEnergy Comments at 20-21; AEP Ohio Comments at 10; AEP Ohio Reply Comments at 14-15; FirstEnergy Reply Comments at 20).

{¶ 113} In response to concerns raised by DP&L, FirstEnergy, and AEP Ohio, the Commission has retained the requirement that the IPE file recommended revisions to the TRM, but has removed it as an element of the IPE's report. This modification is meant to clarify that the IPE's recommended revisions to the TRM may be filed in a separate docket, as the Commission orders.

{¶ 114} ECA contends that the IPE is in the best position to thoroughly and objectively verify energy efficiency program results and recommends that uniform

reporting metrics be adopted for all regulated utilities responsible for energy efficiency reporting. ECA further suggests that the Commission establish a process by which the relevant merits of criteria in portfolio status reports are identified each year, so that each year utilities move closer to consistent reporting. ECA suggests adding a subsection to Ohio Adm.Code 4901:1-39-05(B) that provides the various metrics for the evaluation of the EDUs portfolio plan programs. ECA also urges the Commission to require a net savings approach and include net-to-gross analyses in the IPE's activities. ECA suggests adding the following subsection to Ohio Adm.Code 4901:1-39-05(B): "An analysis of appropriate net-to-gross values for use by EDUs in reporting EE savings. The net-to-gross analysis shall include free ridership and spillover." (ECA Comments at 25-27.)

{¶ 115} AEP Ohio and FirstEnergy disagree with ECA's recommendation to require a net savings approach and include a net-to-gross analysis in the IPE's activities because gross savings is the current practice in counting energy efficiency savings. (FirstEnergy Reply Comments at 21-22.) In its reply, ECA disagrees with AEP Ohio and FirstEnergy's argument that the Commission should codify a gross savings measurement in lieu of transitioning to a net savings requirement. ECA points out that the recent IPE report⁴ demonstrates the need for net savings in Ohio through a net-to-gross analysis. ECA also disagrees with AEP Ohio and FirstEnergy's assertions that a net savings methodology would be difficult or costly to administer, since several states, such as Illinois, Michigan, and Iowa, have successfully transitioned to a net savings methodology. (ECA Reply Comments at 16-18.)

{¶ 116} The Commission denies ECA's proposed additions to Ohio Adm.Code 4901:1-39-05(B). We find that the reporting requirements requested by ECA are already sufficiently encompassed in Ohio Adm.Code 4901:1-39-05(A). Furthermore, Staff is

⁴ *In the Matter of the Annual Verification of the Energy Efficiency and Peak Demand Reductions Achieved by the Electric Distribution Utilities Pursuant to R.C. 4928.66*, Case No. 13-1027-EL-UNC, 2011 Independent Evaluator Report at 6 (May 2, 2013).

currently working with the EDUs to standardize the reporting requirements statewide, making ECA's suggestion unnecessary. The Commission also rejects ECA's arguments regarding a net savings approach. In accordance with R.C. 4928.662(D) and our prior findings in this Finding and Order, the Commission will continue to count energy efficiency savings and peak demand reduction on a gross savings basis.

{¶ 117} ECA argues that the 30-day comment period provided in proposed Ohio Adm.Code 4901:1-39-05(D) is inadequate (ECA Comments at 28). FirstEnergy rejects ECA's assertion, stating that ECA likely misconstrued the rule's meaning. FirstEnergy argues that the review period is actually the time between when the EDU files its performance report on May 15 through the entire evaluation period of the IPE plus an additional 30 days. (FirstEnergy Reply Comments at 20.)

{¶ 118} The Commission agrees with FirstEnergy's interpretation of Ohio Adm.Code 4901:1-39-05(D), which provides parties with the opportunity to file comments regarding reports filed by the EDU and the IPE 30 days after the IPE files its report. Under Ohio Adm.Code 4901:1-39-05(B), the IPE conducts its report-related activities subsequent to the filing of the electric utility's report, leaving parties with a longer time period to review the EDU's performance report. Additionally, a party that requires more time can file a motion requesting an extension, consistent with the Commission's practice in other proceedings. The Commission finds that a 30-day comment period following the filing of the IPE's report is adequate for any interested party to evaluate the reports filed by the EDU and the IPE and file responsive comments.

{¶ 119} OAEE is concerned that the Commission is eliminating valuable public participation in proposed Ohio Adm.Code 4901:1-39-05 (OAEE Comments at 10). OPAE requests that the Commission require a hearing absent a unanimous agreement of the parties (OPAE Comments at 13). OMAEG argues that the Commission should retain the language of the existing rule, as the proposed language is not clear as to the criteria under Ohio Adm.Code 4901:1-39-05(D) for holding a hearing, the scope of the hearing, or the

potential remedies available to customers. OMAEG also agrees with OAEE that this provision diminishes due process rights. (OMAEG Reply at 7-8.) Duke would like Ohio Adm.Code 4901:1-39-05(D) to incorporate a just and reasonable standard of review as well as a requirement that any party not using the TRM bears the burden of proof (Duke Comments at 7).

{¶ 120} The Commission notes that the proposed language in Ohio Adm.Code 4901:1-39-05(D) allows stakeholders to file comments regarding any aspect of the EDU's performance in implementing its program portfolio plan. Furthermore, under proposed Ohio Adm.Code 4901:1-39-05(E), the Commission may schedule a hearing based upon the IPE's recommendations and comments received from stakeholders. Thus, the Commission rejects OPAC's suggestion to require a hearing absent unanimous agreement among the parties. The Commission also rejects OAEE, OMAEG, and Duke's comments. While the Commission's decision to hold a hearing remains discretionary, any interested party will have the opportunity to present its arguments for the Commission's consideration. The Commission will make its decision on a case-by-case basis and will schedule a hearing to review the EDU's performance, as it deems necessary. Lastly, the Commission notes that any interested party may also file a complaint case under R.C. 4905.26 regarding an EDU's implementation of its program portfolio plan and bear the burden of proof against the EDU.

{¶ 121} IEU-Ohio suggests modifying Ohio Adm.Code proposed 4901:1-39-05(F) to provide parties with an opportunity to comment on Staff's proposed changes to the TRM and to provide that the Commission must approve Staff's changes before they go into effect. Duke argues that subjecting the TRM to an annual review process would introduce an added and unnecessary level of uncertainty and cost, adding that a more appropriate cycle would match the program planning cycle that the EDUs would use as directed by the Commission for program planning purposes. Further, Duke asserts that the TRM should be updated after a hearing as this is where the utility will bear the burden

of proof if using different results from the TRM. Duke and FirstEnergy aver that if there are conflicts between the TRM and an approved compliance plan, the compliance plan should control. (Duke Comments at 7-8; FirstEnergy Reply Comments at 20.) AEP Ohio similarly recommends that Staff collect the IPE's recommendations to the TRM and make changes on a periodic basis, not to be less than three years and not more than five years. (AEP Ohio Comments at 9.) FirstEnergy argues that any changes to the TRM should be applied on a prospective basis only and that 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 (FirstEnergy Comments at 12).

{¶ 122} OMAEG argues 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 (OMAEG Reply Comments at 8). Duke agrees, in its reply comments, that if the TRM is to be used as the basis of compliance reporting in Ohio, then it requires a more substantial process with participation from interested parties (Duke Reply Comments at 3). ECA disagrees with Duke's characterization of the burden of updating the TRM every year, as this process would correspond with the IPE's annual review and provide an opportunity for the IPE and stakeholders to recommend changes aligned with the evolving energy efficiency marketplace. Further, ECA notes that the associated administrative costs are far outweighed by the increased benefits to portfolio plans and customer access to more cost-effective programs. (ECA Reply Comments at 20.) Lastly, ECA and OMAEG again argue for continued pre-approval of the EDUs' program portfolio plans. (ECA Comments at 11.) (OMAEG Comments at 6-7.)

{¶ 123} The Commission finds it appropriate to add language to proposed Ohio Adm.Code 4901:1-39-05(F) in response to IEU-Ohio's comments regarding the approval

of the TRM. The Commission will direct the IPE to recommend revisions to the TRM periodically concurrent with the performance verification process. After reviewing all recommendations, the Commission will update and approve the TRM periodically, as noted in the discussion for proposed Ohio Adm.Code 4901:1-39-01(P)(3). With respect to Duke's argument that an annual update will be overly burdensome, the Commission clarifies that an annual update would likely only require few changes that will allow the TRM to fall more closely in line with appropriate evaluation, measurement, and verification techniques. In response to Duke's argument that an approved compliance plan should overrule the TRM, the Commission reminds Duke, as well as FirstEnergy and DP&L, that the proposed rules no longer provide for pre-approved compliance plans. We also note that the TRM will be applied on a prospective basis. Furthermore, because the portfolio plans do not remain in effect for multiple years under the proposed rules, the companies should make use of the TRM in effect at the time the EDU files to update its program portfolio plan.

F. Ohio Adm.Code 4901:1-39-06 - Recovery Mechanism

{¶ 124} DP&L requests clarification regarding the term "performance verification process" used in proposed Ohio Adm.Code 4901:1-39-06. DP&L suggests the terms be revised to recognize the utility's annual recovery mechanism true-up filing. (DP&L Comments at 5.)

{¶ 125} The purpose of Ohio Adm.Code 4901:1-39-06 is to require an EDU to propose a rate that will recover costs proposed in its program portfolio plan. The review of the costs and true-ups will occur in the performance verification process, as detailed in Ohio Adm.Code 4901:1-39-05. In response to DP&L's request for clarification regarding this distinction, the Commission revises the rule to specify that the EDU file, rather than propose, a rate adjustment mechanism. The mechanism may be filed in a separate docket from the program portfolio plan, but the two must be filed concurrently.

{¶ 126} Nucor notes that the rule requires a utility to file a rate adjustment mechanism for recovery of portfolio costs concurrent with the filing of its portfolio plan. Nucor asserts the Commission should clarify that a utility also has the option to propose a cost recovery mechanism as part of a standard service offer (SSO) rate filing, which would also avoid the need to re-litigate the mechanism in each portfolio plan proceeding. Nucor suggests editing the rule's language to clarify that a utility "may," instead of "shall," propose a rate adjustment mechanism for recovery of costs incurred because there may be other dockets in which the issue may be addressed. (Nucor Comments at 5.)

{¶ 127} OMAEG and FirstEnergy agree with Nucor's suggested edit (OMAEG Reply Comments at 9; FirstEnergy Reply Comments at 22-23). OCC opposes Nucor's suggestion that a cost recovery mechanism be included in a SSO rate filing and points out that the statutes governing SSO proceedings do not include energy efficiency programs (OCC Reply Comments at 24).

{¶ 128} The Commission clarifies that an EDU's proposed rate adjustment mechanism does not belong in an SSO filing and, thus, rejects Nucor's recommended revision. As the Commission is transitioning away from the pre-approval process, we also find that Nucor's concern over re-litigating the mechanism annually is moot.

{¶ 129} OMAEG and OCC assert that the proposed rule appears to remove due process from the determination of the costs to be recovered. According to OMAEG, the rule does not require that costs that are included for recovery only include those costs that were reasonable, prudently incurred, or associated with cost-effective programs. Further, OCC and OMAEG note that if no approval process with interested parties' involvement is required before the program is approved, costs may be automatically included in the program and recovered by the electric utilities. They urge the Commission to retain the existing process. (OMAEG Comments at 8; OCC Comments at 10.)

{¶ 130} Contrarily, AEP Ohio argues for the sake of efficiency, it does not make sense to have an adjudicated process when the levels of recovery of program costs, shared savings or lost distribution revenue mechanisms change within consistent levels already approved for recovery (AEP Ohio Reply Comments at 16). DP&L also disagrees with OCC, arguing that EDUs should be able to recover all costs and lost distribution revenues, and have an opportunity to earn shared savings (DP&L Reply Comments at 6).

{¶ 131} The Commission finds it appropriate to add a provision to Ohio Adm.Code 4901:1-39-06 to address concerns raised by OCC and OMAEG regarding the lack of due process. With this revision, Ohio Adm.Code 4901:1-39-06(B) will allow any party to file comments in response to the company's proposed recovery mechanism. Based upon the filed comments, the Commission will determine whether a hearing is necessary in any given case. We also note that any revenue received through the proposed mechanism is subject to disallowance and reconciliation in the annual performance verification process provided in Ohio Adm.Code 4901:1-39-05.

{¶ 132} In order to alleviate parties' concerns regarding an EDU's ability to collect shared savings and lost distribution revenues without demonstrating need or appropriateness, the Commission includes additional language to Ohio Adm.Code 4901:1-39-06(A) requiring an EDU to justify any costs collected in addition to direct program implementation costs

{¶ 133} IEU-Ohio and OCC argue that the Commission should not allow shared savings to be collected through an EDU's energy efficiency and peak demand reduction rider because it is unreasonable to pay incentives to an EDU to comply with Ohio law where the incentives reduce the savings that customers would achieve. IEU-Ohio notes that R.C. 4928.66 provides that if an EDU fails to achieve the required annual savings, the Commission shall assess a forfeiture on the EDU. However, if the Commission does allow recovery of lost distribution revenue through the rider, IEU-Ohio asserts it should

provide that recovery will be allocated to the customer classes that generated the lost distribution revenue. (IEU-Ohio Comments at 9; OCC Reply Comments at 17.)

{¶ 134} AEP Ohio disagrees with IEU-Ohio's arguments regarding shared savings, noting that a penalty for lack of performance does not preclude an incentive to perform well. AEP Ohio and ECA also contend that shared savings mechanisms, such as those already approved by the Commission, ensure that all EDUs operate their programs cost-effectively and encourage utilities to exceed the statutory benchmarks. ECA also asserts that shared savings are specifically allowed by Ohio law under R.C. 4928.143(B)(2)(h). (AEP Ohio Reply Comments at 17; ECA Reply Comments at 24-25.)

{¶ 135} OCC avers that allowing the EDUs to collect lost distribution revenues is a departure from previous Commission commitments and objects to the collection of a shared savings incentive if the EDU is receiving lost distribution revenue. OCC and Nucor also argue that charges for shared savings, if permitted, should be strictly limited to charging customers for shared savings on the efficiencies that exceed the statutory benchmark. (OCC Comments at 12; Nucor Reply Comments at 2.)

{¶ 136} AEP disagrees with OCC's argument regarding lost distribution revenue and argues that its recovery makes the EDU whole by ensuring that it receives its authorized distribution revenues (AEP Ohio Reply Comments at 16).

{¶ 137} The Commission has approved the recovery of shared savings in past cases, and has held that shared savings is "an effective means of aligning the utilities' and consumers' interests in implementing energy efficiency programs." *In re the Application of The Cleveland Elec. Illum. Co., Ohio Edison Co., and The Toledo Edison Co. for Approval of their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Recovery Mechanism*, Case No. 09-1947-EL-POR, Opinion and Order (Mar. 23, 2011) at 15. The Commission has also upheld an EDU's right to collect lost distribution revenues in previous portfolio plan cases as a way to make the EDU whole as far as its

distribution revenues. *See, e.g., In re the Application of Duke Energy Ohio, Inc., for Recovery of Program Costs, Lost Distribution Revenue, and Performance Incentives Related to its Energy Efficiency and Demand Response Programs for 2014*, Case No. 15-534-EL-RDR, Opinion and Order (Oct. 26, 2016) at 16-17; *In re Dayton Power and Light Co.*, Case No. 13-833-EL-POR, Opinion and Order (Dec. 4, 2013) at 13-14. Despite objections made by several parties, the Commission clarifies that EDUs may continue to recover shared savings and lost distribution revenues in conformance with the Commission's rules and precedent.

{¶ 138} OCC argues that an electric utility should not be allowed to collect a shared savings incentive if it bids less than 75 percent of its eligible energy efficiency into the PJM BRA (OCC Comments at 14). In its reply, FirstEnergy rejects this restriction (FirstEnergy Reply Comments at 22).

{¶ 139} The Commission denies OCC's request to tie shared savings to the bidding of energy efficiency into the PJM BRA. This issue was thoroughly addressed in the section above which addresses comments regarding the bidding of energy efficiency in relation to proposed Ohio Adm.Code 4901:1-39-04.

G. Ohio Adm.Code 4901:1-39-07 - Historical Mercantile Customer Programs, Combined Heat And Power, Or Waste Energy Recovery Systems.

{¶ 140} OPAE asserts that in order to provide transparency and provide customers with information on the costs of complying with R.C. 4928.66, the costs of reasonable arrangements should be publicly available (OPAE Comments at 13). In reply comments, IEU-Ohio argues that this request is contrary to Ohio law as trade secrets protected by state law are not considered public records and are therefore exempt from public disclosure (IEU-Ohio Reply at 20).

{¶ 141} The Commission rejects OPAE's request that the Commission adopt a provision requiring public disclosure of the costs of reasonable arrangements that involve the commitment of demand side management resources to an EDU. The Commission

finds that this issue would be more appropriate to determine in a reasonable arrangement case, rather than a rulemaking proceeding.

{¶ 142} ERC argues that the Commission should provide clear directions that the energy savings will match the kilowatt hours (kWhs) generated and utilized in the production incentive approach; alternatively, ERC suggests that the Commission clearly define the method to be utilized if using a savings approach where the BTUs are measured and converted to kWhs (ERC Comments at 3). IEU-Ohio proposes a provision to incorporate the conversion of British thermal units (BTUs) into kWh and kW for calculating savings (IEU-Ohio Comments at 11-12).

{¶ 143} AEP Ohio and ECA disagree with IEU-Ohio's proposal. Specifically, AEP Ohio argues that, using the benchmark method for calculating an exemption from the energy efficiency and peak demand reduction rider, the annual production kWh from the CHP system is the appropriate energy savings to use in determining the exemption, and is the equivalent method used in all other energy efficiency projects (AEP Ohio Reply Comments at 18). ECA argues that IEU-Ohio's BTU conversion proposal recommends such a conversion for technologies that are not permitted as energy efficiency measures under the Ohio Revised Code (ECA Reply Comments at 9-11).

{¶ 144} The Commission rejects IEU-Ohio's proposal to adopt a provision for converting BTUs to kWh because the energy efficiency programs are meant to capture only electrical savings. We will, therefore, continue to count energy savings to match the kWhs generated.

{¶ 145} FirstEnergy asserts that Ohio Adm.Code 4901:1-39-07(B)(1) and (2) apply universally and, accordingly, should not be in Ohio Adm.Code 4901:1-39-07, which is specific to mercantile self-direct projects, CHP projects, and WER projects. FirstEnergy requests that a similar rule for non-mercantile customer projects be added to proposed rule Ohio Adm.Code 4901:1-39-05. (FirstEnergy Comments at 13-14.)

{¶ 146} The Commission denies FirstEnergy's request that a similar rule be added for non-mercantile customers as this rule is meant to effectuate the provisions in R.C. 4928.66(A)(2)(c), which is specific to mercantile customers. Additionally, the Commission clarifies that Ohio Adm.Code 4901:1-39-07 applies only to historical mercantile customers, not all mercantile customers, in accordance with R.C. 4928.66(A)(2)(c).

{¶ 147} OPAE asserts that Ohio Adm.Code 4901:1-39-07(B)(2)(a) and (b) should be modified such that capacity can only be counted as it is defined by the regional transmission organization in which the EDU participates (OPAE Comments at 13-14).

{¶ 148} The Commission accepts OPAE's proposed revision to Ohio Adm.Code 4901:1-39-07(B)(2)(a) and (b) to clarify that an EDU should only count capacity as defined by the regional transmission organization in which the EDU participates. The rule has been revised, accordingly.

{¶ 149} ECA disagrees with Ohio Adm.Code 4901:1-39-07(B)(3), which includes the ability of mercantile customers who replace non-functioning equipment or installation of new equipment to commit any energy reductions to its EDU utilizing the "as-found method." ECA views the as-found method as in direct conflict with R.C. 4928.66 and its requirement that utilities "implement energy efficiency [and peak demand reduction] programs that achieve" certain benchmarks. (ECA Comments at 19.) OPAE notes that, while it has long supported the as-found method of calculating savings, it does not support counting as-found savings from installing new equipment unless it is installed as part of a comprehensive energy improvement plan where new systems replace old systems (OPAE Comments at 14). Duke seeks clarification on whether the utility is required to claim impacts for mercantile projects on an as-found basis or the EDU may choose to claim impacts based on the market standard to simplify the operation of mercantile programs (Duke Comments 8).

{¶ 150} IEU-Ohio and FirstEnergy agree with the proposed rule in Ohio Adm.Code 4901:1-39-07(B)(3) that allows the mercantile customer replacing non-functioning equipment or installing new equipment to count related savings based on the efficiency of the equipment that was replaced. FirstEnergy rejects ECA's opposition to this method of counting savings (IEU-Ohio Reply Comments at 4; FirstEnergy Reply Comments at 17).

{¶ 151} In response to comments made by OPAE, ECA and Duke regarding the as-found method in Ohio Adm.Code 4901:1-39-07(B)(3), the Commission finds that savings must be recognized as permitted by statute. R.C. 4928.662(B) requires that energy efficiency savings and peak demand reduction achieved be measured on "the higher of an as-found or deemed basis." The Commission will therefore continue to use the as-found method to measure such savings.

{¶ 152} Regarding Ohio Adm.Code 4901:1-39-07(B)(4), Duke seeks clarification that the verification will be included in the IPE's report and not by the utility's evaluator (Duke Comments at 9).

{¶ 153} The Commission clarifies that the IPE, as well as the utility's evaluator, must review such programs. The fact that a program is reviewed by the IPE as required under Ohio Adm.Code 4901:1-39-05 does not obviate the utility's obligation to review its programs.

{¶ 154} Duke and DP&L also request clarification on Ohio Adm.Code 4901:1-39-07(C)(3) regarding when the EDU must submit its annual update to Staff and whether that update will be approved under an automatic approval process. Specifically, DP&L asserts it is unclear when a mercantile customer's application must be filed in order to meet the criteria for a mercantile rebate from the utility. (Duke Comments at 9; DP&L Comments at 6.) FirstEnergy suggests that all customer annual reporting be submitted to Staff by April 30 of each year (FirstEnergy Reply Comments at 24).

{¶ 155} The Commission finds it appropriate to revise proposed Ohio Adm.Code 4901:1-39-07(C) in response to comments made by Duke and DP&L concerning the deadline of filing with the Commission an application to commit savings. The revision clarifies that an application that is filed individually must be filed by December 31 of the year following the end of the three-year period. If the application is filed jointly between the mercantile customer and the EDU, the deadline is the following March 31. For instance, if the three-year period ends in 2017, an application filed individually will be due December 31, 2018, and an application filed jointly, March 31, 2019.

{¶ 156} Referring to Ohio Adm.Code 4901:1-39-07(C), ECA agrees with the Commission on establishing a performance-based system, but recommends adding language that clearly establishes the requirement to file an annual report with the Commission. Further, ECA notes that the draft rules do not specify that the same incentive will be required of any existing or future CHP/WER programs within the EDU's energy efficiency portfolio. ECA recommends clarification that the same performance-based incentive be required of these EDU-run programs. (ECA Comments at 19.)

{¶ 157} The Commission finds that whether to include CHP or WER programs as part of an EDU's portfolio plan should be left to the discretion of the EDU. While the Commission recommends an incentive payment amount, it continues to leave that element as one to be negotiated between the mercantile customer and the EDU, subject to approval by the Commission. Furthermore, in response to ECA, Ohio Adm.Code 4901:1-39-07(C)(3) explicitly requires that annual updates be filed for the continued commitment of savings and exemption from the rider.

{¶ 158} IEU-Ohio proposes language to be added to Ohio Adm.Code 4901:1-39-07(C) that would provide specific guidance on how to count the output of either a WER or CHP system (IEU-Ohio Comments at 12). IEU-Ohio also argues for a new provision to clarify the application of the automatic approval process (IEU-Ohio Comments at 5).

{¶ 159} OCC rejects IEU-Ohio's proposed modifications to Ohio Adm.Code 4901:1-39-07(C) because mercantile customers should not be exempt from paying the EDUs' energy efficiency riders while at the same time making money by bidding their energy efficiency savings into the PJM markets. If the Commission does adopt rules allowing mercantile customers to retain ownership of energy efficient/peak demand reduction attributes, OCC suggests that those customers should no longer be eligible to participate in any EDU interruptible rate programs because such programs increase costs to Ohio residential customers. OCC suggests that the electric utilities' interruptible rates should be eliminated as they move to divesting 100 percent of their generation. (OCC Reply Comments at 20-24.)

{¶ 160} The Commission rejects OCC's suggestions. R.C. 4928.66(A)(2)(c) allows EDUs to exempt mercantile customers from the rider used to collect energy efficiency costs if they commit their savings to the EDU. Furthermore, the Commission is not adopting a rule allowing mercantile customers to retain ownership of their energy efficiency attributes at this time. That issue is more fully discussed below. Additionally, the Commission accepts the language for Ohio Adm.Code 4901:1-39-07(C) proposed by IEU-Ohio regarding the method of counting the output of a customer's CHP and WER systems, but rejects the proposed modification to subsection (C)(1). The rule language, as proposed, already specifies that the automatic approval process applies to any application that is filed under Ohio Adm.Code 4901:1-39-07(C). The rule has been amended, accordingly.

{¶ 161} ECA requests clarification regarding the meaning of "permanent" under Ohio Adm.Code 4901:1-39-07(C)(2) as it relates to incentive payments (ECA Comments at 39-40). CHP Coalition believes clarity is needed on the length of time the incentive can be earned (CHP Coalition Reply Comments at 4). FirstEnergy suggests 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. FirstEnergy contends that a three-year period is consistent with the Commission's requirement for an EDU to determine its baseline. (FirstEnergy Comments at 25.)

{¶ 162} The Commission initially notes that, under Ohio Adm.Code 4901:1-39-07(C)(2), an EDU must count energy efficiency savings as permanent after five years of approved commitment payment applications from a mercantile customer. The Commission revises the proposed rule language in response to ECA's inquiry by adding that "no additional payments will be made to the customer" after those five consecutive years. Moreover, the Commission rejects FirstEnergy's proposal to limit the filing requirement to three years, and retains the requirement that a mercantile customer apply to commit its savings for five years before those savings become permanent.

{¶ 163} IEU-Ohio recommends modifying Ohio Adm.Code 4901:1-39-07(C)(3) to provide that mercantile customers may verify their continued actual EE/PDR savings to their EDUs, which will report those ongoing savings to the Commission in their annual reports filed in accordance with proposed Ohio Adm.Code 4901:1-39-05. This modification would recognize that the annual performance verification process applies to the applicant filing the mercantile customer application, as in practice the vast majority of these applications are jointly filed between the mercantile customer and its EDU. The modification would also recognize that a mercantile customer is already under an obligation as part of its commitment agreement with its EDU to verify annually that its energy savings and peak demand reductions still exist. (IEU-Ohio Comments at 8.)

{¶ 164} The Commission recognizes the need for clarification in Ohio Adm.Code 4901:1-39-07(C)(3) as requested by IEU-Ohio. Therefore, the Commission adds language that specifies that either a mercantile customer or an EDU may provide the annual update required for ongoing rider exemptions.

{¶ 165} Several parties commented on the incentives offered for the commitment of savings from CHP and WER systems. ERC suggests a single tiered approach to incentive payments for CHP. ECA also suggests that CHP and WER systems should receive a higher incentive. Specifically, ECA notes that the proposed rules suggest a 100 percent conversion rate of kWh generated to kWh saved, which does not incentivize customers and CHP developers to properly design and operate their CHP systems to achieve the highest possible efficiencies. (ECA Comments at 14.) Additionally, the Heat is Power Association, ECA, OMAEG, CHP Coalition, and MCA suggest that the Commission's proposed incentive level of \$0.005/kWh is too low when compared to incentives offered in other states and payments for other energy efficiency measures. (MCA Comments at 4; ECA Comments at 16). Finally, MCA, ECA and ERC propose that a portion of the incentive be paid upfront in order to reduce costs of the detail system design and help facilitate CHP and WER projects that would not have otherwise been developed (MCA Comments at 2; ECA Comments at 18; ERC Reply Comments at 2).

{¶ 166} ECA agrees with AEP Ohio's comments urging the Commission to implement CHP/WER provisions to encourage high-efficiency systems, establish a tiered payment system based on efficiency, set incentives based on performance of the system, and ensure that funding for CHP projects is balanced against budgets for other energy efficiency programs (ECA Reply Comments at 9-11; AEP Ohio Reply Comments at 19).

{¶ 167} FirstEnergy rejects the commenters' approaches to determining the level of savings from a CHP (FirstEnergy Reply Comments at 24-28). Moreover, FirstEnergy and IEU-Ohio urge the Commission to adopt rules that allow EDUs the flexibility to incorporate CHP and WER projects in their compliance plans when such projects are demonstrated to be cost effective relative to other compliance options. (IEU-Ohio Reply Comments at 16-17; FirstEnergy Reply Comments at 24-28).

{¶ 168} OMAEG supports incorporating the mercantile customer pilot program into the Commission's regulations, as it has been an effective, streamlined process which

has resulted in the implementation of numerous energy efficiency projects. OMAEG further urges the Commission to recognize, by incorporating into its rules, the concept that mercantile customers retain their ownership rights to the energy efficiency attributes of their self-directed projects when committing the savings from those projects to an electric utility. (OMAEG Comments at 9-10.) IEU-Ohio agrees (IEU-Ohio Reply at 20). However, AEP Ohio opposes this position, arguing that this recommendation could reduce the opportunities for the EDU to bid capacity savings to the PJM market for the benefit of all customers. It states that OMAEG and IEU-Ohio can accomplish their desired result without a rules change. Further, AEP Ohio states that mercantile customers may complete any energy efficiency project without EDU support in the form of an incentive or rider exemption. (AEP Ohio Reply Comments at 17-18.)

{¶ 169} The Commission denies the proposed revisions raised by various parties to modify the incentive payments for savings related to CHP and WER. The Commission notes that in the time since comments were originally submitted in this proceeding, the incentive payment of \$0.005/kWh has served to motivate mercantile customers to participate in committing their CHP and WER savings to their EDU. Furthermore, the Commission rejects the proposals for a tiered approach to counting savings from CHP and WER systems. As long as the CHP or WER system meets the statutory minimum required efficiency, the Commission will recognize CHP and WER savings annually as it is produced, counting a kWh produced as a kWh saved.

{¶ 170} The Commission also rejects OMAEG's argument regarding ownership rights. The Commission has previously held that an EDU may obtain ownership of a mercantile customer's energy efficiency attributes as a condition of the customer's exemption from the rider, finding that "requiring the Companies to bid all planned savings into future PJM BRAs could substantially benefit ratepayers by lowering capacity auction prices and reducing Rider DSE costs." *In re the Application of The Cleveland Elec. Illum. Co., Ohio Edison Co., and The Toledo Edison Co. for Approval of Their Energy Efficiency*

and Peak Demand Reduction Program Plans for 2013 through 2015, Case No. 12-2190-EL-POR, et al., Opinion and Order (Mar. 20, 2013) at 20. For that reason, the Commission will continue to allow an EDU to obtain ownership rights to the energy efficiency attributes when committing their savings.

{¶ 171} Finally, OPAE opposes compensating customers for administrative costs and inconvenience (OPAE Comments at 14).

{¶ 172} The Commission rejects OPAE's position. Compensating historical mercantile customers for administrative costs and convenience simply makes those customers whole when committing savings to an EDU. The Commission encourages such compensation to avoid creating a barrier to committing savings.

H. CHP/WER Template-related Comments

{¶ 173} Several parties including AEP Ohio, Ohio Coalition for CHP, DP&L, Duke, ERC, FirstEnergy, IEU-Ohio, IGS, and OMAEG filed comments regarding the CHP/WER template that was included in the proposed rules. The Heat is Power Association, ECA, OMAEG, CHP Coalition, and MCA recommended raising the per kWh incentive payment of \$0.005.

{¶ 174} FirstEnergy avers that the application templates are somewhat premature in their development but provides comments with proposed improvements to the templates. FirstEnergy believes that the template should be revised to indicate the length of time during which the cash option is to be paid. It also recommends adding a provision to the template stating that no incentive payments will be made until the CHP/WER project is certified, fully operational and committed to the EDU. (FirstEnergy Comments at 27.) CHP Coalition disagrees with FirstEnergy, specifically noting that requiring incentive payments to be paid only when a project is fully operational creates dissimilarity between CHP and WER systems and other energy efficiency measures. Also, CHP Coalition recommends providing clear guidance on what qualifies as an

“auxiliary support system” and how customers and developers might demonstrate that they have factored out any additional power support. (CHP Coalition Reply Comments at 5.)

{¶ 175} The Commission notes that the incentive payment of \$0.005 per kWh has successfully been in place since 2011.⁵ As such, the Commission retains this incentive amount at this time.

{¶ 176} CHP Coalition and ERC contend that the proposed rules do not provide guidance to EDUs on how to incorporate CHP and WER into their energy efficiency portfolios (CHP Coalition Comments at 1, 6; ERC Comments at 4-5). CHP Coalition also supports IGS’s recommendation to modify the rule in order to ensure that CHP receives equal access to funding opportunities under EDU programs. (CHP Coalition Reply Comments at 2). Duke and DP&L assert that the CHP incentive mechanism needs to be further defined, both in the appropriate way to effectively calculate energy efficiency savings, and the timing in which the incentive should be paid (DP&L Reply Comments at 6; Duke Reply Comments at 11).

{¶ 177} With regard to comments made by parties about further guidance on how to incorporate CHP and WER into their energy efficiency portfolios, the Commission reiterates that it is moving to a performance verification post-approval process, as outlined in Ohio Adm.Code 4901:39-05. Consequently, the Commission expects EDUs to design their own energy efficiency portfolios that include CHP and WER programs when appropriate. Ultimately, the inclusion of such programs is a management decision and EDUs should be making these decisions based on their own internal risk analysis and in collaboration with stakeholders.

⁵ See *In the Matter of a Mercantile Application Pilot Program Regarding Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders*, Case No. 10-834-EL-POR, Second Entry on Rehearing at 8 (May 25, 2011).

{¶ 178} AEP Ohio recommends changes to *Section 3* of the template that reflect its comments above regarding a tiered incentive structure and higher incentive payments.

{¶ 179} The Commission rejects AEP Ohio's recommended changes to Section 3 of the template. The issue of CHP incentive payments has been thoroughly addressed in the discussion regarding section Ohio Adm.Code 4901:1-39-07.

IV. COMMENTS ON OHIO ADM.CODE CHAPTER 4901:1-40

A. *Ohio Adm.Code 4901:1-40-01 - Definitions*

{¶ 180} FirstEnergy and AEP Ohio suggest that the definition of "deliverable into this state" in proposed Ohio Adm.Code 4901:1-40-01(F) should be revised to include electricity originating from a source located in MISO or PJM. FirstEnergy notes that both PJM and MISO require a study to be performed prior to the interconnection of any generation source they operate. Therefore, FirstEnergy asserts that no other studies should be necessary if MISO and PJM's requirements are satisfied. FirstEnergy believes that this proposal would reduce administrative costs for potential suppliers, remove a potential barrier to entry into Ohio's market, and streamline the process. (FirstEnergy Comments at 30; AEP Ohio Reply at 23.)

{¶ 181} The Commission finds that the comments regarding the definition of "deliverable into this state" have been thoroughly addressed in previous rulemaking cases, and the Commission maintains its position that this definition does not need to be expanded to include any generation originating within the PJM or MISO transmission systems. We continue to believe that "a demonstration of delivery via a power flow study and/or deliverability study should be necessary, although not to the extent of requiring signed contracts." *In re the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-3, 4901:5-7 of Ohio Adm.Code, to Implement S.B. No. 221*, Case No. 08-888-EL-ORD, Opinion and Order (Apr. 15, 2009) at 28.

{¶ 182} IEU-Ohio, AEP Ohio, and FirstEnergy each assert that the Commission should delete the second subpart under the definition of “double-counting” in proposed Ohio Adm.Code 4901:1-40-01(I). They assert that there is no statutory authorization to prohibit using a single resource to meet more than one requirement. IEU-Ohio also contends that the General Assembly was aware that measures could potentially count towards compliance with both mandates, but only excluded WER systems from counting towards both mandates. Further, IEU-Ohio avers that Staff’s proposed rule would work against customers implementing CHP facilities that may qualify as both a renewable energy resource and also result in a reduction in energy usage for the mercantile customer. (FirstEnergy Comments at 30-31; IEU-Ohio Comments at 19; AEP Ohio Reply at 23.)

{¶ 183} The Commission notes that one of the statutory changes in SB 310 was the removal of the advanced energy benchmarks. Therefore, the second subpart of the definition of “double-counting,” which read “[c]omply with both energy efficiency and advanced energy statutory benchmarks,” is now moot. Consequently, the Commission agrees with IEU-Ohio and FirstEnergy and is amending the rule accordingly by deleting that portion of the definition in order to be consistent with the statutory changes.

{¶ 184} IEU-Ohio recommends amending the definition of geothermal energy in proposed 4901:1-40-01(O) and the definition of solar thermal energy in proposed Ohio Adm.Code 4901:1-40-01(AA) because the definitions are limited to geothermal and solar thermal energy that results in the production of electricity. IEU-Ohio argues that Ohio law does not limit geothermal or solar energy in this way; for example, geothermal energy could include using devices such as a ground source heat pump for heating and cooling purposes. IEU-Ohio urges the Commission to redefine geothermal energy and solar thermal energy to allow any type of geothermal or solar energy to qualify as a renewable resource. (IEU-Ohio Comments at 10-11.)

{¶ 185} The Commission finds it unnecessary to amend the definitions of “solar thermal” or “geothermal energy.” The Commission believes that these definitions are consistent with the statutory intent behind R.C. Chapter 4928. Thus, the Commission rejects IEU-Ohio’s recommendations.

B. Ohio Adm.Code 4901:1-40-03 - Requirements

{¶ 186} DP&L supports the removal of Ohio Adm.Code 4901:1-40-03(C), which requires a ten-year compliance plan for future renewable energy benchmarks (DP&L Comments at 6).

{¶ 187} IEU-Ohio recommends that the Commission modify Staff’s proposed rules to allow utilities to rely upon advanced energy resources to meet the alternative energy resource mandate in each year of the compliance period through 2025. IEU-Ohio argues that the proposed rules in Ohio Adm.Code Chapter 4901:1-40 do not allow advanced energy resources to count towards the alternative energy resource mandate until 2024. (IEU-Ohio Comments at 20.)

{¶ 188} As a threshold matter, the Commission notes that there have been significant revisions to Ohio Adm.Code 4901:1-40-03 to reflect changes made by the 130th General Assembly to R.C. 4928.64 through SB 310. These revisions render IEU-Ohio and DP&L’s comments moot.

{¶ 189} FirstEnergy recommends that in an application to adjust the baseline under Ohio Adm.Code 4901:1-40-03(B)(3), an EDU should be permitted to provide justification for its adjustment, including what constitutes the new economic growth that required an adjustment of the baseline. Further, FirstEnergy suggests that the Commission determine what constitutes new economic growth on a case-by-case basis. (FirstEnergy Comments at 31.)

{¶ 190} AEP Ohio recommends a definition of “new economic growth” for purposes of Ohio Adm.Code 4901:1-40-03(B)(3). AEP Ohio suggests that the Commission exclude load associated with reasonable arrangements approved under R.C. 4905.31. As the Commission typically makes an independent statutory determination regarding reasonable arrangements and awards an economic development discount for energy sold to the customer that is approved for a specific period of time, AEP Ohio believes that should also serve as the duration of the baseline adjustment. If a non-reasonable arrangement basis is used, then AEP Ohio notes that a generic period of three years could be used since the baselines themselves are calculated based on a three-year horizon. (AEP Ohio Comments at 15.)

{¶ 191} FirstEnergy agrees with AEP Ohio’s suggestion that load associated with reasonable arrangements should be excluded from the baseline, but FirstEnergy believes that this is only one element of load associated with economic growth. FirstEnergy argues that a large commercial customer can complete a significant expansion with load that should be excluded for economic growth, but never have a reasonable arrangement implemented. Therefore, FirstEnergy does not believe a definition for new economic growth is necessary and that the decision of whether to exclude something as new economic growth from the baseline should be made on a case-by-case basis. (FirstEnergy Reply at 29.)

{¶ 192} The Commission appreciates the comments from AEP Ohio and FirstEnergy regarding baseline adjustments for economic growth. While the Commission understands AEP Ohio’s argument that a definition of new economic growth could lend more certainty to the process, the Commission agrees with FirstEnergy that the determination of whether to exclude something from the calculation of baseline is best made by the Commission on a case-by-basis, which will allow the Commission to consider all the relevant factors at issue. Therefore, the Commission does not believe that

a definition of “new economic growth” needs to be included in these rules at this time. As such, the Commission rejects AEP Ohio’s recommendation.

{¶ 193} Further, the Commission has amended Ohio Adm.Code 4901:1-40-03(B) to provide utilities and ESCs with two options on how to calculate their baselines: they can use the average total kilowatt hours sold annually to their respective customers in the preceding three calendar years, or the total kilowatt hours sold in the applicable compliance year. This flexibility should mitigate some of the need for applications to exclude new economic growth, as a regulated party may choose the second baseline calculation option in the event new economic growth appears to be a concern. Additionally, the rules maintain the option for regulated parties to request a baseline reduction to reflect new economic growth in their service areas. Therefore, the Commission believes that the attached rules appropriately address the issues raised in the comments and provides a balanced approach to determining the baseline for compliance with the requirements of R.C. 4928.64.

C. Ohio Adm.Code 4901:1-40-04 - Qualified Resources

{¶ 194} OPAE and AEP Ohio request clarification to Ohio Adm.Code 4901:1-40-04(A)(8) on what is meant by a storage facility that “promotes the better utilization of a renewable energy resource.” OPAE suggests that this phrase should be replaced with “that stores energy produced by a renewable energy resource.” AEP Ohio agrees with OPAE’s suggested change and believes that such change eliminates ambiguity regarding the meaning of “promotes the better utilization” and specifically defines that the qualified resource must store energy from a renewable energy resource. (OPAE Comments at 14-15; AEP Ohio Reply at 23-24.)

{¶ 195} The Commission finds these comments to be persuasive. In order to avoid confusion and promote consistency, the Commission is revising Ohio Adm.Code 4901:1-40-04(A)(8) to match the language in R.C. 4928.01(A)(37)(a), which states that

renewable energy resource “includes, * * * [a] storage facility that will promote the better utilization of a renewable energy resource * * * .” Further, we note Ohio Adm.Code 4901:1-40-04(A)(8) explains that the “amount of energy that may qualify from a storage facility is the amount of electricity discharged from the storage facility.” The Commission feels that this language sufficiently explains how storage facilities can be used to meet the requirements set forth in R.C. 4928.64.

{¶ 196} AEP Ohio requests clarification on Ohio Adm.Code 4901:1-40-04(B), (B)(1), and (B)(4) that the ‘non-renewable portion of an alternative energy benchmark’ is the same as an “advanced energy resource” under the statute. AEP Ohio notes that the term “non-renewable benchmark” is not found in R.C. 4928.66. (AEP Ohio Comments at 12-13.)

{¶ 197} ECA argues that the Commission should add a restriction regarding the placed in service date of qualified advanced energy resources in Ohio Adm.Code 4901:1-40-04(B)(8) (ECA Comments at 51).

{¶ 198} IEU-Ohio disagrees with the ECA’s suggestion to add a restriction in Ohio Adm.Code 4901:1-40-04(B)(8). IEU-Ohio believes the proposed rule tracks the language in in R.C. 4928.01(A)(34)(h) and should stay. (IEU-Ohio Reply at 15.)

{¶ 199} The Commission notes that section (B) of Ohio Adm.Code 4901:1-40-04, as it was written in the version of the rules promulgated on January 29, 2014, has been deleted to address SB 310’s elimination of an advanced energy resource benchmarks from R.C. Chapter 4928. Accordingly, all comments that the Commission received that addressed Ohio Adm.Code 4901:1-40-04(B) are now moot.

{¶ 200} FirstEnergy argues that the limitation on double-counting contained in Staff’s proposed version of Ohio Adm.Code 4901:1-40-04(C) as of January 29, 2014 limits the mercantile customer sited resources that an EDU may count for purposes of complying with the renewable energy requirement. FirstEnergy asserts this is an

arbitrary restriction contrary to the plain meaning of both R.C. 4928.64 and 4928.66, and unnecessarily increases the costs of compliance, which in turn unnecessarily increases customer rates. (FirstEnergy Comments at 32.)

{¶ 201} The Commission accepts FirstEnergy's comments and amends this rule to reflect changes made by SB 310 and the language contained within R.C. 4928.64(A)(1)(e) and 4928.66(A)(2)(c) to remove the prohibition on double-counting of mercantile customer sited facilities that use renewable energy resources in proposed Ohio Adm.Code 4901:1-40-04(B).

{¶ 202} PJM EIS recommends the deletion of MISO in Staff's proposed version of Ohio Adm.Code 4901:1-40-04(D)(3)(b) as of January 29, 2014 and to replace it with "midwest" because MISO does not have a dedicated renewable energy tracking system for generating resources within its footprint (PJM EIS at 2). The Commission agrees with this recommendation and accepts this change. Proposed Ohio Adm.Code 4901:1-40-04(C)(3)(b) has been amended, accordingly.

{¶ 203} Multiple comments addressed the life of a REC (i.e. the length of time that a REC can be banked), with several different suggestions offered. FirstEnergy suggests that the Commission clarify the life of RECs as described in proposed Ohio Adm.Code 4901:1-40-04(C). FirstEnergy believes that 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 should be counted. Further, regarding grandfathering, FirstEnergy asserts that allowing a one year grace period will allow electric utilities to use RECs that may no longer qualify under Ohio Adm.Code 4901:1-40-04(C)(4) rather than wasting those RECs. (FirstEnergy Comments at 33.)

{¶ 204} Similarly, DP&L is concerned that the proposed rule Ohio Adm.Code 4901:1-40-04(C)(4) is contrary to R.C. 4928.65, since the statute requires that RECs have a life of five years following the date of their purchase or acquisition. Duke also believes

that proposed Ohio Adm.Code 4901:1-40-04(C)(4) changes the time period within which a REC may be counted. Duke suggests that upon implementation of the rule, the Commission should consider grandfathering for any RECs held by an electric utility or an ESC that was purchased prior to the enactment of the proposed new rule. (DP&L Comments at 6; Duke Comments at 10.)

{¶ 205} PJM EIS also recommends the replacement of the phrase “date of its creation by the applicable tracking system” in Staff’s proposed version of Ohio Adm.Code 4901:1-40-04(D)(4) with “year in which the associated electricity was generated” to make this section consistent the eligibility requirements in the paragraphs immediately following which are based on when the associated electricity was generated. PJM EIS points out that when most people in the industry discuss REC vintage, they are referring to when the generation occurred. PJM EIS expressed concern that it could cause confusion to those parties doing business in multiple states if in Ohio REC life is based on a date other than when the associated electricity was generated. PJM EIS also noted that since the REC creation date in GATS is usually a month after the associated electricity was generated, PJM EIS’s recommended change should have little or no effect on the compliance years in which a REC can be used. (PJM EIS Comments at 2-3.)

{¶ 206} As to the comments regarding REC life, the Commission finds that the attached version of proposed Ohio Adm.Code 4901:1-40-04(C)(4) is consistent with the statutory requirements of R.C. 4928.645(A), as amended by SB 310. As the Commission has previously stated, “RECs retained by the original generator have an unlimited life, while purchased or acquired RECs will have a life of five years from the date of initial purchase or acquisition.” *In re the Adoption of Rules for Alternative and Renewable Energy Technologies*, Case No. 08-888-EL-ORD, Opinion and Order (Apr. 15, 2009) at 35.

{¶ 207} DP&L asserts that proposed Ohio Adm.Code 4901:1-40-04(C)(7) is unnecessary and believes the Commission should amend this rule to allow entities to comply with the renewable energy requirements by April 15 of the next calendar year by

using any REC available before the compliance deadline of April 15 (DP&L Comments at 6).

{¶ 208} The Commission finds that DP&L's proposal is unfounded. The process proposed by Staff is appropriate and in compliance with the statute. Therefore, DP&L's comment is rejected.

{¶ 209} AEP Ohio recommends that the Commission adopt a provision in proposed Ohio Adm.Code 4901:1-40-04(D)(7) to provide for due process before a renewable facility certification can be revoked (AEP Ohio Comments at 13).

{¶ 210} While the Commission agrees that due process is always a concern, the Commission finds that it is not necessary for the rules to require a hearing prior to a certificate revocation under this section. For example, there have been numerous instances where a certificate was revoked at the request of the applicant because a certificate is a duplicate for the same facility or because the facility is no longer producing renewable energy.

{¶ 211} OPAE argues that proposed Ohio Adm.Code 4901:1-40-04(E) would provide the Commission with broad discretion to define what constitutes an advanced or renewable energy resource. OPAE asserts that there is no statutory support for such a provision. Further, if such provision is not eliminated, OPAE suggests that there should be a mandatory hearing process. (OPAE Comments at 15.)

{¶ 212} IEU-Ohio disagrees with OPAE's recommended changes to Ohio Adm.Code 4901:1-40-04(E). IEU-Ohio believes that the proposed section tracks the language in R.C. 4928.64(A)(2) and should stay. (IEU-Ohio Reply at 15.)

{¶ 213} The Commission finds that OPAE's comment on Ohio Adm.Code 4901:1-40-04(E) is not well taken. As IEU-Ohio points out, the rule tracks the language in R.C. 4928.64(A)(2). Therefore, we reject OPAE's comment.

D. Ohio Adm.Code 4901:1-40-05 - Annual Status Reports and Compliance Reviews

{¶ 214} Several parties' comments address filing requirements that the commenters believe should be treated as confidential with regard to Staff's proposed version of this rule as of January 29, 2014. Specifically, FirstEnergy argues that information filed pursuant to Ohio Adm.Code 4901:1-40-05(A)(4)(b) should be maintained as confidential. FirstEnergy asserts that average REC cost data should be protected from public disclosure as a trade secret. Further, FirstEnergy avers that some third party suppliers may be discouraged from participating in the Ohio market if their pricing information will be disclosed to the public. FirstEnergy also requests clarification regarding whether Staff is requesting the average cost per megawatt hour for each category of REC, or the cost for each specific REC. Additionally, FirstEnergy believes that the Commission should clarify that the annual report only requires a prospective review of the status relative to the statutory three percent cost provision for informational purposes. (FirstEnergy Comments 35-37.)

{¶ 215} IGS and FES argue that the Commission should not adopt Staff's proposal in Ohio Adm.Code 4901:1-40-05(A)(4) for CRES providers to disclose their costs for meeting all AEPS requirements. They argue requiring CRES providers to disclose these costs is bad public policy and should not be adopted by the Commission. (IGS Comments at 2-4; FES Comments at 2-4.)

{¶ 216} AEP Ohio and ECA disagree with IGS's suggestion that the Commission add a provision that allows CRES providers to file their reports under seal but not electric utilities (AEP Ohio Reply at 24; ECA Reply at 30). AEP Ohio argues that there is no difference regarding cost information meeting the requirements for confidential protection for electric utilities or CRES providers and that it would be inappropriate to only allow an exception for a CRES provider (AEP Ohio Reply at 24). Furthermore, as noted by DP&L, several parties did not provide the required information under R.C. 4928.64(D)(1) for the Commission's annual report to the General Assembly. (DP&L Reply

at 7.) ECA also disagrees with FES' objection to the proposed public disclosure requirement of cost data disclosure by CRES providers (ECA Reply Comments at 30).

{¶ 217} Duke did not have any suggested changes to the proposed language in the rule but believes that the information provided to the Commission related to costs as submitted by individual reporting entities must be kept confidential (Duke Comments at 10).

{¶ 218} Both ECA and OCC disagree with Duke's comment that cost information provided to the Commission should be kept confidential (ECA Reply at 28-31 and OCC Reply at 25-26).

{¶ 219} DP&L also seeks clarification regarding Ohio Adm.Code 4901:1-40-05(A)(4)(d). DP&L believes that it is not clear if a determination is made regarding the cost cap annually, or if it is simply a status update and a separate application must be filed to demonstrate compliance with the costs cap rule in Ohio Adm.Code 4901:1-40-07. (DP&L Comments at 7.)

{¶ 220} Regarding the requirement to include average annual cost of renewable energy credits in annual reports, PJM EIS asserts that if the Commission decides to go with a tracking system, GATS already has the capability for a user to enter the price paid per REC when a REC is retired for compliance with a state AEPS (PJM EIS at 2).

{¶ 221} AEP Ohio suggests that requiring the cost data for RECs as part of the annual report would be preferred to using the cost data in the GATS tracking system. AEP Ohio thinks the cost data in GATS is either unreliable or simply does not reflect the unbundled REC cost. AEP Ohio further posits that the in-service date should not be earlier than the effective date of SB 315. (AEP Ohio Comments at 14.)

{¶ 222} The Commission notes that the review procedures and reporting requirements in this rule have been substantially changed from Staff's January 29, 2014

proposed version in response to these comments and to address changes in SB 310. Ohio Adm.Code 4901:1-40-05(A)(3) has been amended to allow the electric utilities and ESCs to submit portions of the report confidentially. Subparagraph (A)(3)(b) was also revised to remove the monetary component. The rule has also been revised to clarify that it requires both a prospective and retrospective look at the three percent cost cap. Furthermore, the Commission has transitioned to cost disclosure through GATS, which should resolve some other issues raised regarding tracking RECs. Taken as a whole, all of these changes address the majority of comments received under this section. Finally, we note that we have added proposed Ohio Adm.Code 4901:1-40-05(D), which states that annual compliance status report is automatically approved unless suspended by the Commission within 60 days of the filing date. Automatic approval of these reports enhances administrative efficiency and preserves both the Commission's and EDUs' resources. However, if additional review is required, the attached rules provide the Commission with the discretion to suspend the automatic approval process based on our review of any submitted comments or objections to the electric utility's or electric services company's renewable energy portfolio status report.

{¶ 223} DP&L, ECA, and OCC suggest that the rule should incorporate a penalty for failure to comply with the annual reporting requirements. DP&L states that R.C. 4928.64(D)(1) clearly states that the Commission should annually submit "the average annual cost of renewable energy credits purchased by utilities and companies for the compliance year." (DP&L Comments at 6-7; ECA Reply Comments at 31; OCC Reply Comments at 26.)

{¶ 224} The Commission finds that there is no need for a specific penalty provision for failure to comply, as the Commission has sufficient authority to enforce its rules. Specifically, under Ohio Adm.Code 4901:1-10-30(A)(1), any EDU that fails to comply with the rules or an order of the Commission may be subject to a forfeiture to the state of not more than ten thousand dollars per day, per violation.

{¶ 225} ECA recommends an addition of a new subsection (g) that would read: “A full description of any affiliate transactions used to meet the alternative energy portfolio standard compliance requirements.” Additionally, ECA suggests that if a utility enters into affiliate transactions to meet its alternative energy portfolio standard compliance requirements, the utility should fully report the details of those transactions in its annual status report.

{¶ 226} DP&L, AEP Ohio, and FirstEnergy disagree with ECA’s recommendation of a new subsection (g). DP&L believes this would fall under the utility’s cost recovery mechanism and that this would be a duplicative filing requirement (DP&L Reply at 7). AEP Ohio also disagrees, arguing that there is no requirement in R.C. 4928.64 to provide such information. AEP Ohio believes ECA’s recommendation can appropriately be addressed through corporate separation audits. (AEP Ohio Reply at 24-25.) FirstEnergy suggests that the Staff and Commission have the ability to request such information without ECA’s proposed addition (FirstEnergy Reply at 31). OCC agrees with ECA’s recommendation (OCC Reply at 25).

{¶ 227} Regarding ECA’s proposal to include a new subsection requiring the disclosure of affiliate transactions used to meet the qualifying renewable resource benchmarks, while the Commission understands the intent behind this suggested addition, such disclosures are better addressed in a financial audit. Therefore, the Commission sees no need to amend the rules to require this additional reporting requirement at this time. This issue can be revisited in the future if such need arises.

E. Ohio Adm.Code 4901:1-40-07 - Cost Cap

{¶ 228} FirstEnergy asserts that this rule is inconsistent with Ohio Adm.Code 4901:1-40-05 in that it appears to require a prospective three percent calculation, while Ohio Adm.Code 4901:1-40-05 does not indicate which type of calculation it requires.

{¶ 229} The Commission finds that this comment is resolved by the revisions mentioned above in the Commission's discussion of Ohio Adm.Code 4901:1-40-05.

{¶ 230} FirstEnergy argues the terms "maximum recoverable funds" and "cost cap" should be removed from the rule because they contradict the plain language of R.C. 4928.64(C)(3).⁶ FirstEnergy then asserts that proposed Ohio Adm.Code 4901:1-40-07(A)(4) is inaccurate in that the three percent cost provision is calculated on an aggregate basis and not on a separate basis for each benchmark. (FirstEnergy Comments at 38-39.)

{¶ 231} Nucor disagrees with FirstEnergy's comments to revise Ohio Adm.Code 4901:1-40-07(A), while AEP Ohio agrees with FirstEnergy's comments, (Nucor Reply at 7; AEP Ohio Reply at 25). Nucor argues that Commission should reject the revisions proposed by FirstEnergy because making the cost cap discretionary for electric utilities would decrease the effectiveness of the overall statutory scheme. Nucor agrees with FirstEnergy that the cost cap is designed to be prospective, but disagrees that each benchmark has its own cost cap. Nucor believes that the cost cap applies on an aggregate basis to a utility's overall renewable energy compliance requirement in a given year, and not separately for each category of renewable energy. (Nucor Reply at 7.) Further, Nucor disagrees with FirstEnergy's proposed deletion of maximum recoverable compliance funds while AEP Ohio agrees with FirstEnergy's comment (Nucor Reply at 7; AEP Ohio Reply at 25). Additionally, AEP Ohio agrees with FirstEnergy's deletion of Ohio Adm.Code 4901:1-40-07(C). As a final matter, AEP Ohio recommends the section be retitled "Cost Compliance." (AEP Ohio Reply at 25.)

{¶ 232} The Commission agrees that Ohio Adm.Code 4901:1-40-07(A) should be clarified that there is a prospective and retrospective component and the Commission has amended the language accordingly. Also, the Commission agrees that the three percent

⁶ FirstEnergy notes that this involves an issue currently pending before the Supreme Court of Ohio in Case No. 2013-2026. The issue on appeal is whether R.C. 4928.64(C)(3) sets a limit on funds that can be used to comply with the mandates.

cost cap is based on the aggregate, rather than being applied individually to the solar benchmark and the non-solar benchmark, and has clarified the rules accordingly. FirstEnergy's comment that Ohio Adm.Code 4901:1-40-07(C) should be deleted is also well taken. However, the Commission disagrees with FirstEnergy's suggestion to delete "cost cap" and "maximum recoverable funds." This rule is consistent with the plain language of R.C. 4928.64(C)(3) and appropriately allows the Commission the discretion to determine whether the company's reasonably expected cost of compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three percent or more. Finally, we agree with FirstEnergy in that Ohio Adm.Code 4901:1-40-05 does not contain cost cap requirements and, instead, enumerates the information to be provided to the Commission regarding a company's calculations of its maximum recoverable compliance funds, as determined by the formula contained in Ohio Adm.Code 4901:1-40-07. The rule has been amended accordingly.

{¶ 233} DP&L recommends that proposed Ohio Adm.Code 4901:1-40-07(A)(4) should be modified for consistency with Ohio Adm.Code 4901:1-40-07(B) and R.C. 4928.64(C)(3). DP&L also believes that Ohio Adm.Code 4901:1-40-07(B)(2)(b) should be modified to be consistent with Ohio Adm.Code 4901:1-40-07(B)(2)(a). (DP&L Comments at 7.)

{¶ 234} FirstEnergy disagrees because it believes the cost cap is discretionary for electric utilities (FirstEnergy Reply at 32). AEP Ohio agrees with DP&L's comments regarding modifying Ohio Adm.Code 4901:1-40-07(B)(2)(b) to be consistent with Ohio Adm.Code 4901:1-40-07(B)(2)(a) (AEP Ohio Reply at 25).

{¶ 235} Regarding DP&L's comments, the Commission finds that it is not necessary to adopt DP&L's recommended amendment to Ohio Adm.Code 4901:1-40(A)(5). Similar to our finding above, the rule indicates that the electric utilities "may not be required" to comply with the qualifying renewable resources benchmark if they can demonstrate that compliance costs exceed the three percent cost cap, which the

Commission believes affords sufficient discretion. Further, the Commission finds that DP&L's recommended changes to Ohio Adm.Code 4901:1-40-07(B)(2)(b) are unnecessary given that that electric utilities have since all moved to 100 percent competitive bid rates. Consequently, the Commission rejects DP&L's comments.

{¶ 236} Nucor, DP&L, and AEP Ohio point out an apparent typographical error in Ohio Adm.Code 4901:1-40-07(B)(1), which provided for the compliance baseline to be determine in "dollars per megawatt-hour" instead of simply megawatt-hours (Nucor Comments at 7; DP&L Comments at 8; AEP Ohio Comments at 13). Nucor also suggests that the Commission approve the proposed mandatory alternative energy cost cap under 4901:1-40-07(B) in order to protect customers against excessive alternative energy compliance costs, consistent with R.C. 4928.64 (Nucor Comments at 6-7).

{¶ 237} The Commission finds that the typographical error pointed out by Nucor, DP&L, and AEP Ohio should be corrected and it accepts the parties' comments. Accordingly, Ohio Adm.Code 4901:1-40-07(B)(1) has been amended to refer to megawatt-hours. Regarding Nucor's suggestion to approve the proposed mandatory cost cap under Ohio Adm.Code 4901:1-40-07(B), the Commission agrees and has incorporated that language into the rule.

{¶ 238} ECA argues that a clarification is needed in proposed Ohio Adm.Code 4901:1-40-07(A)(3) to the cost cap calculation for those situations where an electric utility employs R.C. 4928.143(B)(2)(c) and decides to develop its own renewable project rather than purchase RECs. In that scenario, ECA recommends that the total cost for the construction of the renewable energy facility must be characterized as a generation cost not a compliance cost. ECA argues that the RECs generated from the project should be the only compliance cost to count toward the three percent cost cap provision. Further, ECA supports adding language to Ohio Adm.Code 4901:1-40-07(A)(4) requiring demonstration of the steps taken by an electric utility or electric service company to exhaust all other compliance alternatives. (ECA Comments at 49-50.)

{¶ 239} AEP Ohio and FirstEnergy disagree with ECA's comments on the cost cap calculation. AEP Ohio argues that this information was previously contained in Ohio Adm.Code 4901:1-40-03(C) and is not required by statute (AEP Ohio Reply at 25). FirstEnergy disagrees with ECA's inclusion of price suppression benefits because it would add a subjective element to an otherwise objective calculation (FirstEnergy Reply at 32). FirstEnergy also argues that ECA's suggestion to require utilities to demonstrate that they had pursued all compliance options would be nearly impossible (FirstEnergy Reply at 33).

{¶ 240} While the Commission recognizes the possibility of using R.C. 4928.143(B)(2)(c) for renewable facilities, we find that ECA's first argument is premature and that it is more appropriate to address cost recovery and potential recovery mechanisms on a case-by-case basis, rather than make these determinations in a generic rulemaking proceeding. This approach is consistent with Commission precedent and, therefore, ECA's first recommendation should be rejected. See *In re Ohio Power Co. and Columbus S. Power Co.*, Case Nos. 10-501-EL-FOR and 10-502-EL-FOR, Opinion and Order (Jan. 9, 2013) at 6, 8, 23. Further, we agree with FirstEnergy that it would be impractical to require electric utilities or electric services companies to exhaust all other compliance alternatives before requesting relief from compliance with the renewable energy resource requirements based on the three percent cap. Instead, the Commission finds that the existing language that provides the Commission with the discretion to determine whether the company pursued all reasonable compliance options prior to such a request is more appropriate. Thus, ECA's second recommendation should also be rejected.

F. Ohio Adm.Code 4901:1-40-09 - Annual Report

{¶ 241} AEP Ohio asserts that the Commission should strike out the term "and solar" in Ohio Adm.Code 4901:1-40-09(A)(1) and restate the language to clarify that solar benchmarks are a subset of the renewable benchmarks. Further, AEP Ohio avers the

phrase “most recent” is redundant and confusing, given that the rule already indicates that the “applicable” benchmark will be applied. (AEP Ohio Comments at 13.)

{¶ 242} While AEP Ohio’s comments, as filed, state that they address Ohio Adm.Code 4901:1-40-09, the Commission believes that this was a typographical error and that they actually relate to Ohio Adm.Code 4901:1-40-05. Taking them as such, the Commission finds that no revisions to Ohio Adm.Code 4901:1-40-09(A) are necessary to address these concerns. We feel this section is clear and needs no further changes.

V. CONCLUSION

{¶ 243} In making its rules, an agency is required to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any factors that have changed in the subject matter area affected by the rules. The Commission has evaluated Ohio Adm.Code 4901:1-39 and 4901:1-40 and recommends amending the rules as demonstrated in the attachment to this Order.

{¶ 244} An agency must also demonstrate that it has included stakeholders in the development of the rule, that it has evaluated the impact of the rule on businesses, and that the purpose of the rule is important enough to justify the impact. The agency must seek to eliminate excessive or duplicative rules that stand in the way of job creation. The Commission has included stakeholders in the development of these rules and has sought to eliminate excessive or duplicative rules that stand in the way of job creation.

{¶ 245} Accordingly, at this time, the Commission finds that amendments to Ohio Adm.Code 4901:1-39-01, -03, -04, -05, -06, -07, -08 and 4901:1-40-01, -02, -03, -04, -05, -06, -07, -08, -09 should be filed with the Joint Committee on Agency Rule Review (JCARR), the Secretary of State, and the Legislative Service Commission (LSC). We also recognize that, when the Commission files this rule, the existing Ohio Adm.Code 4901:1-39-01, -02, -04, -05, -06, -07, -08 and 4901:1-40-03, -04, -05, -07 will be rescinded and the rule as proposed in the attachment will be filed as a new rule in order to comply with JCARR

and LSC requirements. In order to avoid needless production of paper copies, the Commission will serve a paper copy of this Order only and will make the rule, as well as the business impact analysis, available online at the Commission's website: www.puco.ohio.gov/puco/rules. All interested persons may download the rule and the business impact analysis from the above website, or contact the Commission's Docketing Division to be sent a paper copy.

VI. ORDER

{¶ 246} It is therefore,

{¶ 247} ORDERED, That amended Ohio Adm.Code 4901:1-39-03 and 4901:1-40-01, -02, -06, -08, -09 be adopted. It is, further,

{¶ 248} ORDERED, That the existing Ohio Adm.Code 4901:1-39-01, -02, -04, -05, -06, -07, -08 and 4901:1-40-03, -04, -05, -07 be rescinded consistent with JCARR and LSC requirements. It is, further,

{¶ 249} ORDERED, That the new versions of Ohio Adm.Code 4901:1-39-01, -02, -04, -05, -06, -07, -08, and 4901:1-40-03, -04, -05, -07 be adopted. It is, further,

{¶ 250} ORDERED, That the new and amended rules be filed with JCARR, the Secretary of State, and LSC, in accordance with Divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 251} ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Board, the five-year review date for Ohio Adm. Code Chapters 4901:1-39 and 4901:1-40 shall be in compliance with R.C. 119.032. It is, further,

{¶ 252} ORDERED, That a copy of this Finding and Order be served upon all commenters and all interested persons of record in this matter.

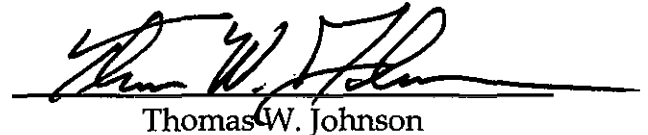
THE PUBLIC UTILITIES COMMISSION OF OHIO



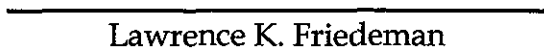
Asim Z. Haque, Chairman



M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

AS/mef

Entered in the Journal

DEC 19 2018



Barcy F. McNeal
Secretary

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"Rescind"

~~4901:1-39-01 Definitions.~~

- ~~(A) "Achievable potential" means the reduction in energy usage or peak demand that would likely result from the expected adoption by homes and businesses of the most efficient, cost effective measures, given effective program design, taking into account remaining barriers to customer adoption of those measures. Barriers may include market, financial, political, regulatory, or attitudinal barriers, or the lack of commercially available product. "Achievable potential" is a subset of "economic potential."~~
- ~~(B) "Anticipated savings" means the reduction in energy usage or peak demand that will accrue from contractual commitments for program participation made in the reporting period, which measures in such programs are scheduled for installation in the subsequent reporting periods.~~
- ~~(C) "Capital stock" means all devices, equipment, and processes that use or convert energy.~~
- ~~(D) "Coincident peak demand savings" means the demand savings for energy efficiency measures that are expected to occur during the summer on peak period which is defined as June through August on weekdays between three p.m. and six p.m.~~
- ~~(E) "Commission" means the public utilities commission of Ohio.~~
- ~~(F) "Cost effective" means the measure, program, or portfolio being evaluated that satisfies the total resource cost test.~~
- ~~(G) "Demand response" means a change in customer behavior or a change in customer-owned or operated assets that affects the demand for electricity as a result of price signals or other incentives.~~
- ~~(H) "Economic potential" means the reduction in energy usage or peak demand that would result if all homes and businesses adopted the most efficient and cost effective measures. Economic potential is a subset of the "technical potential."~~
- ~~(I) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.~~

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- (J) ~~"Energy baseline" means the average total kilowatt hours of distribution service sold to retail customers of the electric utility in the preceding three calendar years as reported in the electric utility's most recent long term forecast report, pursuant to division (A)(2)(a) of section 4928.66 of the Revised Code. The total kilowatt hours sold shall equal the total kilowatt hours delivered by the electric utility.~~
- (K) ~~"Energy benchmark" means the annual level of energy savings that an electric utility must achieve as provided in division (A)(1)(a) of section 4928.66 of the Revised Code.~~
- (L) ~~"Energy efficiency" means reducing the consumption of energy while maintaining or improving the end use customer's existing level of functionality, or while maintaining or improving the utility system functionality.~~
- (M) ~~"Independent program evaluator" means the person(s) hired by one or more of the electric utilities, at the direction of the commission, to complete the following activities:~~
- ~~(1) Monitor, verify, evaluate, and report on the electric energy savings and peak demand reductions resulting from utility program and mercantile customer activities.~~
 - ~~(2) Determine program and portfolio cost effectiveness.~~
 - ~~(3) Conduct program process evaluations.~~
 - ~~(4) 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.~~
- (N) ~~"Market transformation" means a lasting structural or behavioral change in the marketplace that increases customer adoption of energy efficiency or peak reduction measures that will be sustained after any program promoting such behavior ceases.~~
- (O) ~~"Measure" means any material, device, technology, operational practice, or educational program that makes it possible to deliver a comparable level and quality of end use energy service while using less energy or less capacity than would otherwise be required.~~

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- (P) ~~"Mercantile customer" has the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.~~
- (Q) ~~"Nonenergy benefits" mean societal benefits that do not affect the calculation of program cost effectiveness pursuant to the total resource cost test including but not limited to benefits of low income customer participation in utility programs; reductions in greenhouse gas emissions, regulated air emissions, water consumption, natural resource depletion to the extent the benefit of such reductions are not fully reflected in cost savings; enhanced system reliability; or advancement of any other state policy enumerated in section 4928.02 of the Revised Code.~~
- (R) ~~"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.~~
- (S) ~~"Peak demand baseline" means the average peak demand on the electric utility's system in the preceding three calendar years as reported in the electric utility's most recent long term forecast report, pursuant to division (A)(2)(a) of section 4928.66 of the Revised Code.~~
- (T) ~~"Peak demand benchmark" means the reduction in peak demand an electric utility's system must achieve as provided in division (A)(1)(b) of section 4928.66 of the Revised Code.~~
- (U) ~~"Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.~~
- (V) ~~"Program" means a single offering of one or more measures provided to consumers. For example, a weatherization program may include insulation replacement, weather stripping, and window replacement measures.~~
- (W) ~~"Staff" means the staff or authorized representative of the public utilities commission.~~
- (X) ~~"Technical potential" means the reduction in energy usage or peak demand that would result if all homes and businesses adopted the most efficient measures, regardless of cost.~~

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- (Y) ~~"Total resource cost test" means an analysis to determine if, for an investment in energy efficiency or peak demand reduction measure or program, on a life cycle basis, the present value of the avoided supply costs for the periods of load reduction, valued at marginal cost, are greater than the present value of the monetary costs of the demand-side measure or program borne by both the electric utility and the participants, plus the increase in supply costs for any periods of increased load resulting directly from the measure or program adoption. Supply costs are those costs of supplying energy and/or capacity that are avoided by the investment, including generation, transmission, and distribution to customers. Demand-side measure or program costs include, but are not limited to, the costs for equipment, installation, operation and maintenance, removal of replaced equipment, and program administration, net of any residual benefits and avoided expenses such as the comparable costs for devices that would otherwise have been installed, the salvage value of removed equipment, and any tax credits.~~
- (Z) ~~"Verified savings" means an annual reduction of energy usage or peak demand from an energy efficiency or peak demand reduction program directly measured or calculated using reasonable statistical and/or engineering methods consistent with approved measurement and verification guidelines.~~

"New"

4901:1-39-01 Definitions.

- (A) "Achievable potential" means the reduction in energy usage or peak demand that would result from the expected adoption by electricity consumers of the most efficient and cost-effective commercially available energy efficiency measures, taking into account applicable societal and market-related barriers to customer adoption of those measures. Achievable potential is a subset of "economic potential."
- (B) "Annualized energy savings" means the recognition, in the year of installation or implementation, of the total amount of energy savings that would be achieved in a full year of service, regardless of the actual date of installation or implementation.
- (C) "Anticipated savings" means the reduction in energy usage or peak demand that is expected to accrue from program participation.

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- (D) "Benchmark comparison method" means the comparison of customer's energy efficiency savings percentage to the electric utility's statutorily required energy efficiency savings percentage, for the purpose of determining the length of the rider exemption that the customer may receive for dedication of its energy efficiency savings to the electric utility.
- (E) "Coincident peak-demand savings" means the demand savings resulting from energy efficiency measures that occur during the summer on-peak period which is defined as June through August on weekdays between 32:00 p.m. and 6:00 p.m.
- (F) "Combined Heat and Power System" means the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve thermal-efficiency levels of at least sixty per cent, with at least twenty per cent of the system's total useful energy in the form of thermal energy.
- (G) "Commission" means the public utilities commission of Ohio.
- (H) "Cost-effective" means that the measure, program, or portfolio being evaluated satisfies the total resource cost test or utility cost test, as applicable.
- (I) "Demand response" means a change or potential change in customer behavior or a change in customer-owned or operated equipment that reduces the demand for electricity during specified time periods as a result of price signals or other incentives.
- (J) "Economic potential" means the reduction in energy usage or peak demand that would result if all electricity consumers adopted the most efficient, cost-effective commercially available energy efficiency measures. Economic potential is a subset of technical potential.
- (K) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (L) "Energy baseline" means the annual average total kilowatt-hours of distribution service sold to retail customers of the electric utility in the preceding three calendar years as reported in the electric utility's most recent long-term forecast report, pursuant to division (A)(2)(a) of section 4928.66 of the Revised Code.

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- (M) "Energy benchmark" means the annual level of energy savings that an electric utility must achieve as provided in division (A)(1)(a) of section 4928.66 of the Revised Code.
- (N) "Energy efficiency" means reducing the consumption of electrical energy, without substitution from other energy sources, while maintaining or improving the end-use customer's existing level of functionality, or while maintaining or improving the utility system functionality, or producing electricity from waste energy recovery systems or producing electricity from combined heat and power systems.
- (O) "Gross savings" means the energy and demand savings that result from program activities without regard to the reasons behind the decision to participate in those programs.
- (OP) "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.
 - (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 other due-diligence reviews of evaluations and/or documentation provided by an electric utility or mercantile customer, as directed by the commission or its staff.

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

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person shall contract with the electric utility for payment for the work activities, and work at the direction of the commission or its staff.

(PQ) "Measure" means any material, device, technology, operational practice, or educational program that makes it possible to deliver a comparable level and quality of end-use electrical energy service while using less electrical energy or capacity than would otherwise be required.

(QR) "—Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states, as set forth in division (A)(19) of section 4928.01 of the Revised Code.

(RS) "Non-energy benefits" mean positive non-monetized impacts that do not affect the calculation of program cost-effectiveness pursuant to the total resource cost test including but not limited to low-income customer participation in utility programs, reductions in greenhouse gas emissions, reductions in regulated air emissions, reductions in natural resource depletion, enhanced system reliability, or advancement of state policy as itemized in section 4928.02 of the Revised Code.

(ST) "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.

(TU) "Peak-demand baseline" means the annual average of peak demand on the electric utility's system in the preceding three calendar years as reported in the electric utility's most recent long-term forecast report, pursuant to division (A)(2)(a) of section 4928.66 of the Revised Code.

(UV) ——"Peak-demand benchmark" means the reduction in peak demand an electric utility's system must achieve, or have the capability to achieve, as provided in division (A)(1)(b) of section 4928.66 of the Revised Code.

(VW) ——"Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.

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(WX) — “Program” means a single offering that includes one or more measures provided to electricity consumers. For example, a weatherization program may include insulation replacement, weather stripping, and window replacement measures.

(XY) “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. The net savings is the difference in the present value of the EDU’s portfolio of avoided generation, transmission and distribution costs minus the total costs of the energy efficiency programs inclusive of each program’s measurement and verification costs. The net savings do not include any savings related to historical mercantile programs, transmission and distribution infrastructure projects, customer action programs, special improvement districts as defined in section 1710.01, Revised Code, and banked savings.

(YZ) “Staff” means the public utilities commission’s staff or authorized representative.

(ZAA) — “Technical potential” means the reduction in energy usage or peak demand that would result if all electricity consumers adopted the most efficient commercially available energy efficiency measures.

(AABB) “Total resource cost test” means an ex-ante analysis to determine if, for an investment in energy efficiency or peak-demand reduction measure or program, on a life-cycle basis, the present value of the avoided supply costs for the periods of load reduction, valued at marginal cost, are greater than the present value of the monetary costs of the demand-side measure or program borne by both the electric utility and the participants, plus the increase in supply costs for any periods of increased load resulting directly from the measure or program adoption. Supply costs are those costs of supplying energy and/or capacity that are avoided by the investment, including generation, transmission, and distribution to customers. Demand-side measure or program costs include, but are not limited to, the costs for equipment, installation, operation and maintenance, removal of replaced equipment, and program administration, net of any residual benefits and avoided expenses such as the comparable costs for devices that would otherwise have been installed, and the salvage value of removed equipment.

(CC) — “Useful thermal energy” means the thermal energy output of a CHP system that is recovered for use by the facility.

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(DD) "Utility cost test" means a benefit-cost test where benefits are avoided utility costs resulting from the demand-side management program, and costs are those incurred by the EDU, including incentive costs and excluding any direct customer costs. The utility cost test is also known as the program administrator cost test.

(BEE) "Verified savings" means an annual reduction of energy usage or peak demand from an energy efficiency or peak-demand reduction program directly measured or calculated using methods found in the Ohio technical reference manual or other reasonable statistical and/or engineering, as approved by the commission—methods consistent with approved measurement and verification guidelines.

(CEE) "Waste Energy Recovery System" shall have the same meaning as set forth in division (A)(38) of section 4928.01 of the Revised Code.

"Rescind"

4901:1-39-02 — Purpose and scope.

~~(A) Pursuant to division (A)(1)(a) of section 4928.66 of the Revised Code, beginning in 2009, each electric utility is required to implement energy efficiency programs. Such programs, at a minimum, shall achieve established statutory benchmarks for energy efficiency. Additionally, pursuant to division (A)(1)(b) of section 4928.66 of the Revised Code, beginning in 2009, each electric utility is required to implement peak demand reduction programs designed to achieve established statutory benchmarks for peak demand reduction. The purpose of this chapter is to establish rules for the implementation of electric utility programs that will encourage innovation and market access for cost-effective energy efficiency and peak demand reduction, achieve the statutory benchmark for peak demand reduction, meet or exceed the statutory benchmark for energy efficiency, and provide for the participation of stakeholders in developing energy efficiency and peak demand reduction programs for the benefit of the state of Ohio.~~

~~(B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.~~

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“New”

4901:1-39-02 Purpose and scope.

- (A) Pursuant to division (A)(1)(a) of section 4928.66 of the Revised Code, each electric utility is required to implement energy efficiency programs. Such programs, at a minimum, shall achieve established statutory energy benchmarks for energy efficiency and peak demand reduction, and may include a combined heat and power system placed into service or retrofitted on or after September 10, 2012, or a waste energy recovery system placed into service or retrofitted on or after the same date, except that a waste energy recovery system described in division (A)(38)(b) of section 4928.01 of the Revised Code may be included only if it was placed into service between January 1, 2002, and December 31, 2004. The purpose of this chapter is to establish rules for the implementation of electric utility energy efficiency and peak-demand reduction programs.
- (B) The commission may, sua sponte, or upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

“Amend”

4901:1-39-03 Program planning requirements.

- (A) Assessment of potential. Unless otherwise ordered by the commission, Prior to implementing an proposing its comprehensive energy efficiency and peak-demand reduction program portfolio plan, and at least once every five years thereafter, an electric utility shall conduct an assessment of potential energy savings and peak-demand reduction from adoption of energy efficiency and demand-response measures within its certified territory, which will be included in the electric utility's program portfolio filing pursuant to rule 4901:1-39-04 of the Administrative Code. Such assessment may be updated by the electric utility from time to time, at less than five year intervals, as market conditions warrant. An electric utility may collaborate with other electric utilities to co-fund or conduct such an assessment on a broader geographic basis than its certified territory. However, such an assessment must also

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disaggregate results on the basis of each electric utility's certified territory. Such assessment shall include, but not be limited to, the following:

- (1) ~~Analysis of technical potential. Each electric utility shall survey and characterize the energy-using capital stock located within its certified territory and quantify its actual and projected energy use and peak demand. Based upon the a survey and characterization of electricity-consuming facilities within its certified territory, the~~ electric utility shall conduct an analysis of the technical potential for energy efficiency and peak-demand reduction obtainable from applying commercially available alternate measures.
 - (2) Analysis of economic potential. For each available alternate measure identified in its assessment of technical potential, the electric utility shall conduct an assessment of cost-effectiveness using either the total resource cost test or the utility cost test, whichever is applicable.
 - (3) Analysis of achievable potential. For each available alternate measure identified in its analysis of economic potential as cost-effective, the electric utility shall conduct an analysis of achievable potential. Such analysis shall consider the ability of the program design to overcome barriers to customer adoption, including, but not limited to, appropriate bundling of measures.
 - (4) For each measure considered, the electric utility shall describe all attributes relevant to assessing its value, including, but not limited to potential energy savings or peak-demand reduction, cost, and nonenergy benefits.
- (B) Program portfolio plan design criteria. When developing programs for inclusion in its program portfolio plan, an electric utility shall consider the following criteria:
- (1) Relative cost-effectiveness.
 - (2) Benefits and costs to all members of a customer class, including nonparticipants.
 - (3) Potential for broad participation within the targeted customer class.
 - (4) Likely Projected magnitude of aggregate energy savings or peak-demand reduction.
 - (5) Nonenergy benefits.

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- (6) Equity among customer classes.
 - (7) ~~Relative advantages or disadvantages of energy efficiency and peak demand reduction programs for~~ Anticipated impacts on the construction of new facilities, or the replacement of retiring capital stock, or retrofitting of existing facilities capital stock.
 - (8) Potential to partner ~~integrate the proposed program with similar programs offered by other utilities, if such integration produces the most in a cost-effective result and is in the public interest~~ manner.
 - (9) The degree to which a program Potential to bundle ~~bundles~~ measures so as to avoid lost opportunities to attain energy savings or peak reductions that would not be cost-effective or would be less cost-effective if installed individually.
 - (10) The degree to which the program design Potential to engage ~~engages~~ the energy efficiency supply chain and leverages partners in program delivery.
 - (11) The degree to which the program Potential to ~~successfully addresses~~ address market barriers or market failures.
 - (12) The degree to which the program leverages ~~Potential to leverage~~ knowledge gained from existing program successes and failures.
 - (13) ~~The degree to which the program promotes market transformation:~~
 - (13) Opt-out customers, which are customers, as defined in R.C. 4928.6610, which have chosen not to participate in an electric utility's energy efficiency and peak demand reduction portfolio plan.
- (C) Promising measures not selected. Each electric utility shall identify measures considered but not found not to be cost-effective or achievable but show promise for future deployment. The electric utility shall identify potential actions that it could undertake to improve the measure's technical potential, economic potential, and achievable potential to enhance the likelihood that the measure would become cost-effective and reasonably achievable.

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- (D) The electric utility 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.

“Rescind”

~~4901:1-39-04 — Program portfolio plan and filing requirements.~~

- ~~(A) Each electric utility shall design and propose a comprehensive energy efficiency and peak demand reduction program portfolio, including a range of programs that encourage innovation and market access for cost-effective energy efficiency and peak demand reduction for all customer classes, which will achieve the statutory benchmarks for peak demand reduction, and meet or exceed the statutory benchmarks for energy efficiency. An electric utility's first program portfolio plan filed pursuant to this rule, shall be filed with supporting testimony prior to January 1, 2010. Each electric utility shall file an updated program portfolio plan by April 15, 2013, and by the fifteenth of April every third year thereafter, unless otherwise directed by the commission.~~
- ~~(B) Each electric utility shall demonstrate that its program portfolio plan is cost effective on a portfolio basis. 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 nonenergy 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 4901:1-39-03 of the Administrative Code.~~
 - ~~(2) A description of stakeholder participation in program planning efforts and program portfolio development.~~
 - ~~(3) A description of attempts to align and coordinate programs with other public utilities' programs.~~

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- ~~(4) A description of existing programs. The electric utility shall provide a summary of existing programs with a recommendation for whether the program should continue and, if so, a description of its relationship to any proposed programs. If a program has previously been approved and is unchanged, the electric utility may reference the program description currently in effect. If the electric utility is proposing to modify an existing program, the electric utility shall provide a description of the proposed modification and the basis for proposed changes.~~
- ~~(5) A description of proposed programs. An electric utility shall describe each program proposed to be included within its program portfolio plan with at least the following information:~~
 - ~~(a) A narrative describing why the program is recommended pursuant to the program design criteria in this chapter.~~
 - ~~(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.~~

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- ~~(k) Proposed market transformation activities, if any, which have been identified and proposed to be included in the program portfolio plan.~~
- ~~(l) 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. The independent program evaluator will prepare an independent evaluation, measurement, and verification plan at the direction of the commission staff to monitor, verify, evaluate and report on the energy savings and peak-demand reductions resulting from utility programs and mercantile customer activities. The independent program evaluator's plan may rely on data collected and reported by the electric utility.~~
- ~~(D) Unless otherwise ordered by the commission, any person may file objections within sixty days after the filing of an electric utility's program portfolio plan. Any person filing objections shall specify the basis for all objections, including any proposed additional or alternative programs, or modifications to the electric utility's proposed program portfolio plan.~~
- ~~(E) The commission shall set the matter for hearing and shall cause notice of the hearing to be published one time in a newspaper of general circulation in each county in the electric utility's certified territory. At such hearing, the electric utility shall have the burden to prove that the proposed program portfolio plan is consistent with the policy of the state of Ohio as set forth in section 4928.02 of the Revised Code, and meets the requirements of section 4928.66 of the Revised Code.~~

"New"

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

- (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 which will cost-effectively achieve the statutory benchmarks for energy efficiency and peak-demand

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reduction. No later than September 15 in the last year of an existing commission approved portfolio plan, and no later than September 15 each year thereafter, each electric utility shall file an updated program portfolio plan to be implemented in the following calendar year, unless otherwise directed by the commission.

- (B) AnEach electric utility's shall demonstrate that its program portfolio plan isshall-be cost-effective on a portfolio basis, based on the total resource cost test. 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 pursuant to the total resource cost test when that program provides substantial non-energy benefits or the electric utility can demonstrate that an alternative cost test is more appropriate.
- (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 4901:1-39-03 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 At these meetings, the electric utility shall provide updates on the energy efficiency and peak demand- reductions achieved by its programs, all costs incurred in implementation of its programs, and information about new programs or measures that it is considering.-and Additionally, the electric utility shall 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) An analysis of existing programs. The electric utility shall provide a description of each existing program, and measures within the program, including an analysis of the success of the program and the electric utility's rationale for continuing, modifying, or eliminating the program or measures within the program.

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- (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 whether the electric utility intends to make use of 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, when costs will be shared among customer classes 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.

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(D) An electric utility, as part of its filing, may request to adjust its sales and/or demand baseline. In making such an adjustment, the baseline shall be normalized for weather and for changes in numbers of customers, sales, and peak demand to the extent such changes are outside the control of the electric utility. The electric utility shall include in its application all assumptions, rationales, and calculations, and shall propose methodologies and practices to be used in any proposed adjustments or normalizations. To the extent approved by the commission, normalizations for weather, changes in numbers of customers, sales, and peak demand shall be consistently applied from year to year. The electric utility shall modify its baseline, on a going forward basis, to exclude load and usage characteristics of all opt-out customers and the customers in its certified distribution territory with a reasonable arrangement authorized by the commission pursuant to section 4905.31 of the Revised Code.

~~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. 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.~~

“Rescind”

~~4901:1-39-05 — Benchmark and annual status reports.~~

(A) ~~Initial benchmark report. Within sixty days of the effective date of this rule, each electric utility shall file an initial benchmark report with the commission that identifies the following information:~~

- ~~(1) The energy and demand baselines for kilowatt-hour sales and kilowatt demand for the reporting year, including a description of the method of calculating the baseline, with supporting data.~~

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~~(2) The applicable statutory benchmarks for energy savings and electric utility peak demand reduction.~~

~~(B) An electric utility may file an application to adjust its sales and/or demand baseline. The baseline shall be normalized for weather and for changes in numbers of customers, sales, and peak demand to the extent such changes are outside the control of the electric utility. The electric utility shall include in its application all assumptions, rationales, and calculations, and shall propose methodologies and practices to be used in any proposed adjustments or normalizations. To the extent approved by the commission, normalizations for weather, changes in numbers of customers, sales, and peak demand shall be consistently applied from year to year.~~

~~(C) Portfolio status report. By March fifteenth of each year, each electric utility shall file a portfolio status report addressing the performance of all approved energy efficiency and peak demand reduction programs in its program portfolio plan over the previous calendar year which includes, at a minimum, the following information:~~

~~(1) Compliance demonstration. Each electric utility shall include a section in its portfolio status report detailing its achieved energy savings, achieved demand reductions, and the expected demand reductions that its programs were reasonably designed to achieve, relative to its corresponding baselines. At a minimum, this section of the portfolio status report shall include each of the following:~~

~~(a) An update to its benchmark report.~~

~~(b) A comparison with the applicable benchmark of actual energy savings and peak demand reductions achieved by electric utility programs.~~

~~(c) An affidavit as to whether the reported performance complies with the statutory benchmarks.~~

~~(2) Program performance assessment. Each electric utility shall include a section in its portfolio status report demonstrating whether it has successfully implemented the energy efficiency and demand reduction programs approved in its program portfolio plan. At a minimum, this section of the annual portfolio status report shall include each of the following:~~

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- (a) ~~A description of each approved energy efficiency or peak demand reduction program implemented in the previous calendar year including:~~
- (i) ~~The key activities undertaken in each program, the number and type of participants, a comparison of the forecasted savings to the verified savings achieved by such program, the magnitude of anticipated savings, and a trend analysis of how anticipated savings will be realized over the life of the program.~~
 - (ii) ~~All energy savings counted toward the applicable benchmark as a result of energy efficiency improvements implemented by mercantile customers and committed to the electric utility.~~
 - (iii) ~~All peak demand reductions counted toward the applicable benchmark as a result of energy efficiency improvements, demand response, or demand reduction improvements implemented by mercantile customers and committed to the electric utility.~~
 - (iv) ~~A description of all transmission and distribution infrastructure improvements made by the electric utility that reduce line losses to the extent the reduction in line losses has been applied to meet the applicable benchmarks with a calculation and description of the net impact of such improvements on losses.~~
- (b) ~~An evaluation, measurement, and verification 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. Such report shall 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. Upon commission order, the staff may publish guidelines for program measurement and verification.~~

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- ~~(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 per cent 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.~~
- ~~(D) Independent program evaluator report. Subsequent to the filing of the electric utility's portfolio status report, the independent program evaluator will prepare and file a report of the independent program evaluator's activities and conclusions in monitoring, verifying, and evaluating the energy savings and peak-demand reductions resulting from the electric utility programs and mercantile customer activities. The report shall also include the verification and evaluation, through the use of due-diligence techniques including project inspections, of the electric utility's evaluation, measurement, and verification report.~~
- ~~(E) 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.~~
- ~~(1) For energy efficiency programs, an electric utility may count the programs' effects resulting in coincident peak-demand savings.~~
- ~~(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:~~

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- ~~(a) A peak demand reduction program meets the requirements to be counted as a capacity resource under the tariff 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.~~
- ~~(F) A mercantile customer's energy savings and peak demand reductions shall be measured by including the effects of all demand response programs of the mercantile customer and all mercantile customer-sited energy efficiency and peak demand reduction programs. A mercantile customer's energy savings and peak demand reductions shall be presumed to be the effect of a demand response, energy efficiency, or peak demand reduction program to the extent they involve the early retirement of fully functioning equipment, or the installation of new equipment that achieves reductions in energy use and peak demand that exceed the reductions that would have occurred had the customer used standard new equipment or practices where practicable. Electric utilities may make an alternative demonstration that mercantile customer energy savings or peak demand reductions are effects of such a program.~~
- ~~(G) A mercantile customer may file, either individually or jointly with an electric utility, an application to commit the customer's demand reduction, demand response, or energy efficiency programs for integration with the electric utility's demand reduction, demand response, and energy efficiency programs, pursuant to division (A)(2)(d) of section 4928.66 of the Revised Code. Such application shall:~~
 - ~~(1) Address coordination requirements between the electric utility and the mercantile customer with regard to voluntary reductions in load by the mercantile customer, which are not part of an electric utility program, including specific communication procedures.~~
 - ~~(2) Grant permission to the electric utility and staff to measure and verify energy savings and/or peak demand reductions resulting from customer-sited projects and resources.~~
 - ~~(3) Identify all consequences of noncompliance by the customer with the terms of the commitment.~~

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- (4) ~~Include a copy of the formal declaration or agreement that commits the mercantile customer's programs for integration, including any requirement that the electric utility will treat the customer's information as confidential and will not disclose such information except under an appropriate protective agreement or a protective order issued by the commission pursuant to rule 4901-1-24 of the Administrative Code.~~
- (5) ~~Include a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results, and identify and explain all deviations from any program measurement and verification guidelines that may be published by the commission.~~
- (H) ~~An electric utility shall not count in meeting any statutory benchmark the adoption of measures that are required to comply with energy performance standards set by law or regulation, including but not limited to, those embodied in the Energy Independence and Security Act of 2007, or an applicable building code.~~
- (I) ~~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.~~
- (J) ~~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 the actual and expected performance of demand response programs. In any such application, the electric utility shall demonstrate that it has exhausted all reasonable compliance options.~~

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- (A) Portfolio performance report. By May fifteenth of each year, each electric utility shall file a portfolio performance report addressing the performance of its energy efficiency and peak-demand reduction programs in its program portfolio plan over the previous calendar year which includes, at a minimum, the following information:
- (1) Compliance demonstration. Each electric utility shall include a section in its portfolio performance report detailing its achieved annualized energy savings, achieved demand reductions, and the demand reductions that its programs were reasonably designed to achieve, relative to its corresponding energy and peak demand reduction baselines. At a minimum, this section of the portfolio status report shall include each of the following:
 - (a) A benchmark report. The benchmark report shall provide the energy and peak demand baselines for kilowatt-hour sales and kilowatt demand for the reporting year, including a description of the method of calculating the baselines, and the applicable statutory benchmarks for energy savings and electric utility peak-demand reduction, with supporting data.
 - (b) A comparison of actual annualized energy savings and peak-demand reductions achieved by electric utility programs with the applicable benchmarks. An electric utility shall not provide a financial or rider exemption incentive for, but may count in meeting any statutory benchmark, the adoption of measures that are required to comply with energy performance standards set by law or regulation, including but not limited to, those embodied in the federal standards Energy Independence and Security Act of 2007, or an applicable building code. The prohibition against a financial or rider exemption incentive does not preclude the electric utility from compensating a customer for the administrative costs and inconvenience of undertaking the commitment process, in the form of a commitment payment.
 - (c) An electric utility may file an application to adjust its sales and/or demand baseline. In making such an adjustment, the baseline shall be normalized for weather and for changes in numbers of customers, sales, and peak demand to the extent such changes are outside the control of the electric utility. The electric utility shall include in its application all assumptions, rationales, and calculations, and shall propose methodologies and practices to be used in any proposed adjustments or normalizations. To the extent approved by the

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commission, normalizations for weather, changes in numbers of customers, sales, and peak demand shall be consistently applied from year to year. The electric utility shall modify its baseline, on a going forward basis, to exclude load and usage characteristics of all opt-out customers and the customers in its certified distribution territory with a reasonable arrangement authorized by the commission pursuant to section 4905.31 of the Revised Code.

- (cd) Banking surplus energy savings. To the extent that an electric utility's actual energy savings exceeds its energy efficiency benchmark for any year, the electric utility may apply such surplus energy savings to either its energy efficiency benchmarks for a subsequent year, but banked surplus energy savings shall not be used to trigger shared savings incentive or toward meeting its advanced energy requirement, but not both. In order to exercise this option, the electric utility shall indicate in the annual portfolio status report for the year in which the surplus occurs whether the surplus will be directed to a subsequent year's energy efficiency benchmark or its advanced energy requirement.
- (de) 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.
- (f) Any exclusion from the baseline calculations for economic development customer and opt-out customer accounts shall also exclude any energy and demand savings from the economic development customer and opt-out customer account, but only in each year in which the economic development customer or opt-out customer account is excluded from the baseline.
- (eg) The electric utility shall specify the methodology it has used to measure and verify its energy efficiency and peak-demand reduction savings. An electric utility's methodologies for measuring and verifying its energy efficiency and peak demand reduction savings will be presumed reasonable if they follow the measurement and verification methodologies specified in the technical

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reference manual published by the commission's staff. If an electric distribution utility utilizes different methodologies to measure and verify the energy efficiency and peak demand reduction savings it has achieved, the electric distribution utility shall demonstrate that the measurement and verification methodologies it relies upon are reasonable.

- (f) The electric utility shall include a summary of program savings and expenditures in a template prescribed by staff.
- (2) Program performance assessment. Each electric utility shall include a section in its portfolio performance report demonstrating whether it has successfully implemented the energy efficiency and demand-reduction programs in its program portfolio plan. At a minimum, this section of the annual portfolio performance report shall include each of the following:

 - (a) A description of each energy efficiency or peak-demand reduction program implemented in the previous calendar year including:

 - (i) The key activities undertaken in each program, the number and type of participants, a comparison of the forecasted savings to the verified savings achieved by such program, the magnitude of anticipated savings, and a trend analysis of how anticipated savings will be realized over the life of the program.
 - (ii) All energy savings and peak-demand reductions counted toward the applicable benchmark as a result of energy efficiency improvements, demand response, or demand reduction improvements implemented by mercantile customers and committed to the electric utility.
 - (iii) A description of all transmission and distribution infrastructure improvements made by the electric utility that reduce line losses to the extent the reduction in line losses has been applied to meet the applicable benchmarks with a calculation and description of the net impact of such improvements on losses.
 - (iv) A description of all other applicable energy efficiency and peak demand reduction activities that the electric utility proposes to count toward its applicable benchmarks.

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- (b) An evaluation, measurement, and verification 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. Such report shall 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.
- (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, but is not limited to, the following:
- (1) A description of the independent program evaluator's activities, analyses, and conclusions in monitoring, verifying, and evaluating 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) The independent evaluator shall file recommended revisions to the technical reference manual, in addition to its report filed pursuant to section (B) of this rule.

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~~(CD)~~—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.

~~(DE)~~ Within thirty days of the filing of the independent program evaluator's recommendations, any stakeholder may request a hearing on any aspect of the electric utility's performance in complying with its annual statutory requirement for energy efficiency and peak demand reduction. Based upon its review of any such hearing requests, and the recommendations of the independent program evaluator relative to the electric utility's performance, and the comments received on the reports pursuant to paragraph ~~(CD)~~ of this rule, the commission ~~shall~~ may schedule a hearing in order to review ~~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.

~~(EF)~~ 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 ~~(CD)~~ of this chapter, the commission's staff shall direct the independent program evaluator to file an updated technical reference manual. Unless otherwise indicated by the commission, the updated technical reference manual shall be deemed to be automatically approved on the thirtieth day after its filing.

“Rescind”

~~4901:1-39-06—Review of annual reports and issuance of the commission verification report.~~

~~(A)~~ Any person may file comments regarding an electric utility's initial benchmark report or annual portfolio status report filed pursuant to this chapter within thirty days of the filing of such report.

~~(B)~~ Upon receipt of such report, the staff shall review the report and any timely-filed comments, and file its findings and recommendations regarding program implementation and compliance with the applicable benchmarks, and any proposed modifications thereto, verifying the electric utility's compliance or noncompliance with

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~~its approved program portfolio plan and the mandated energy efficiency improvements and peak demand reductions. If staff finds that an electric utility has not demonstrated compliance with the approved program portfolio plan or annual sales or peak demand reductions required by division (A) of section 4928.66 of the Revised Code, staff may recommend remedial action and/or the assessment of a forfeiture. Additionally, the staff may recommend modifications to a program within the electric utility's program portfolio plan.~~

- ~~(C) The commission may schedule a hearing on the electric utility's portfolio benchmark report or status report. If staff recommends a forfeiture, the commission shall schedule a hearing on the staff's recommendations.~~
- ~~(D) The commission shall adopt, or modify and adopt, the staff's recommendations and findings as its annual verification report of the electric utility's achieved energy efficiency and peak demand reductions pursuant to division (B) of section 4928.66 of the Revised Code. Such verification report shall be provided to the consumers' counsel of Ohio.~~

“New”

4901:1-39-06 Recovery mechanism.

- (A) Concurrent with the filing of its program portfolio plan, the electric utility shall proposefile a proposed rate adjustment mechanism for recovery of costs incurred in implementing its energy efficiency, peak-demand reduction, and demand response programs. Inclusion of any lost distribution revenue and shared savings in the proposed rate adjustment mechanism shall be consistent with prior Commission directives. If the electric utility proposes to include for recovery anything in addition to direct program implementation costs, the electric utility shall demonstrate how it proposes such recovery to occur and why such recovery is appropriate and necessary. Any cost recovery that occurs under the electric utility's rate adjustment mechanism shall be subject to reconciliation based on the commission's opinion and order issued in the performance verification process.
- (B) Unless otherwise ordered by the commission, any person may file comments within thirty days after the filing of an electric utility's proposed recovery mechanism. Any

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person filing comments shall specify the basis for all recommendations made, or modifications that are suggested to be made to the electric utility's proposed recovery mechanism. Based on comments received, the commission may schedule a hearing on the proposed recovery mechanism. If the commission takes no action within 30 days of receiving comments, the recovery mechanism shall be automatically deemed to be reasonable. Any revenue received under the electric utility's rate adjustment mechanism shall be subject to potential disallowance and reconciliation based on the commission's decision issued in the annual performance verification process in 4901:1-39-05, Ohio Administrative Code.

“Rescind”

~~4901:1-39-07 — Recovery mechanism.~~

~~(A) With the filing of its proposed program portfolio plan, the electric utility may submit a request for recovery of an approved rate adjustment mechanism, commencing after approval of the electric utility's program portfolio plan, of costs due to electric utility peak demand reduction, demand response, energy efficiency program costs, appropriate lost distribution revenues, and shared savings. Any such recovery shall be subject to annual reconciliation after issuance of the commission verification report issued pursuant to this chapter.~~

~~(1) The extent to which the cost of transmission and distribution infrastructure investments that are found to reduce line losses may be classified as or allocated to energy efficiency or peak demand reduction programs, pursuant to division (A)(2)(d) of section 4928.66 of the Revised Code, shall be limited to the portion of those investments that are attributable to and undertaken primarily for energy efficiency or demand reduction purposes.~~

~~(2) Mercantile customers, who commit their peak demand reduction, demand response, or energy efficiency projects for integration with the electric utility's programs as set forth in rule 4901:1-39-08 of the Administrative Code, may individually or jointly with the electric utility, apply for exemption from such recovery.~~

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(B) ~~Any person may file objections within thirty days of the filing of an electric utility's application for recovery. If the application appears unjust or unreasonable, the commission may set the matter for hearing.~~

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“New”

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

- (A) An application to commit a mercantile customer's energy efficiency program, or a customer's combined heat and power system or waste energy recovery system, to its electric utility's programs, pursuant to division (A)(2) of section 4928.66 of the Revised Code, may include a request for an incentive payment based on payment levels established in the electric utility's portfolio plan, or a commitment payment for behavioral programs, combined heat and power systems, waste energy recovery systems, or other payment for efficiency savings that do not qualify for an incentive payment, or an exemption from the cost recovery mechanism set forth in rule 4901:1-39-06 of the Administrative Code. Such application shall be filed pursuant to the requirements set forth in section (C) of this rule. Alternatively, an application for an incentive payment, commitment payment, or cost recovery mechanism exemption may be combined with any other reasonable arrangement, approved pursuant to Chapter 4901:1-38 of the Administrative Code, if such reasonable arrangement contains appropriate measurements and verification of program results.
- (B) In meeting its energy efficiency and peak-demand reduction benchmarks, an electric utility shall include mercantile customer energy efficiency, ~~and~~ peak demand reduction, combined heat and power, and waste energy recovery 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 reduction requirements.
- (2) For demand response programs, an electric utility may count demand reductions towards ~~satisfying some or all of the~~ its 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:

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- (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 in which the electric utility is a member and which has been 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 the commission.
- (3) A mercantile customer's energy savings and peak-demand reductions shall be presumed to be the effect of a demand response, energy efficiency, or peak-demand reduction program to the extent they involve the replacement of functioning equipment. If the mercantile customer's program involves the replacement of non-functioning equipment or an initial installation of new equipment, the electric utility may count the savings based on the efficiency of the replaced equipment, if any, but may provide a financial or rate exemption incentive based only on the reductions in energy use and peak demand that exceed the reductions or levels that would have occurred had the customer used standard new equipment or practices where practicable. However, nothing in this section prohibits the electric utility from compensating a mercantile customer for the administrative costs and inconvenience of undertaking the commitment process, in the form of a commitment payment. Electric utilities may make an alternative demonstration, subject to commission approval, that mercantile customer energy savings or peak demand reductions are eligible to be counted toward the electric utility's statutory requirements.
- (4) Inclusion of all such mercantile customer energy efficiency and peak demand reduction programs shall be subject to commission approval and subsequent verification through the annual performance verification process, pursuant to rule 4901:1-39-05 of the Administrative Code.
- (C) A mercantile customer may file, either individually or jointly with an electric utility, an application to commit the customer's demand reduction, demand response, or energy efficiency programs or the output of the customer's combined heat and power system or waste energy recovery system that have been implemented in the previous three years for integration with the electric utility's demand reduction, demand response, and energy efficiency programs, pursuant to division (A)(2) of section 4928.66 of the Revised Code. Such application, if filed individually, shall be filed no later than

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December 31 of the ~~one~~ calendar year after following the end of the three-year period. However, such applications that are filed jointly shall be filed no later than March 31 of the year following the individual application deadline, but only if the mercantile customer commitment agreement with the electric utility was executed by the individual filing deadline.

- (1) Any such application filed in accordance with the automatic approval template published by the commission shall be deemed automatically approved unless suspended by order of the commission or an attorney examiner within 60 days of the filing of the application.
- (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 consecutive years of approved commitment payment applications, the energy efficiency savings shall be counted as permanent by the electric utility, and no additional payments will be made to the customer. If the energy savings levels vary from year to year during the five year period, the lowest of the energy savings levels shall be counted as permanent by the electric utility, and no additional payments will be made to the customer.
- (3) No exemption from an energy efficiency cost recovery rider granted pursuant to an automatic approval shall extend more than one year unless the ~~applicant~~mercantile customer, or the electric utility on behalf of the mercantile customer, provides an annual update to staff on such form as published by the commission. The length of rider exemption shall be determined by the use of the benchmark comparison method.
- (4) An application to commit a mercantile customer's demand reduction, demand response, or energy efficiency program to the electric utility that is not filed in accordance with the commission's automatic approval template, shall not be deemed automatically approved. Such an application shall address the following areas:
 - (a) eCoordination requirements between the electric utility and the mercantile customer with regard to voluntary reductions in load by the mercantile

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customer, which are not part of an electric utility program, including specific communication procedures.

- (b) Grant permission to the electric utility and staff to measure and verify energy savings and/or peak-demand reductions resulting from customer-sited projects and resources.
- (c) Identify all consequences of noncompliance by the customer with the terms of the commitment.
- (d) Include a copy of the formal declaration or agreement that commits the mercantile customer's programs for integration, including any requirement that the electric utility will treat the customer's information as confidential and will not disclose such information except under an appropriate protective agreement or a protective order issued by the commission pursuant to rule 4901-1-24 of the Administrative Code.
- (e) Include a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results, and identify and explain all deviations from any program measurement and verification guidelines that may be published by the commission.

“Rescind”

~~4901:1-39-08 — Mercantile customer exemptions.~~

~~An application to commit a mercantile customer program for integration filed pursuant to paragraph (G) of rule 4901:1-39-05 of the Administrative Code, may include a request for an exemption from the cost recovery mechanism set forth in rule 4901:1-39-07 of the Administrative Code. To be eligible for such exemption, the mercantile customer must consent to providing an annual report on the energy savings and electric utility peak-demand reductions achieved in the customer's facilities in the most recent year. The report shall include the following:~~

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- (A) ~~A demonstration that energy savings and peak demand reductions associated with the mercantile customer's program are the result of investments that meet the total resource cost test, or that the electric utility's avoided cost exceeds the cost to the electric utility for the mercantile customer's program.~~
- (B) ~~A statement distinguishing programs implemented before and after January 1, 2009, or in future reports filed for years subsequent to 2009, before and after the most recent year.~~
- (C) ~~A quantification of the energy savings or peak demand reductions for programs initiated prior to 2009 in the baseline period, recognizing that programs may have diminishing effects over time as technology evolves or equipment degrades.~~
- (D) ~~A recognition that the energy saving and demand reduction effects during the electric utility's baseline period of any mercantile customer-sited energy efficiency or peak demand reduction programs that are integrated into an electric utility's programs are excluded from the electric utility's baselines by increasing its baseline for energy savings and baseline for peak demand reductions by the amount of mercantile customer energy savings and demand reductions.~~
- (E) ~~A listing and description of the customer programs implemented, including measures taken, devices or equipment installed, processes modified, or other actions taken to increase energy efficiency and reduce peak demand, including specific details such as the number, type, and efficiency levels both of the installed equipment and the old equipment that is being replaced, if applicable.~~
- (F) ~~An accounting of expenditures made by the mercantile customer for each program and its component energy savings and electric utility peak demand reduction attributes.~~
- (G) ~~The timeline showing when each program went into effect, and when the energy savings and peak demand reductions occurred.~~
- (H) ~~Any request for an exemption may be combined with any other reasonable arrangement, approved pursuant to Chapter 4901:1-38 of the Administrative Code, if such reasonable arrangement contains appropriate measurements and verification of program results.~~

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“Amend”

4901:1-40-01 Definitions.

- (A) “Advanced energy fund” has the meaning set forth in section 4928.61 of the Revised Code.
- ~~(B) “Advanced energy resource” has the meaning set forth in division (A)(34) of section 4928.01 of the Revised Code.~~
- ~~(C) “Alternative energy resource” has the meaning set forth in division (A)(1) of section 4928.64 of the Revised Code.~~
- ~~(D)~~ “Biologically derived methane gas” means landfill methane gas; or gas from the anaerobic digestion of organic materials, including animal waste, municipal wastewater, institutional and industrial organic waste, food waste, yard waste, and agricultural crops and residues.
- ~~(E)~~ “Biomass energy” means energy produced from organic material derived from plants or animals and available on a renewable basis, including but not limited to: agricultural crops, tree crops, crop by-products and residues; wood and paper manufacturing waste, including nontreated by-products of the wood manufacturing or pulping process, such as bark, wood chips, sawdust, and lignin in spent pulping liquors; forestry waste and residues; other vegetation waste, including landscape or right-of-way trimmings; algae; food waste; animal wastes and by-products (including fats, oils, greases and manure); biodegradable solid waste; and biologically derived methane gas.
- ~~(F) “Clean coal technology” means any technology that removes or has the design capability to remove criteria pollutants and carbon dioxide from an electric generating facility that uses coal as a fuel or feedstock as identified in the control plan requirements in paragraph (C) of rule 4901:1-41-03 of the Administrative Code.~~
- ~~(G)~~ “Co-firing” means simultaneously using multiple fuels in the generation of electricity. In the event of co-firing, the proportion of energy input comprised of a renewable energy resource shall dictate the proportion of electricity output from the facility that can be considered a renewable energy resource.

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- (~~HE~~) "Commission" means the public utilities commission of Ohio.
- (~~HF~~) "Deliverable into this state" means that the electricity or qualifying biologically derived methane gas 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.
- (~~JG~~) "Demand response" has the meaning set forth in rule 4901:1-39-01 of the Administrative Code.
- (~~K~~) "~~Demand-side management~~" ~~has the meaning set forth in paragraph (F) of rule 4901:5-5-01 of the Administrative Code.~~
- (~~LH~~) "Distributed generation" means electricity production that is on-site and is connected to the electricity grid.
- (~~MI~~) "Double-counting" means utilizing renewable energy or renewable energy credits, or energy efficiency savings to do any of the following:
- (1) Satisfy multiple Ohio state renewable energy requirements or such requirements for more than one state.
 - (~~2~~) ~~Comply with both the energy efficiency and advanced energy statutory benchmarks.~~
 - (~~3~~) Support multiple voluntary product offerings.
 - (~~3~~) Substantiate multiple marketing or public relations claims.
 - (~~4~~) Some combination of these.
- (~~N~~) "Electric generating facility" means a power plant or other facility where electricity is produced.
- (~~OK~~) ——"Electric services company" has the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.

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- (PL) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- ~~(Q) "Energy efficiency" has the meaning set forth in rule 4901:1-39-01 of the Administrative Code.~~
- (RM) "Energy storage" means a facility or technology that permits the storage of energy for future use as electricity.
- (SN) "Fuel cell" means a device that uses an electrochemical energy conversion process to produce electricity.
- (O) "Geothermal energy" means hot water or steam extracted from geothermal reservoirs in the earth's crust and used for electricity generation.
- (UP) "Hydroelectric energy" means electricity generated by a hydroelectric facility as defined in division (A)(375) of section 4928.01 of the Revised Code.
- (VQ) "Hydroelectric facility" has the meaning set forth in division (A)(375) of section 4928.01 of the Revised Code.
- (WR) "Mercantile customer" has the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- ~~(XS) "MISO" means "Midwest Midcontinent Independent Transmission System Operator, Inc." or any successor regional transmission organization.~~
- (T) "Ohio run-of-the-river hydroelectric facility" means a run-of-the-river hydroelectric facility placed in service on or after January 1, 1980, that is located within this state, relies upon the Ohio river, and operates, or is rated to operate, at an aggregate capacity of forty or more megawatts.
- (YU) "Person" shall have the meaning set forth in division ~~(A)(24)~~ of section ~~4928.01~~1.59 of the Revised Code.
- ~~(Z)~~V "PJM" means "PJM Interconnection, LLC" or any successor regional transmission organization.

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(AAW) "Placed-in-service" means when a facility or technology becomes operational.

(BBX) "Renewable energy credit" or "REC" means the environmental attributes associated with one megawatt-hour of electricity generated by a non-solar renewable energy resource or its non-electric equivalent, ~~except for electricity generated by facilities as described in paragraph (E) of rule 4901:1-40-04 of the Administrative Code.~~

(CCY) "Renewable energy resource" has the meaning set forth in division (A)(375) of section 4928.01 of the Revised Code.

(EEZ) "Small hydroelectric facility" means a hydroelectric facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts.

(DDZAA) "Solar energy resources" means solar photovoltaic and/or solar thermal resources.

(EEAABB) "Solar photovoltaic" means energy from devices which generate electricity directly from sunlight through the movement of electrons.

(CCBB) "Solar renewable energy credit" or "S-REC" means the environmental attributes associated with one megawatt-hour of electricity generated by a solar energy resource.

(FFCCDD) "Solar thermal" means the concentration of the sun's energy, typically through the use of lenses or mirrors, to drive a generator or engine to produce electricity.

(GGDDEE) "Solid wastes" has the meaning set forth in section 3734.01 of the Revised Code.

(HHFFFF) "Staff" means the commission staff or its authorized representative.

(HGG) "Standard service offer" means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.

(HH) "Waste energy recovery system" has the meaning set forth in division (A)(38) of section 4928.01 of the Revised Code.

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- (HII) “Wind energy” means electricity generated from wind turbines, windmills, or other technology that converts wind into electricity.

“Amend”

4901:1-40-02 Purpose and scope.

- (A) This chapter addresses the implementation of the alternative energyrenewable portfolio standard, including the incorporation of renewable energy credits, as detailed in sections 4928.64 and ~~4928.65~~4928.645 of the Revised Code respectively. Parties affected by these alternative energyrenewable portfolio standard rules include all Ohio electric utilities and all electric services companies serving retail electric customers in Ohio. With the exception of the filing requirements set forth in 4901:1-40-05 of the Administrative Code, any Any entities that do not serve Ohio retail electric customers during a given calendar year shall not be required to comply with the terms of the alternative energyrenewable portfolio standard during that calendar year.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

“Rescind”

~~4901:1-40-03~~ **Requirements.**

- ~~(A) All electric utilities and affected electric services companies shall ensure that, by the end of the year 2024 and each year thereafter, electricity from alternative energy resources equals at least twenty five per cent of their retail electric sales in the state.~~
- ~~(1) Up to half of the electricity supplied from alternative energy resources may be generated from advanced energy resources.~~

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- (2) ~~At least half of the electricity supplied from alternative energy resources shall be generated from renewable energy resources, including solar energy resources, in accordance with the following annual benchmarks:~~

~~Annual benchmarks for alternative energy resources generated from renewable and solar energy resources~~

By end of year:	Renewable energy resources	Solar energy resources
2009	0.25%	0.004%
2010	0.50%	0.01%
2011	1.0%	0.03%
2012	1.5%	0.06%
2013	2.0%	0.09%
2014	2.5%	0.12%
2015	3.5%	0.15%
2016	4.5%	0.18%
2017	5.5%	0.22%
2018	6.5%	0.26%
2019	7.5%	0.30%
2020	8.5%	0.34%
2021	9.5%	0.38%
2022	10.5%	0.42%
2023	11.5%	0.46%
2024 and each year thereafter	12.5%	0.50%

- (a) ~~At least half of the annual renewable energy resources, including solar energy resources, shall be met through electricity generated by facilities located in this state. Facilities located in the state shall include a hydroelectric generating~~

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~~facility that is located on a river that is within or bordering this state, and wind turbines located in the state's territorial waters of lake Erie.~~

- ~~(b) To qualify towards a benchmark, any electricity from renewable energy resources, including solar energy resources, that originates from outside of the state must be shown to be deliverable into this state.~~
- ~~(3) All costs incurred by an electric utility in complying with the requirements of section 4928.64 of the Revised Code, shall be avoidable by any consumer that has exercised choice of electricity supplier, during such time that a customer is served by an electric services company.~~
- ~~(B) The baseline for compliance with the alternative energy resource requirements shall be determined using the following methodologies:~~
 - ~~(1) For electric utilities, the baseline shall be computed as an average of the three preceding calendar years of the total annual number of kilowatt-hours of electricity sold under its standard service offer to any and all retail electric customers whose electric load centers are served by that electric utility and are located within the electric utility's certified territory. The calculation of the baseline shall be based upon the average, annual, kilowatt-hour sales reported in that electric utility's three most recent forecast reports or reporting forms.~~
 - ~~(2) For electric services companies, the baseline shall be computed as an average of the three preceding calendar years of the total annual number of kilowatt-hours of electricity sold to any and all retail electric consumers served by the company in the state, based upon the kilowatt-hour sales in the electric services company's most recent quarterly market monitoring reports or reporting forms.~~
 - ~~(a) If an electric services company has not been continuously supplying Ohio retail electric customers during the preceding three calendar years, the baseline shall be computed as an average of annual sales data for all calendar years during the preceding three years in which the electric services company was serving retail customers.~~

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- (b) ~~For an electric services company with no retail electric sales in the state during the preceding three calendar years, its initial baseline shall consist of a reasonable projection of its retail electric sales in the state for a full calendar year. Subsequent baselines shall consist of actual sales data, computed in a manner consistent with paragraph (B)(2)(a) of this rule.~~
- (3) ~~An electric utility or electric services company may file an application requesting a reduced baseline to reflect new economic growth in its service territory or service area. Any such application shall include a justification indicating why timely compliance based on the unadjusted baseline is not feasible, a schedule for achieving compliance based on its unadjusted baseline, quantification of a new change in the rate of economic growth, and a methodology for measuring economic activity, including objective measurement parameters and quantification methodologies.~~
- (C) ~~Beginning in the year 2010, each electric utility and electric services company annually shall file a plan for compliance with future annual advanced and renewable energy benchmarks, including solar, utilizing at least a ten-year planning horizon. This plan, to be filed by April fifteenth of each year, shall include at least the following items:~~
- ~~(1) Baseline for the current and future calendar years.~~
 - ~~(2) Supply portfolio projection, including both generation fleet and power purchases.~~
 - ~~(3) A description of the methodology used by the company to evaluate its compliance options.~~
 - ~~(4) A discussion of any perceived impediments to achieving compliance with required benchmarks, as well as suggestions for addressing any such impediments.~~

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4901:1-40-03 Requirements.

- (A) All electric utilities and affected electric services companies shall ensure that, by the end of the year 2027 and each year thereafter, electricity from qualifying renewable energy resources equals the benchmarks set forth in R.C. 4928.64(B)(2). Non-electric sources as permitted by law and certified by the Commission may be used to satisfy the renewable energy resource requirements.
- (1) The qualifying renewable energy resources implemented by the utility or company shall be met either through facilities located in this state or with resources that can be shown to be deliverable into this state.
 - (2) The qualifying electricity or non-electric source supplied from renewable energy resources, including solar energy resources, shall be provided in accordance with the annual benchmarks detailed in section 4928.64(B)(2) of the Revised Code.
 - (3) All costs incurred by an electric utility in complying with the requirements of section 4928.64 of the Revised Code shall be avoidable by any consumer that has exercised choice of electricity supplier during such time that a customer is served by an electric services company.
- (B) The baseline for compliance with the qualified renewable energy resource requirements of section 4928.64 of the Revised Code shall be determined as follows:
- (1) For electric utilities, the baseline shall be computed using one of the following methodologies:
 - (a) The average of total kilowatt hours sold by the utility in the preceding three calendar years to any and all retail electric customers whose electric load centers are served by that electric utility and are located within the electric utility's certified territory.
 - (b) The total kilowatt hours sold to any and all retail electric consumers whose electric load centers are served by that utility and are located within the utility's

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certified territory in the applicable compliance year. An electric utility that opts to use this methodology may in subsequent compliance years switch to the methodology described in (B)(1)(a), but in so doing, the electric utility shall be required to use the methodology described in (B)(1)(a) for at least three consecutive compliance years.

- (c) The annual sales used to compute the baseline under methodologies (B)(1)(a) or (B)(1)(b) shall be based upon the annual sales as reported in the electric utility's forecast reports or reporting forms.
- (2) For electric services companies, the baseline shall be computed using one of the following methodologies:

 - (a) The average of total kilowatt hours sold annually by the company in the preceding three calendar years to any and all retail electric consumers served by the company in the state. (a) If an electric services company has not been continuously supplying Ohio retail electric customers during the preceding three calendar years, the baseline shall be computed as an average of annual sales data for all calendar years during the preceding three years in which the electric services company was serving retail customers.
 - (b) The total number of kilowatt hours sold to any and all retail electric customers who are served by the company and are located within this state during the compliance year. An electric services company that opts to use this methodology may in subsequent compliance years switch to the methodology described in (B)(2)(a), but in so doing, the electric services company shall be required to use the methodology described in (B)(2)(a) for at least three consecutive compliance years.
 - (c) The annual sales used to compute the baseline under methodologies in (B)(2)(a) and (B)(2)(b) shall be based upon the annual sales as reported in the electric services company's Annual Reports for Fiscal Assessment or as otherwise directed by the commission.
- (3) An electric utility or electric services company may request a reduced baseline to reflect new economic growth in its service territory or service area. A company

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requesting a reduced baseline shall file an application with the Commission seeking approval for such reduction.

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~~4901:1-40-04 — Qualified resources.~~

- ~~(A) The following resources or technologies, if they have a placed-in-service date of January 1, 1998, or after, are qualified resources for meeting the renewable energy resource benchmarks:~~
- ~~(1) Solar photovoltaic or solar thermal energy.~~
 - ~~(2) Wind energy.~~
 - ~~(3) Hydroelectric energy.~~
 - ~~(4) Geothermal energy.~~
 - ~~(5) Solid waste energy derived from fractionalization, biological decomposition, or other process that does not principally involve combustion.~~
 - ~~(6) Biomass energy.~~
 - ~~(7) Energy from a fuel cell.~~
 - ~~(8) A storage facility, if it complies with the following requirements:~~
 - ~~(a) The electricity used to pump the resource into a storage reservoir must qualify as a renewable energy resource, or the equivalent renewable energy credits are obtained.~~
 - ~~(b) The amount of energy that may qualify from a storage facility is the amount of electricity dispatched from the storage facility.~~

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- ~~(9) Distributed generation system used by a customer to generate electricity from one of the resources or technologies listed in paragraphs (A)(1) to (A)(8) of this rule.~~
- ~~(10) 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.~~
- ~~(B) The following resources or technologies, if they have a placed-in-service date of January 1, 1998, or after, are qualified resources for meeting the advanced energy resource benchmarks:~~
 - ~~(1) Any modification to an electric generating facility that increases its generation output without increasing the facility's carbon dioxide emissions (tons per year) in comparison to its actual annual carbon dioxide emissions preceding the modification. In such an instance, it is the incremental increase in generation output that may be quantified and applied toward an advanced energy requirement.~~
 - ~~(2) Any distributed generation system, designed primarily to meet the energy needs of the customer's facility that utilizes co-generation of electricity and thermal output simultaneously.~~
 - ~~(3) Clean coal technology.~~
 - ~~(4) Advanced nuclear energy technology, from:~~
 - ~~(a) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission or other later technology.~~
 - ~~(b) Significant improvements to existing facilities. In such an instance, it is the incremental increase in generation attributable to the improvement that may be quantified and applied toward an advanced energy requirement. Extension of the life of existing nuclear generation capacity shall not qualify as advanced nuclear energy technology.~~
 - ~~(5) Energy from a fuel cell.~~
 - ~~(6) Advanced solid waste or construction and demolition debris conversion technology that results in measurable greenhouse gas emission reductions.~~

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- ~~(7) Demand side management and energy efficiency, above and beyond that used to comply with any other regulatory standard or programs.~~
- ~~(C) The following new or existing mercantile customer sited resources may be qualified resources for meeting electric utilities' annual, renewable or advanced energy resource benchmarks, as applicable, provided that it does not constitute double counting for any other regulatory requirement and that the mercantile customer has committed the resource for integration into the electric utility's demand response, energy efficiency, or peak demand reduction programs pursuant to rule 4901:1-39-08 of the Administrative Code.~~
- ~~(1) Renewable energy resources from mercantile customers include the following:~~
- ~~(a) Electric generation equipment that uses a renewable energy resource and is owned or controlled by a mercantile customer.~~
 - ~~(b) Any renewable energy resource of the mercantile customer that can be utilized effectively as part of an alternative energy resource plan of an electric utility and would otherwise qualify as a renewable energy resource if it were utilized directly by an electric utility.~~
- ~~(2) Advanced energy resources from mercantile customers include the following:~~
- ~~(a) A resource that improves the relationship between real and reactive power.~~
 - ~~(b) A mercantile customer owned or controlled resource that makes efficient use of waste heat or other thermal capabilities.~~
 - ~~(c) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics.~~
 - ~~(d) Electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource.~~
 - ~~(e) Any advanced energy resource of the mercantile customer that can be utilized effectively as part of an advanced energy resource plan of an electric utility and~~

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would otherwise qualify as an advanced energy resource if it were utilized directly by an electric utility.

~~(D) An electric utility or electric services company may use renewable energy credits (REC) to satisfy all or part of a renewable energy resource benchmark, including a solar energy resource benchmark.~~

~~(1) To be eligible for use towards satisfying a benchmark, a REC must originate from a facility that meets the definition of a renewable energy resource, including solar energy resources, and be measured by a utility grade meter in compliance with paragraph (B) of rule 4901:1-10-05 of the Administrative Code, for facilities with generating capacity of more than six kilowatts. Such facilities could include a mercantile customer sited resource that is not committed for integration into an electric utility's demand response, energy efficiency, or peak demand reduction program pursuant to rule 4901:1-39-08 of the Administrative Code but that otherwise qualifies under the terms of paragraph (A) of this rule.~~

~~(2) To use RECs as a means of achieving partial or complete compliance, an electric utility or electric services company must be a registered member in good standing of at least one of the following:~~

~~(a) The PJM's generation attributes tracking system.~~

~~(b) The MISO's renewable energy tracking system.~~

~~(c) Another credible tracking system approved for use by the commission.~~

~~(3) A REC may be used for compliance any time in the five calendar years following the date of its initial purchase or acquisition.~~

~~(4) Double counting is prohibited.~~

~~(5) The RECs must be associated with electricity that was generated no earlier than July 31, 2008.~~

~~(E) For a generating facility of seventy five megawatts or greater that is situated within~~

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~~this state and has committed by December 31, 2009, to modify or retrofit its generating unit or units to enable the facility to generate principally from biomass energy by June 30, 2013, the number of RECs produced by each megawatt-hour of electricity generated principally from biomass energy shall equal the actual percentage of biomass feedstock heat input used to generate such megawatt-hour multiplied by the quotient obtained by dividing the then existing unit dollar amount used to determine a renewable energy compliance payment as provided under division (C)(2)(b) of section 4928.64 of the Revised Code, by the then existing market value of one REC, but such megawatt-hour shall not equal less than one credit.~~

- ~~(F) An entity seeking resource qualification shall file an application for certification of its resources or technologies, upon such forms as may be prescribed by the commission. The application shall include a determination of deliverability to the state in accordance with paragraph (I) of rule 4901:1 40-01 of the Administrative Code.~~
- ~~(1) Any interested person may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.~~
 - ~~(2) The commission may approve, suspend, or deny an application within sixty days of it being filed. If the commission does not act within sixty days, the application is deemed automatically approved on the sixty-first day after the date filed.~~
 - ~~(3) If the commission suspends the application, the applicant shall be notified of the reasons for such suspension and may be directed to furnish additional information. The commission may act to approve or deny a suspended application within ninety days of the date that the application was suspended.~~
 - ~~(4) Upon commission approval, the applicant shall receive notification of approval and a numbered certificate where applicable. The commission shall provide this certificate number to the appropriate attribute tracking system.~~
 - ~~(5) Representatives of certified facilities must notify the commission within thirty days of any material changes in information previously submitted to the commission during the certification process. Failure to do so may result in revocation of certification status.~~

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- ~~(6) Certification of a resource or technology shall not predetermine compliance with annual benchmarks, and does not constitute any commission position regarding cost recovery.~~
- ~~(G) At its discretion, the commission may classify any new technology or additional resource as an advanced or renewable energy resource. Any interested person may request a hearing on such classification.~~

“New”

4901:1-40-04 Qualified resources.

- (A) The following resources or technologies, if they have a placed-in-service date of January 1, 1998, or after, are qualified resources for meeting the qualified renewable energy resource benchmarks:
- (1) Solar photovoltaic or solar thermal energy.
 - (2) Wind energy.
 - (3) Hydroelectric energy.
 - (4) Geothermal energy.
 - (5) Solid waste energy derived from fractionalization, biological decomposition, or other process that does not principally involve combustion.
 - (6) Biomass energy.
 - (7) Energy from a fuel cell.
 - (8) A storage facility, if it promotes the better utilization of a renewable energy resource. The amount of energy that may qualify from a storage facility is the amount of electricity discharged from the storage facility.
 - (9) Abandoned coal mine methane energy.

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- (10) Waste energy recovery system placed into service or retrofitted on or after September 10, 2012, as defined in division (A)(38)(a) of Section 4928.01 of the Revised Code. The portion of the electricity production that is generated from recovered waste energy shall be recognized as renewable.
- (11) A waste energy recovery system defined in division (A)(38)(b) of section 4928.01 of the Revised Code, provided that it was placed into service between January 1, 2002, and December 31, 2004.
- (12) 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.
- (13) Ohio run-of-the-river hydroelectric facility.
- (14) Small hydroelectric facility, regardless of placed in-service date.
- (15) Biologically-derived methane gas resources, including biologically derived methane gas resources that are not converted to electricity, excluding biologically-derived methane gas resources used solely for the purpose of flaring. This includes heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas; and compressed natural gas produced from biologically derived methane gas.
 - (a) The producer of the biologically derived methane gas must adequately demonstrate measurement, verification, and quantity of biologically derived methane gas produced on a continuing basis. The method used for measuring and calculating the biologically derived methane gas produced must be approved in advance by the commission as part of the facility certification process.
 - (b) Biologically derived methane gas that has been certified and tracked is not eligible again for certification and may not be double-counted.
 - (c) The energy derived from biologically derived methane gas shall be measured and verified in accordance with applicable tracking system requirements. For the purposes of converting the quantity of energy derived

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from biologically derived methane gas to an electricity equivalent, one megawatt hour equals 3,412,142 British thermal units. The producer must demonstrate adequate energy content, in British thermal units, and metering accuracy. Biologically derived methane gas shall be reported in megawatt hours.

(16) Distributed generation system used by a customer to generate electricity from one of the resources or technologies listed in paragraphs (A)(1) to (A)(15) of this rule.

(B) The following new or existing mercantile customer-sited resources may be qualified resources for meeting electric utilities' annual renewable energy resource benchmarks, as applicable, provided that it uses a renewable energy resource and that the mercantile customer commits the resource for integration into the electric utility's demand-response, energy efficiency, or peak-demand reduction programs pursuant to rule 4901:1-39-07 of the Administrative Code and division (A)(2)(c) of section 4928.66 of the Revised Code:

- (1) Electric generation equipment that uses a renewable energy resource and is owned or controlled by a mercantile customer.
- (2) A resource that improves the relationship between real and reactive power.
- (3) A mercantile customer-owned or controlled resource that makes efficient use of waste heat or other thermal capabilities.
- (4) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics.
- (5) Electric generation equipment owned or controlled by a mercantile customer that uses a renewable energy resource.

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- (C) An electric utility or electric services company may use RECs and S-RECs, as applicable, to satisfy all or part its qualifying renewable energy resource benchmarks, including a solar energy resource benchmark.
- (1) To be eligible for use towards satisfying a benchmark, a REC or S-REC must originate from a facility that has been certified by the commission under paragraph (D) of this rule.
- (2) To become certified under paragraph (D) of this rule, an electric generating facility or a qualifying non-electric source, must demonstrate that it satisfies the following:
- (a) The definition of a renewable energy resource, including solar energy resources;
 - (b) The applicable placed in-service date;
 - (c) The deliverability requirement;
 - (d) It is registered with, or commits to become registered with, an attribute tracking system recognized by the commission;
 - (e) The facility's electrical output is measured by a utility-grade meter in compliance with paragraph (B) of rule 4901:1-10-05 of the Administrative Code, for facilities with generating capacity of more than six kilowatts. Gas meters for measuring qualifying gas resources shall comply with the accuracy requirements in Section 4933.09 of the Revised Code; and
 - (f) All other requirements as delineated in the certification application.
- (3) To demonstrate compliance with a renewable energy resource benchmark, an electric utility or electric services company must retire the RECs and S-RECs with any of the following attribute tracking systems: :
- (a) The PJM EIS generation attributes tracking system (GATS);
 - (b) The midwest renewable energy tracking system (M-RETS); or

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- (c) Another credible tracking system approved for use by the commission.
- (4) A REC or S-REC may be used for compliance any time in the five calendar years following the date of its initial purchase or acquisition.
- (5) Double counting is prohibited.
- (6) The RECs and S-RECs must be associated with electricity that was generated no earlier than July 31, 2008 for resources or technologies included in the definition of "renewable energy resources" by Amended Substitute Senate Bill 221 (127th General Assembly). For resources or technologies added to the definition of "renewable energy resources" by Amended Substitute Senate Bill 315 (129th General Assembly), the RECs must be associated with electricity that was generated no earlier than September 10, 2012. For resources or technologies added to the definition of "renewable energy resources" by Substitute Senate Bill 310 (130th General Assembly), the RECs must be associated with electricity that was generated, or a qualifying non-electric source that was produced, no earlier than September 12, 2014.
- (7) The RECs and S-RECs must be associated with electricity, or a qualifying non-electric source, that was generated no later than the end of the compliance year.
- (D) An entity seeking facility qualification shall file an application for certification of its electric generating facility, or qualifying non-electric source, upon such forms as may be prescribed by the commission. The application shall include a determination of deliverability to the state in accordance with paragraph (F) of rule 4901:1-40-01 of the Administrative Code.
 - (1) Any interested person may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.
 - (2) An application is deemed automatically approved within 30 days after the application is filed, unless suspended by order of the commission.

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- (3) If the commission suspends the application, the applicant shall be notified of the reasons for such suspension and may be directed to furnish additional information.
- (4) Upon commission approval, the applicant shall receive notification of approval and a numbered certificate where applicable. The commission shall provide this certificate number to the appropriate attribute tracking system.
- (5) If an applicant withdraws an application prior to commission approval, then the case shall be closed without further action from the commission.
- (6) Representatives of certified facilities must notify the commission within thirty days of any material changes in information previously submitted to the commission during the certification process. Failure to do so may result in revocation of certification status.
- (7) The Commission may revoke a certificate due to changes that negate the facility's certification eligibility. In the event a certificate is revoked, the Commission may recognize as viable compliance resources the RECs or S-RECs generated during the time of certification unless specifically stated otherwise by the commission.
- (8) Certification of a resource or technology shall not predetermine compliance with annual benchmarks, and does not constitute any commission position regarding cost recovery.
- (E) At its discretion, the commission may classify any new technology as a qualifying renewable energy resource. Any interested person may request a hearing on such classification.

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“Rescind”

~~4901:1-40-05 — Annual status reports and compliance reviews.~~

- ~~(A) Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, an annual alternative energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks and planning requirements have or will be met. Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.~~
- ~~(1) Beginning in the year 2010, the annual review will include compliance with the most recent applicable renewable and solar energy resource benchmark.~~
- ~~(2) Beginning in the year 2025, the annual review will include compliance with the most recent applicable advanced energy resource benchmark.~~
- ~~(3) The annual compliance reviews shall consider any under compliance an electric utility or electric services company asserts is outside its control, including but not limited to, the following:~~
- ~~(a) Weather related causes.~~
- ~~(b) Equipment shortages for renewable or advanced energy resources.~~
- ~~(c) Resource shortages for renewable or advanced energy resources.~~
- ~~(B) Any person may file comments regarding the electric utility's or electric services company's alternative energy portfolio status report within thirty days of the filing of such report.~~
- ~~(C) Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.~~

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- ~~(D) The commission may schedule a hearing on the alternative energy portfolio status report.~~

“New”

4901:1-40-05 Annual status reports and compliance reviews.

- (A) Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, an annual renewable energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable renewable energy portfolio benchmarks and planning requirements have been met. Staff shall conduct annual compliance reviews with regard to the benchmarks under the renewable energy portfolio standard.
- (1) The annual review will include compliance with the most recent applicable renewable and solar energy resource benchmark.
- (2) The annual compliance reviews shall consider any under-compliance an electric utility or electric services company asserts is outside its control, including but not limited to, the following:
- (a) Weather-related causes.
- (b) Equipment shortages for renewable energy resources.
- (c) Resource shortages for renewable energy resources.
- (3) The renewable energy portfolio status reports filed by each electric utility and electric services company for the applicable compliance year shall include at least the following content that, with the exception of paragraphs (d) and (e), shall be made publicly available:
- (a) The actual annual sales volumes used to compute the compliance baseline, including identification of the source of the sale volume figures.

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- (b) A quantification in megawatt-hours of all applicable renewable energy portfolio standard compliance requirements.
 - (c) An indication of the compliance status relative to each of the applicable alternative renewable energy portfolio standard compliance requirements.
 - (d) Demonstration of status relative to the statutory three percent cost provision(s), for the compliance year addressed in the annual status report, pursuant to the calculation methodology described in rule 4901:1-40-07 of the Administrative Code.
 - (e) A prospective calculation of its maximum recoverable compliance funds for the year following the compliance year, pursuant to the calculation methodology described in rule 4901:1-40-07 of the Administrative Code.
 - (f) Identification of the attribute tracking system(s) used to demonstrate compliance.
 - (g) A discussion of any perceived impediments to achieving compliance with required benchmarks, as well as suggestions for addressing any such impediments.
 - (h) An electric services company may omit the contents required in paragraphs (d) and (e) of this section if the company affirms in its compliance status report that it will not seek compliance relief under section 4928.64(C)(3) of the Revised Code for those years.
- (B) Any person may file comments regarding an electric utility's or electric services company's renewable energy portfolio status report within thirty days of the filing of such report.
- (C) Staff shall review each electric utility's or electric services company's renewable energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.
- (D) An annual compliance status report is deemed automatically approved unless suspended by the commission within sixty days of the filing date of staff's findings and

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recommendations. The commission may schedule a hearing on the renewable energy portfolio status report.

“Amend”

4901:1-40-06 Force majeure.

An electric utility or electric services company may seek a force majeure determination from the commission for all or part of a minimum renewable- or solar-energy benchmark.

- (A) A decision on a request for a force majeure determination will be rendered within ninety days of an electric utility or electric services company filing a request for such determination. The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.
 - (1) At the time of requesting such a determination from the commission, an electric utility or electric services company shall demonstrate that it pursued all reasonable compliance options including, but not limited to, renewable energy credit (REC) solicitations, REC banking, and long-term contracts.
 - (2) The request shall include an assessment of the availability of ~~qualified in-state resources, as well as qualified resources within the~~ service territories of PJM and the MISO ~~any regional transmission organizations that manage transmission systems located in Ohio.~~
- (B) If the commission determines that force majeure conditions exist, it may modify that compliance obligation of the electric utility or electric services company, as it considers appropriate to accommodate the finding.
 - (1) Such modification does not automatically reduce future-year obligations.
 - (2) The commission retains the right to increase a future year's compliance obligation by the amount of any under compliance in a previous year that is attributed to a force majeure determination.

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“Rescind”

~~4901:1-40-07 — Cost cap.~~

- ~~(A) An electric utility or electric services company may file an application requesting a determination from the commission that its reasonably expected cost of compliance with an advanced energy resource benchmark would exceed its reasonably expected cost of generation to customers by three per cent or more. The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.~~
- ~~(1) The burden of proof for substantiating such a claim shall remain with the electric utility or electric services company.~~
- ~~(2) An electric utility or electric services company shall pursue all reasonable compliance options prior to requesting such a determination from the commission.~~
- ~~(3) In the case that the commission makes such a determination, the electric utility or electric services company may not be required to fully comply with that specific benchmark.~~
- ~~(B) An electric utility or electric services company may file an application requesting a determination from the commission that its reasonably expected cost of compliance with a renewable energy resource benchmark, including a solar energy resource benchmark, would exceed its reasonably expected cost of generation to customers by three per cent or more. The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.~~
- ~~(1) The burden of proof for substantiating such a claim shall remain with the electric utility or electric services company.~~
- ~~(2) An electric utility or electric services company shall pursue all reasonable compliance options prior to requesting such a determination from the commission.~~

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- ~~(3) In the case that the commission makes such a determination, the electric utility or electric services company may not be required to fully comply with that specific benchmark.~~
- ~~(C) Calculations involving a three per cent cost cap shall consist of comparing the total expected cost of generation to customers of an electric utility or electric services company, while satisfying an alternative energy portfolio standard requirement, to the total expected cost of generation to customers of the electric utility or electric services company without satisfying that alternative energy portfolio standard requirement.~~
- ~~(D) Any costs included in a commission approved unavoidable surcharge for construction or environmental expenditures of generation resources shall be excluded from consideration as a cost of compliance under the terms of the alternative energy portfolio standard and therefore, would not count against the applicable cost cap. Such costs should, however, be included in the calculation of the total expected cost of generation to customers described in paragraph (C) of this rule.~~
- ~~(E) If the commission makes a determination that a three per cent provision is triggered, the electric utility or electric services company shall comply with each benchmark up to the point that the three per cent increment would be reached for each benchmark.~~

“New”

4901:1-40-07 Cost cap.

- (A) 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), as applicable, during that compliance year. Electric services companies may be excused from this requirement pursuant to rule 4901:1-40-05(A)(3)(h) of the Administrative Code. The prospective calculations and related information shall be provided to the commission pursuant to rule 4901:1-40-05 of the Administrative Code. Alternatively, an electric utility or electric services 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.

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- (1) A three percent cost cap is applicable to the renewable energy benchmarks specified in division (B)(2) of section 4928.64 of the Revised Code.
 - (2) The burden of proof for demonstrating compliance with the three percent cost cap shall remain with the entity filing the application.
 - (3) An electric utility or electric services company shall pursue all reasonable compliance options prior to requesting relief from compliance with the renewable energy resource requirements based on the three percent cost cap.
 - (4) In the case that the commission makes such a determination that an electric utility's or electric services company's compliance costs exceed the applicable three percent cost cap, 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.
- (B) The calculation of the 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 paragraph (A)(1) of this rule, it shall not seek recovery of any additional compliance costs towards that benchmark for that compliance year.
- (1) Determine the compliance baseline in megawatt-hours for the compliance year consistent with the applicable section of paragraph (B) of rule 4901:1-40-03 of the Administrative Code.
 - (2) Calculate a reasonably expected dollar per megawatt-hour figure for the compliance year.
 - (a) For an electric utility, the dollar per megawatt-hour figure should be a weighted average of the reasonably expected cost of the SSO supply for delivery during the compliance year, net of distribution losses.

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- (b) For electric service companies, this dollar per megawatt-hour figure should be a weighted average of the reasonably expected cost of supply for delivery during the compliance year, net of distribution system losses.
- (3) Calculate the total cost by multiplying the dollar per megawatt-hour figure in paragraph (2) by the compliance baseline calculated in paragraph (1).
- (4) Multiply the total cost in paragraph (3) by three percent, with the result representing the maximum recoverable compliance funds to be applied towards compliance resources for paragraphs (A)(1) for that compliance year.

“Amend

4901:1-40-08 Compliance payments.

- (A) Any electric utility or electric services company that does not achieve an annual renewable energy resource benchmark, including a solar benchmark, shall remit a compliance payment based on the amount of noncompliance rounded up to the next megawatt hour (MWh), unless the commission has identified the existence of force majeure conditions or the commission has determined that the three per cent cost-cap provision would be exceeded in the event of full compliance.
- (1) The required payment for noncompliance with any solar energy resource benchmark shall be calculated by quantifying the level of noncompliance, rounded to the next MWh, and multiplying this figure by the per MWh amount in the table below.

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Solar energy resources - compliance payment

Year	Payment per MWh
2009 <u>2014, 2015, and 2016</u>	\$450 <u>350</u>
2017 and 2018 <u>2010 and 2011</u>	\$400 <u>250</u>
2019 and 2020 <u>2012 and 2013</u>	\$350 <u>200</u>
2021 and 2022 <u>2014 and 2015</u>	\$300 <u>150</u>
2016 and 2017 <u>2023 and 2024</u>	\$250 <u>100</u>
2018 and 2019 <u>2025 and beyond</u>	\$200 <u>50</u>
2020 and 2021	\$150
2022 and 2023	\$100
2024 and beyond	\$50

- (2) The required payment for noncompliance with any renewable energy resource benchmark, excluding solar, shall be calculated by quantifying the level of noncompliance, rounded to the next MWh, and multiplying this figure by an amount determined by the commission.
- (a) The per MWh payment for renewable energy resources for the year 2009 is forty-five dollars.
- (b) Beginning in the year 2010, the per MWh payment for renewable energy resources will be adjusted annually to reflect the annual change to the consumer price index as defined in section 101.27 of the Revised Code. Such adjustment

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shall be performed by staff no later than June first of each calendar year. This annual adjustment shall be calculated using the following formula:

$$= ((\text{CPIYR2}/\text{CPIYR1}) * \text{current per MWh payment})$$

- (c) In no event shall the compliance payment for renewable energy resources be less than forty-five dollars per MWh.
- (3) At least annually, the staff shall conduct a review of the renewable energy resource market, including solar, both within this state and within the regional transmission systems active in the state. The results of this review shall be used to determine if changes to the solar- or renewable-energy compliance payments are warranted, as follows:
 - (a) The commission may increase compliance payments if needed to ensure that electric utilities and electric services companies are not using the payments in lieu of acquiring or producing energy or RECs from qualified renewable resources, including solar.
 - (b) Any recommendation to reduce the compliance payments shall be presented to the general assembly.
- (B) Any compliance payment shall be submitted to the commission for deposit to the credit of the advanced energy fund. All compliance payments shall be delivered to the commission within thirty days of the imposition of any compliance payment requirement by the commission.
- (C) Compliance payments shall be subject to such collection and enforcement procedures as apply to the collection of a forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code.
- (D) Any electric utility or electric services company found to be liable for a compliance payment is prohibited from passing compliance payments on to consumers. In the event that a compliance payment is required, an electric utility or electric services company shall ~~submit~~ file an attestation, signed by a company officer or designee, indicating that it will not seek to recover the specific compliance payment from

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consumers. Such attestation shall be ~~submitted to staff~~filed within thirty days of the imposition of any compliance payment requirement.

“Amend”

4901:1-40-09 Annual report.

- (A) Pursuant to division (D)(1) of section 4928.64 of the Revised Code, an annual report shall be submitted to the general assembly addressing at least the following topics:
- (1) The compliance status of electric utilities and electric services companies with respect to the ~~advanced~~-andqualified renewable energy resource benchmarks.
 - (2) Suggested strategies for electric utility and electric services company compliance.
 - (3) Suggested strategies for encouraging the use of ~~alternative~~-renewable energy resources in supplying this state's electricity needs in a manner that considers:
 - (a) Available technology.
 - (b) Costs.
 - (c) Job creation.
 - (d) Economic impacts.
 - (4) Average annual REC and S-REC costs for the compliance year(s) covered by the report.
- (B) The report shall be submitted in accordance with section 101.68 of the Revised Code.
- (C) Prior to its submission to the general assembly, the report will be issued for public comment by interested persons for thirty days, unless otherwise ordered by the commission. The process and timeframes for soliciting public comment shall be set by entry of the commission, the legal director, deputy director, or attorney examiner.