BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code.	)))))	**CASE NO. 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**

APPLICATION FOR REHEARING OF OHIO POWER COMPANY AND THE DAYTON POWER & LIGHT COMPANY

Pursuant to Section 4903.10, Ohio Revised Code ("R.C."), and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Ohio Power Company ("AEP Ohio") and The Dayton Power & Light Company ("DP&L") (collectively, "Joint Applicants") jointly file this Application for Rehearing of the Commission's December 19, 2018 Finding and Order ("Order") in the above-referenced proceedings. The Commission's Order adopts numerous amendments to O.A.C. Chapters 4901:1-39 [Energy Efficiency Programs] and 4901:1-40 [Alternative Energy Portfolio Standard]. Overall, Joint Applicants commend the Commission and its Staff on the substantial work undertaken to date to clarify the rules applicable to these important programs. Joint Applicants respectfully submit, however, that certain amendments to the rules as adopted in the Order are unreasonable and/or contrary to law. Specifically, the Order is unreasonable or unlawful in the following respects:

1. The Commission's amendment of Rule 4901:1-39-04 to require post-approval annual performance verification was unreasonable and will unnecessarily increase the time, administrative burden, and cost associated with making such filings.

2. The Commission's amendment to O.A.C. 4901:1-39-06(A) unreasonably deletes rule language confirming that "[i]nclusion of any lost distribution revenue and shared savings in the proposed rate adjustment mechanism shall be consistent with prior Commission directives," which is inconsistent not only with the Commission's prior directives on this issue but also with the plain language of the Order itself.

3. The Commission's amendment to O.A.C. 4901:1-39-05(A)(1)(c) unreasonably eliminated an electric distribution utility's ability to apply banked surplus energy savings without notice or an opportunity to comment on such a change and to the detriment of electric utilities and their customers. The amendment also unreasonably vests authority in the Commission to dictate the appropriate application of banked savings, thereby contradicting text in the Order confirming that EDUs are expected to prudently manage their programs and to balance the associated risks.

4. The Commission's new definition of "non-energy benefits" in O.A.C. 4901:1-39-01(S) should be modified to expressly recognize and take into account additional non-energy benefits, including operations and maintenance cost reductions, productivity increases, reduced product loss, positive health effects, increased operational safety, and additional sales increases excluding market effects.

5. Newly adopted O.A.C. 4901:1-39-01(P)(3) is unreasonable because it would give an independent program evaluator the power to recommend updates to the technical reference manual upon little or no notice prior to the deadline for an electric utility's portfolio plan filing.

6. Newly adopted O.A.C. 4901:1-40-05(A)(3)(h) unreasonably and unlawfully permits only to electric services companies, and not electric utilities, to omit certain information from compliance status reports, which is contrary to R.C. 4928.64(C)(3).

7. Newly adopted O.A.C. 4901:1-40-07(B)'s maximum recoverable compliance funds construct unreasonably and unlawfully imposes a limitation on compliance cost calculation that is not contained in or contemplated by R.C. 4928.64(C)(3) and (4) and effectively eliminates an EDU's ability to seek a *force majeure* finding under R.C. 4928.64(C)(4).

8. The Commission's amendments to O.A.C. Chapter 4901:1-40 are unreasonable and unlawful to the extent that they conflict with R.C. 4928.641(A), which provides that if an electric distribution utility has executed a contract before April 1, 2014 to procure renewable energy resources and there are ongoing costs associated with that contract that are being recovered from customers through a bypassable charge as of the effective date of S.B. 310 of the 130th General Assembly, that cost recovery shall continue on a bypassable basis until the prudently incurred costs associated with that contract are fully recovered.

For the reasons described in the attached Memorandum in Support, the Commission should grant this Application for Rehearing and modify its Order to change the content of the specific rules addressed by Joint Applicants in their Memorandum.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION & BACKGROUND

On March 14, 2013, the Commission issued an Entry to elicit feedback on Chapters 4901:1-39 [Energy Efficiency Programs] and 4901:1-40 [Alternative Energy Portfolio Standard] of the Ohio Administrative Code. On April 23, 2013, the Commission held a workshop to allow stakeholders to propose their own revisions to the rules for consideration. On January 29, 2014, the Commission requested comments and reply comments addressing Staff's proposed revisions to these chapters. Numerous parties, including Joint Applicants AEP Ohio and DP&L, filed written comments on February 28, 2014. Reply comments were filed in March 2014.

Later that year, on September 12, 2014, certain amendments to R.C. 4928.64 and 4928.65 became effective pursuant to Sub.S.B. No. 310 of the 130th General Assembly (SB310). Notably, however, no substantive activity took place on the dockets of these proceedings for the more than four-year period between the filing of reply comments in March 2014 and the Commission's December 19, 2018 Order adopting amendments to the rules.

In its Order, the Commission states:

> 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.

Order, ¶ 8.

For the following reasons, although Joint Applicants applaud the Commission and Staff for their efforts in these proceedings to improve, clarify and update the existing rules, Joint Applicants respectfully seek rehearing of selected portions of the Commission's Order and modifications to the corresponding rules. The specific modifications to the Energy Efficiency Programs rules and Alternative (now Renewable) Energy Portfolio Standard rules described below are unreasonable and should be addressed on rehearing in order to be consistent with program goals, the Commission's prior directives, and governing statutes.

II. ARGUMENT

A. Unreasonable Amendments to O.A.C. Chapter 4901:1-39 [Energy Efficiency Programs]

1. Program portfolio plan filing requirements.

Staff suggested annual Plan filings to replace the current three-year program portfolios. Joint Applicants expressed common and substantial concerns with this approach in their Initial Comments filed in 2014. As Joint Applicant AEP Ohio explained in its Initial Comments:

> [A]nnual Plan filings *** will [require] more work and associated litigation cost than the current three-year plan intervals. Also, this new process does not appear to affirmatively approve Plan spending in advance, so the utilities would have no assurance of cost recovery before spending actually occurs. The utilities would be subject to increased and unnecessary risk that spending committed to in good faith would be uncertain and disallowed years later.

See Initial Comments of Ohio Power Company at 5 (March 3, 2014). Joint Applicant DP&L raised similar concerns, noting that the program portfolio approval process has "proven to be demanding of all parties involved" and that "requiring EDUs to file a new portfolio annually will prove to be costly, time-consuming and unduly burdensome on all parties involved." *See* Comments of The Dayton Power & Light Company at 2 (Feb. 28, 2014).

In its Order, the Commission does not substantively address these concerns. The Commission concludes:

> 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.

Order, ¶ 88. And the amended version of O.A.C. 4901:1-39-04 adopted by the Order requires annual updated portfolio plan submissions by no later than September 1 of each year. Order, Attachment A, at 15-16.

The Commission's Order is premised upon the misplaced assumption that a transition to annual updated portfolio plan submissions will reduce costs and delay. Order, ¶ 88. But the Order does not appear to reduce the amount of work or costs associated with the portfolio plan submissions; it simply truncates the applicable timeframe for preparing and making such filings. The utilities will need to devote more resources to the plan submissions due to the far shorter period between filings. These plans are expensive and time-consuming to develop, and making them an annual effort is an unreasonable amendment to the existing program – one that runs counter to the Commission's intent of reducing costs and implementing the Common Sense Initiative. As Joint Applicant DP&L explained in its Comments:

> The core issue with filing a new portfolio annually is timing. EDUs all use outside vendors to implement programs. These contracts often span multiple years and are the result of a competitive bid process, which in itself can take multiple months. Moving to an annual filing and approval schedule would create significant challenges in the contracting process with implementation vendors and would ultimately serve to drive up

> costs for customers and provide no additional benefits. Constantly re-negotiating terms and conditions will also affect the variety and number of vendors available to work with EDUs, increasing costs to reach energy efficiency mandates. In addition, the EDU's program evaluators need an adequate amount of time to run the EDU's portfolio through its models and provide the utility with valuable program data and information to be used to make well-informed program decisions. Annual program portfolio updates prevent the opportunity for a thorough review of the proposed plan by evaluators, EDUs, and interested parties, including the Commission.

Comments of The Dayton Power & Light Company at 2-3 (Feb. 28, 2014). The Commission apparently rejected these well-founded concerns, but it did so without providing any explanation in its Order of how, in its view, transitioning to a post-approval annual performance verification process "promotes efficiency, reduces regulatory delay, and minimizes administrative costs *** [.]" Order at ¶ 88. Accordingly, Joint Applicants respectfully ask the Commission, on rehearing, to reconsider and modify the transition it has approved to a post-approval annual performance verification process for portfolio plans. The portfolio process has historically been a very litigious and time-consuming process that often spans months, or even more than a year, between filing and approval. To repeat this process on an annual basis could jeopardize utilities' ability to conduct energy efficiency at all. Although arduous, continuing the pre-approval process for longer-term portfolios would eliminate legal issues prior to utilities needing to implement portfolio plans and execute contracts accordingly, ultimately reducing the total costs of energy efficiency. If it is the Commission's intent to reduce cost, then Joint Applicants respectfully submit that extended – not annual – planning periods help utilities provide the lowest cost, due to the certainty of implementation. An extended planning period of three to five years (with continued pre-approval of plan spending, including the mechanism for ongoing recovery consistent with prior Commission directives, which may include recovery of lost revenue and shared savings) would still permit the Commission to have oversight with regular audits and independent evaluations.

2. Shared savings.

In its Order, the Commission notes that it has "approved the recovery of shared savings in past cases," and held that shared savings is "an effective means of aligning the utilities' and consumers' interests in implementing energy efficiency programs." Order, ¶ 137, citing *In re 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 at 15 (Mar. 23, 2011). In Paragraph 137 of its Order, the Commission goes on to note that "[d]espite 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." *Id.*

Joint Applicants agree with these assertions. Shared savings is an incentive to operate highly cost-effective programs, to meet or exceed mandated requirements with the lowest cost and highest energy and demand savings possible. Unfortunately, the Commission's deletion of certain critical language in the rules risks undermining these principles. In the newly adopted version of O.A.C. 4901:1-39-06(A), the provision of the former rule that "[i]nclusion of any lost distribution revenue and shared savings in the proposed rate adjustment mechanism shall be consistent with prior Commission directives" was deleted, perhaps by an inadvertent scrivener's error. The removal of this provision is erroneous, unreasonable, and inconsistent with the plain text of Paragraph 137 of the Order, and the Commission should re-insert the provision on rehearing to conform to the Commission's earlier statements. Specifically, Joint Applicants propose that the Commission modify the language of O.A.C. 4901:1-39-06(A) on rehearing as follows, with new language underscored and deletions stricken through:

> (A) Concurrent with the filing of its program portfolio plan, the electric utility shall file 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~~. In addition, if the electric utility proposes to include for recovery any costs inconsistent with prior Commission rules and precedent, the electric utility shall demonstrate how it proposes such recovery to occur and why such recovery is appropriate and necessary.

These modifications on rehearing will make the text of the rule more consistent with the principles in support of shared savings that are articulated (correctly) in the text of Paragraph 137 of the Order.

3. Banked savings.

In Paragraph 97 of the Order, the Commission notes that under SB 310, the General Assembly eliminated the advanced energy requirement. Accordingly, the Commission revised O.A.C. 4901:1-39-05(A)(1)(c) in the newly adopted rules to eliminate the option of applying surplus energy savings to an EDU's (no longer applicable) advanced energy requirement. In Paragraph 97 of the Order, however, 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." Joint Applicants respectfully disagree with this aspect of Paragraph 97 of the Order, and with the corresponding rule change. Joint Applicants advance both process-based and substantive concerns with this rule change.

From a procedural standpoint, it is important to note that Staff's proposed rule for banking surplus energy savings, as filed on January 29, 2014, provided:

> 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 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.

Entry (Jan. 29, 2014), Attachment A, at 21-22 (O.A.C. 4901:1-39-05(A)(1)(d)). Joint Applicants did not oppose this in their comments, nor did they need to—this was consistent with Joint Applicants' understanding since 2008 of how their banked savings could be applied. In its recent Order, however, the Commission (absent input) made two substantial modifications to this longstanding approach, stating that electric utilities cannot use their bank to trigger shared savings, and that the Commission "retains the authority to dictate the appropriate application of banked savings." Order at ¶ 97. In Contrast, throughout the Order, the Commission confirmed that it "expects the EDUs to prudently" manage their own, cost-effective portfolio, and to balance the risks associated. *See* Order at ¶ 49; *see also id.* at ¶ 70, ¶ 177. The EDUs have done just that, planning to over-comply with the intent to use these banked savings to achieve the lofty goals of earning 2% benchmarks in the future. The EDUs are not opposed to providing the Commission a non-binding plan for the utilization of their banked savings in future years, concurrent with a new or updated portfolio plan.

Accordingly, Joint Applicants propose that, on rehearing, the Commission amend O.A.C. 4901:1-39-05(A)(1)(c) as follows:

> (c) Banking surplus energy savings. To the extent that an electric utility's actual energy savings exceed its energy efficiency benchmark for any year, the electric utility may apply such surplus energy savings to its energy efficiency benchmarks for a subsequent year. Banked surplus may be used by the utility to trigger the shared savings incentive. However, the shared savings incentive is only eligible for energy and demand savings achieved in the current program year.~~, but banked surplus energy savings shall not be used to trigger shared savings incentive~~.

Adopting this approach on rehearing would clarify that the Commission is indeed aligned with the EDUs' intent to prudently and cost-effectively manage their portfolios, as stated in the text of the Order. *See* Order, ¶ 49, ¶ 70, & ¶ 177.

4. The definition of "non-energy benefits."

Under the new rule adopted in the Order, "non-energy benefits" are defined in O.A.C. 4901:1-39-01(S) to 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.

During the lengthy period of time that elapsed absent a ruling from the Commission in these proceedings, numerous utilities, including AEP Ohio, performed studies on actual participation regarding certain Commercial & Industrial Non-Energy benefits. AEP Ohio is willing to provide its study to the Commission if more in-depth review of these benefits is requested.

Joint Applicants respectfully posit that exclusion of these types of benefits for customers from the list set forth in the definition of "non-energy benefits" due to the delayed ruling in these proceedings is unreasonable. These non-energy benefits can have material impacts in the decision-making process for customers that go beyond valuing the project only in energy savings. With this knowledge, the definition of non-energy benefits should be expanded to account for all benefits to customers, and to allow EDUs to offer programs to serve all needs of our customers. To clarify, the EDUs are not proposing to calculate more net benefits, only that it can help inform the Commission as to which cost test can apply to program design. Accordingly, Joint Applicants propose that this definition be modified on rehearing as follows:

> (S) "Non-energy benefits" mean positive non-monetized energy impacts that ~~do~~ may 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, operations and maintenance cost reductions, productivity increases, reduced product loss, positive health effects, increased operational safety, additional sales increases excluding market effects, 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.

Inclusion of these additional benefits in the nonexclusive list contained in the definition of "non-energy benefits" enhances the reasonableness of the definition and increases the likelihood that they may be appropriately recognized.

5. Updates to the technical reference manual.

In the January 29, 2014 Entry in this case, Commission Staff invited comments relating to the timing of the availability of technical reference manual ("TRM") updates in order for the utilities to have the ability to include those updates in their plans on a timely basis. *See* Entry at 5 (Jan. 29, 2014).

The rules adopted in the Order include, within the definition of "independent program evaluator" at O.A.C. 4901:1-39-01(P)(3), a provision that the evaluator is empowered to "[r]ecommend updates to the technical reference manual, as necessary, pursuant to changes in regulations, equipment availability, and market conditions." Joint Applicants respectfully submit that this rule is unreasonable, unless the Commission modifies it to clarify that updates to the technical reference manual should only apply if a reasonable period of time is provided to implement the updates before the next plan filing. Joint Applicants note that it is impossible, as a practical matter, for "on the fly" TRM changes to be implemented in portfolio plans. Joint Applicants lodged these concerns in their previously filed Comments. *See*, *e.g.*, Initial Comments of Ohio Power Company at 2 (March 3, 2014); Comments of The Dayton Power & Light Company at 4 (Feb. 28, 2014). As Joint Applicant DP&L explained:

> Portfolio plans, by definition, include savings projections with corresponding budgets based on the measure saving assumptions. Once a portfolio plan is filed and approved, the savings assumptions used for the planning period need to be fixed for the duration of the plan. Otherwise the plan, and its corresponding budgets, will no longer be viable to achieve the plan goals. Therefore, if portfolio plans are to be filed on September 15, any revisions to the TRM should be finalized and approved through a public process, no later than six months prior to the filing of the portfolio plan, providing the utilities with sufficient time to develop the plan with the revised TRM savings assumptions.

Id. at 5.

TRM updates referred to in newly adopted O.A.C. 4901:1-39-01(P)(3), approved by the Commission following a collaborative process, review, and comment period, should be made at least one full year in advance of their next portfolio plan implementation for appropriate program planning. For example, if a TRM review process results in changes approved by the Commission in October 2019, one full year after that would be October 2020, and implementation of the TRM changes would occur in January 2021. The Commission should grant rehearing to implement these critical modifications to the rules regarding TRM updates. The rules on TRM updates are unreasonable and impractical unless so modified.

B. Unreasonable Amendments to O.A.C. Chapter 4901:1-40

Two of the new rules adopted in O.A.C. Chapter 4901:1-40 are inconsistent with the Ohio Revised Code with respect to the 3% cost cap. Specifically, R.C. 4928.64(C) provides:

> (3) An electric distribution utility or an electric services company need not comply with a benchmark under division (B)(2) of this section to the extent that its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three per cent or more. The cost of compliance shall be calculated as though any exemption from taxes and assessments had not been granted under section 5727.75 of the Revised Code.

In the statute, the General Assembly allows *both* an EDU *and* an electric service company ("ESC") to elect that they are no longer required to meet the benchmark because compliance costs exceed, by 3% or more, the cost of otherwise producing or acquiring the needed electricity. *Id.* The statute contains *no* mandate or requirement that the EDU/ESC cannot exceed the 3% cost cap. Nor does it include language imposing any "maximum recoverable compliance amount." Instead, the statute provides the EDU/ESC an option—that if compliance costs exceed acquisition costs by 3% or more, then they "need not" comply with the benchmark for the compliance year.

Moreover, R.C. 4928.641(A) provides:

> (A) If an electric distribution utility has executed a contract before April 1, 2014, to procure renewable energy resources and there are ongoing costs associated with that contract that are being recovered from customers through a bypassable charge as of the effective date of S.B. 310 of the 130th general assembly, that cost recovery shall continue on a bypassable basis until the prudently incurred costs associated with that contract are fully recovered.

R.C. 4928.641(A).

The rules adopted in the Order depart from the foregoing statutes in significant respects, rendering them unlawful and in need of modification on rehearing.

First, newly adopted O.A.C. 4901:1-40-05 on annual status reports and compliance reviews provides, in subsection (A)(3), a list of the content to be included in "[t]he renewable energy portfolio status reports filed by each electric utility and electric services company for the applicable compliance year *** [.]" One of the items in this list, in subsection (A)(3)(h), provides:

> (h) an *electric services company* may omit the contents required in paragraphs (d) [demonstration of status relative to the statutory three percent cost provision] and (e) [prospective calculation of maximum recoverable compliance funds] of this section if the company confirms 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.

See Order, Attachment A, at 24 (O.A.C. 4901:1-40-05(A)(3)(h)) (emphasis added). It is unclear why this provision of the newly adopted rule applies only to electric services companies but not *also* to electric utilities. Perhaps this was an unintended drafting error. As currently drafted, however, the rule is unreasonable and unlawful in light of the corresponding Revised Code provision's application to *both* EDUs and electric services companies. *See* R.C. 4928.64(C)(3). Accordingly, the Commission should grant rehearing to modify O.A.C. 4901:1-40-05(A)(3)(h) to insert "electric utility" along with "electric service company" in the opening clause of the rule.

The second way that the newly adopted rules conflict with R.C. 4928.64(C)(3) pertains to newly adopted O.A.C. 4901:1-40-07(B), which states, in pertinent part:

> 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.

See Order, Attachment A, at 28 (O.A.C. 4901:1-40-07(B)) (emphasis added). This new rule is unreasonable and unlawful, because there is no "maximum recoverable compliance" amount contemplated by the renewable benchmarks in the Revised Code, R.C. 4928.64(C)(3). This new rule effectively requires the utility not to seek recovery of compliance costs that exceed the 3% cap. At the same time, as noted in the preceding paragraph, these newly adopted rules (in O.A.C. 4901:1-40-05(A)(3)(h)) allow the electric services company (but not the EDU) to opt not to report on its 3% cost cap. The newly adopted rules also do not acknowledge the above-quoted language from R.C. 4928.641(A), confirming that cost recovery for renewable energy resource contracts executed before April 1, 2014 shall continue on a bypassable basis until the prudently incurred costs associated with such contracts are fully recovered.

On rehearing, the Commission can resolve these inconsistencies by eliminating O.A.C. 4901:1-40-07(B) altogether. Put simply, there is no "maximum recoverable compliance amount" contemplated by the renewable benchmarks in the Revised Code. To the extent that a utility makes its best effort to meet the benchmark, it should be permitted recovery of all prudently incurred compliance costs, as the General Assembly intended. It should not be penalized for trying to meet the state renewable standards.

III. CONCLUSION

For the reasons set forth above, the Commission should grant this Application for Rehearing and modify its December 19, 2018 Order to amend the Energy Efficiency Programs and Renewable Energy Portfolio Standard rules adopted in the Order and identified above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by electronic mail upon the individuals listed below this 18th day of January, 2019.

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