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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Chapters)
4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23,)
4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and)
4901:5-37 of the Ohio Administrative Code.)

Case No. 06-1201-AU-ORD

INITIAL COMMENTS OF
COLUMBUS SOUTHERN POWER COMPANY
AND OHIO POWER COMPANY

INTRODUCTION

By entry dated October 11, 2006, the Commission initiated a review of the various rules related to the energy emergencies and invited comments from interested parties. In response to a request for extension filed by several companies, the attorney examiner issued an entry extending the comment cycle so that initial comments are due on December 15, 2006 and reply comments are due on January 16, 2007. The Commission stated that, in addition to the normal criteria for a 5-year rulemaking review found in R.C. 119.032(C), the proposed rules would also be reviewed to achieve a greater level of consistency among the various energy industry groups and to better reflect the electric restructuring associated with the enactment of R.C. Chapter 4928. Columbus Southern Power Company and Ohio Power Company ("AEP Companies") commend the Commission for pursuing these additional purposes and submit comments below in response to the Commission's invitation for input.

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CHAPTER 4901:5-19, FUEL EMERGENCY

1. Proposed Rule 4901:5-19-01, Definitions

The prior definition of “utility normal burn days” included the concept of available fuel supply expressed as the number of days of coal supply available to serve load that will not to be served by firm purchases or by non-coal generating sources. The new definition of “Electric power producer normal burn days” does not directly incorporate the available fuel concept. Rather, a burn day is calculated as the number of days the provider “can maintain its thermal output” to serve its estimated normal load plus firm sales. The new definition is ambiguous because the ability to maintain thermal output is not necessarily tied to existing fuel supply or available fuel inventory. For example, an electric power producer may well have contractual arrangements for the continual delivery of an adequate fuel supply and that could arguably be considered as the ability to maintain thermal output on an ongoing basis. But a calculation on that basis is not particularly helpful where there is a labor strike, transportation interruption or any other problem that has caused a significant interruption in fuel supply or substantially reduced inventory levels. As a related matter, the prior definition of “utility normal burn days” also incorporated a calculation methodology found in “appendix A” to the rule; the proposed rules also reference “appendix A” even though it is not presently found in the proposed rules. *See Proposed Rule 4901:5-19-05(A)(4)(A).* The above comments also apply to the definition of “State wide normal burn days.” Accordingly, the definition of burn days should be clarified and “appendix A” should be incorporated into the rule so that all power producers calculate burn days in a consistent manner.

The prior rule also contained a definition for "utility advisory group" that was referenced in prior rule OAC 4901:5-19-02(E) and (F). This is apparently the same group referred to as the "fuel source advisory council" in several of the proposed rules without any other definition or description. See Proposed Rules 4901:5-19-02(I), 4901:5-21-02(I), 4901:5-23-02(D), 4901:5-25-02(E), 4901:5-29-02(A), and 4901:5-33-02(A). The AEP Companies support the existence and use of a fuel source advisory council. The advisory council should be comprised of public utility industry representatives and should be consulted prior to declaration of any energy emergency. Accordingly, the definition rules for OAC Chapters 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29 and 4901:5-33 should each contain a definition for "fuel source advisory council."

➤ **Recommended Rule Changes for 4901:5-19-01¹**

- (D) "ELECTRIC POWER PRODUCER NORMAL BURN DAYS" MEANS THE NUMBER OF DAYS THAT EACH ELECTRIC POWER PRODUCER CAN MAINTAIN ITS THERMAL OUTPUT, THROUGH THE GENERATION OF ELECTRICITY USING ITS EXISTING COAL SUPPLY AND/OR THROUGH THE PURCHASE OF ELECTRICITY UNDER EXISTING CONTRACTS, SUCH THAT IT CAN SERVE ITS ESTIMATED NORMAL LOAD PLUS FIRM SALES.
- (K) "STATEWIDE NORMAL BURN DAYS" MEANS THE NUMBER OF DAYS THAT ALL ELECTRIC POWER PRODUCERS IN THE STATE CAN MAINTAIN THEIR THERMAL OUTPUT, THROUGH THE GENERATION OF ELECTRICITY USING THEIR EXISTING COAL SUPPLIES AND/OR THROUGH THE PURCHASE OF ELECTRICITY UNDER EXISTING CONTRACTS, SUCH THAT THEY CAN SERVE THEIR ESTIMATED NORMAL OHIO LOAD PLUS FIRM SALES. STATEWIDE NORMAL BURN DAYS SHALL BE CALCULATED AS A WEIGHTED AVERAGE OF ELECTRIC POWER PRODUCER BURN DAY DATA.
- (L) "FUEL SOURCE ADVISORY COUNCIL" MEANS THE ADVISORY GROUP OF PUBLIC UTILITY INDUSTRY REPRESENTATIVES FORMED BY THE CHAIRMAN OF THE COMMISSION TO MONITOR AND ADVISE THE COMMISSION CONCERNING FUEL SUPPLY SHORTAGES AND RELATED MATTERS.

***** ADD "APPENDIX A" REFERENCED IN PROPOSED RULE 4901:5-19-05(A)(4)(A) AS BEING ATTACHED TO RULE 4901:5-19-01.**

¹ The AEP Companies' recommended rule changes are set forth in redline format with added language shown in **bold underlined text** and recommended deletions shown as ~~strikethrough text~~.

2. Proposed Rule 4901:5-19-02, General Provisions

Subdivisions (E) and (F) refer to interactions between electric power producers and the Commission, although those references probably also are intended to reference the Commission staff as was expressly done in subdivision (H). This would make sense and help the information flow proceed informally and without publicly-filed notices or formal interaction between companies and the Commission. Accordingly, the proposed rule should be changed to refer to the Commission staff in those instances.

Subdivision (E) addresses an electric power producer's notification to the Commission of the intention to implement a "long-term fuel emergency plan," which is not a defined term. If this is intended to reference a utility's tariffed emergency curtailment plan, what does it reference for non-utility power producers? Also, referencing it as a "long-term" fuel emergency plan is confusing since the intent here is to address unusual or temporary circumstances associated with an emergency, rather than long-term or chronic conditions.

Subdivision (G) enables the Governor to order electric power producers to increase energy sales if another power producer reaches twenty burn days. The AEP Companies question the ongoing usefulness of this provision [it is a reworded version of existing OAC 4901:5-19-02(K)], given the advent of electric restructuring in Ohio and the federal development of regional transmission organizations (RTOs). RTOs are now vested with authority to maintain grid operations and follow reliability protocols under all circumstances, including energy emergencies. For the AEP Companies, PJM has fuel supply reporting requirements and even an emergency bid process to encourage the purchasing of additional resources to supply control area load. If fuel supply problems arise, the AEP Companies will coordinate operations with PJM to

ensure safe, reliable operation of the system via the procedures defined in PJM's Emergency Operations manual (M-13) and the AEP Emergency Operating Plan. PJM also has procedures that can be enacted to help conserve fuel.

What happens if there is a conflict between the requirements of the Ohio Commission's emergency rules and FERC-approved PJM procedures? PJM or MISO must be aware, and be in agreement with the proposed rules, for an actual transfer of energy to take place between a PJM and MISO utility. AEP cannot make a sale or purchase without the consent of the PJM control area operator. PJM's knowledge of current reliability issues, including fuel supply, power flow limitations, and generator status must be relied upon to ensure a State emergency does not become a regional emergency. And given the robust development of advanced reliability standards and complex operational procedures associated with RTOs, the Ohio Commission's rules would be much less likely to solve any problems under those circumstances. As a related matter, as discussed further below in connection with proposed rule 4901:5-19-05, the 20 burn day trigger in subdivision (G) does not accurately reflect an imminent problem within AEP or PJM.

Replacing an intricately-planned and carefully-developed system with an *ad hoc* set of reactions and directives would likely be cumbersome, confusing and unlikely to produce the desired result. As a related matter, the electric grid is continually developing as a regional and super-regional operation; instantaneously transforming it into an intrastate system based on Ohio's boundaries would be extremely tedious and difficult, at best. Worse yet, an energy emergency would involve the *least favorable* conditions for doing so. Consequently, the AEP Companies submit that subdivision (G) is not needed in the current environment. Alternatively,

the provision could acknowledge the RTO authority and seek to implement an advisory or cooperative/consultative role for the Ohio Commission and Governor in this situation.

If subdivision (G) is retained, the term “utility normal burn days” should be “electric power producer normal burn days” to reflect the new terminology being used. If retained, the proposed rule should also make clear in what form and to whom the other electric power producers are being ordered to increase sales of energy (e.g., transact a wholesale power sale to the electric power producer who has 20 or less normal burn days).

Subdivision (H) imposes an affirmative and largely unqualified duty on electric providers and power producers to provide staff with information in connection with these rules and subdivision (F) also requires submittal of information at the request of staff. One example of this is that Rule 5 contemplates burn day calculations by staff and imposes reporting requirements relating to daily usage, energy purchases, fuel deliveries as often as daily. Companies should not have to negotiate or litigate matters concerning the confidential and proprietary nature of their business data (which incidentally relates largely to unregulated activities) in the midst of an energy emergency. Providing by rule that the information will be treated as confidential (subject to later determination by order) is eminently reasonable and will help ensure quick responses to information requests by staff.

➤ **Recommended Rule Changes for 4901:5-19-02**

- (E) WHEN ANY ELECTRIC POWER PRODUCER HAVING A GENERATING CAPACITY OF FIVE HUNDRED MEGAWATTS OR MORE ADVISES THE COMMISSION STAFF OF ITS INTENTION TO IMPLEMENT ITS LONG-TERM FUEL EMERGENCY PLAN, ALL ELECTRIC POWER PRODUCERS HAVING A GENERATING CAPACITY OF FIFTY MEGAWATTS OR MORE SHALL, UPON NOTIFICATION BY THE COMMISSION, FILE A WEEKLY REPORT OF ELECTRIC SUPPLY ADEQUACY IN THE FORM PRESCRIBED BY THE COMMISSION. UPON REQUEST OF THE

CHAIRMAN OF THE COMMISSION, THE REPORT OF ELECTRIC SUPPLY ADEQUACY SHALL BE FILED DAILY.

- (F) UPON REQUEST OF THE COMMISSION, EACH ELECTRIC POWER PRODUCER SHALL CALCULATE ITS ELECTRIC POWER PRODUCER NORMAL BURN DAYS, ON THE BASIS OF REASONABLE ASSUMPTIONS. EACH ELECTRIC POWER PRODUCER SHALL PROVIDE THE CALCULATIONS TO THE COMMISSION STAFF AS DIRECTED, TOGETHER WITH A DETAILED DESCRIPTION OF ALL ASSUMPTIONS MADE, THE CAPACITY OF EACH GENERATION FACILITY UNDER THE CONTROL OF THE ELECTRIC POWER PRODUCER, THE QUANTITY OF COAL IN THE ELECTRIC POWER PRODUCER'S INVENTORY, AND THE ELECTRIC POWER PRODUCER'S NORMAL BURN RATE FOR THE SEASON.
- ~~(G) WHEN ANY ELECTRIC POWER PRODUCER IN THE STATE REACHES TWENTY UTILITY NORMAL BURN DAYS, OR WHEN IT IS DETERMINED THAT SUCH ACTION IS APPROPRIATE, THE GOVERNOR MAY ORDER OTHER ELECTRIC POWER PRODUCERS WITH GREATER FUEL SUPPLIES TO INCREASE SALES OF ELECTRIC ENERGY.~~
- (H) EACH ELECTRIC PROVIDER AND ELECTRIC POWER PRODUCER SHALL BE REQUIRED TO ANSWER COMMISSION STAFF'S QUESTIONS, AS WELL AS TO UPDATE ITS COMPANY'S CONTACT INFORMATION WITH THE COMMISSION. THE INFORMATION SUBMITTED TO STAFF AND THE COMMISSION UNDER THE RULES IN THIS CHAPTER SHALL BE TREATED AS CONFIDENTIAL AND PROPRIETARY PENDING FURTHER ORDER BY THE COMMISSION PERTAINING SPECIFICALLY TO THAT INFORMATION.

3. **Proposed Rule 4901:5-19-03, Enforcement on Governor's Instruction**

The existing OAC 4901:5-03(A) provides that no person shall be penalized under any rule in Chapter 4901:5-19 until the governor has declared an emergency. The proposed new rule creates an exception by referencing Rule 2 and Rule 4 as enforceable outside the context of an emergency. Affirmatively providing for enforcement of this Chapter outside the context of an energy emergency is problematic and unnecessary. While there may be valid reasons to enforce two subsections of Rule 2 outside the context of an energy emergency [subdivisions (F) and (H) requiring power producers to provide information to staff and subdivision], the remaining provisions in 4901:5-19-02 address energy emergency conditions and reference OAC Chapter

4901:5-19 as a whole. The exchange of information to assess and anticipate whether an energy emergency is imminent is appropriate, provided the companies' business information is kept confidential in the process. And there is also no need to include Rule 4 [concerning pre-emergency actions] because obligations under Rule 4 are triggered only "by order" of the Commission. Since Commission orders are enforceable under existing provisions of the Revised Code (e.g., R.C. 4905.54, 4905.99, etc), there is no need to create a new rule to enforce Commission orders. In sum, only the provisions that legitimately apply outside of an energy emergency and require independent enforcement actions [Rule 2(F) and Rule 2(H)] should be enforced outside the context of an energy emergency.

➤ **Recommended Rule Changes for 4901:5-19-03**

- (A) NO RULE SHALL BE IMPLEMENTED AND NO PERSON SHALL BE PENALIZED UNDER ANY RULE IN THIS CHAPTER, OTHER THAN RULES **4901:5-19-02(F)** AND **4901:5-19-02(H)** ~~4901:5-19-04~~ OF THE ADMINISTRATIVE CODE AND PERTINENT DEFINITIONS IN RULE 4901:5-19-01 OF THE ADMINISTRATIVE CODE, UNTIL THE GOVERNOR, BY EXECUTIVE ORDER, DURING A DECLARED ENERGY EMERGENCY, SPECIFICALLY DESIGNATES BY RULE NUMBER AND TITLE WHICH RULE OR RULES ARE TO BE IMPLEMENTED AND ENFORCED AND FIXES THE DATE AND TIME AFTER WHICH THE NAMED RULE OR RULES SHALL BE IMPLEMENTED OR ENFORCED.

4. Proposed Rule 4901:5-19-04, Pre-Emergency Actions

Proposed OAC 4901:5-19-04 addresses pre-emergency obligations. That rule should be amended to apply when an energy emergency is anticipated or imminent. The Commission's exercise of power under R.C. Chapter 4935 should be done in connection with an energy emergency, not in isolation or the absence of any anticipated emergency. Since the obligations set forth in proposed OAC 4901:5-19-04 are imposed only "by order" of the Commission, due process and appeal rights apply to such a Commission proceeding and that offers some

protection to affected persons. But the rule language should make clear that the context and application of the rule only occurs where an energy emergency is anticipated or imminent.

➤ **Recommended Rule Changes for 4901:5-19-04**

- (A) ~~PRIOR TO~~ **IN ANTICIPATION OF AN IMMINENT** ENERGY EMERGENCY, THE COMMISSION MAY, BY ORDER, REQUIRE THAT EACH ELECTRIC PROVIDER:
- ***
- (B) ~~PRIOR TO~~ **IN ANTICIPATION OF AN IMMINENT** ENERGY EMERGENCY, THE COMMISSION MAY, BY ORDER, REQUIRE THAT EACH ELECTRIC POWER PRODUCER HAVING A GENERATING CAPACITY OF FIFTY MEGAWATTS OR MORE SHALL FILE A WEEKLY OR DAILY REPORT OF ELECTRIC SUPPLY ADEQUACY IN THE FORM PRESCRIBED BY THE COMMISSION.
- (C) ~~PRIOR TO~~ **IN ANTICIPATION OF AN IMMINENT** ENERGY EMERGENCY, THE COMMISSION MAY, BY ORDER, REQUIRE THAT EACH ELECTRIC POWER PRODUCER HAVING A GENERATING CAPACITY OF FIFTY MEGAWATTS OR MORE SHALL FILE A WEEKLY OR DAILY REPORT OF ELECTRIC SUPPLY ADEQUACY IN THE FORM PRESCRIBED BY THE COMMISSION.

5. **Proposed Rule 4901:5-19-05, Actions Taken Upon Declaration of Energy Emergency**

The AEP Companies do not generally object to the curtailment measures or escalation stages found in this rule and recognize that some of these measures could be appropriate in the event of a true energy emergency. But coordinated emergency actions should only be taken when an energy emergency exists and has been declared. Consequently, there are two aspects of this rule that should be changed to make this clear.

First, the obligations of curtailment and escalation measures should only apply in the context of an energy emergency properly declared by the Governor and filed with the Secretary of State, pursuant to R.C. 4935.03. Declaration of an energy emergency is what triggers the governor's energy emergency authority in consultation with the Commission. The General Assembly limited the Governor's emergency powers to be triggered only when an energy emergency has been declared and filed with the Secretary of State. Further, the curtailment

measures and escalation process (while appropriate) are significant and should not be implemented outside the context of an energy emergency. Consequently, there should not be a grey area in between emergency and non-emergency where the Governor can unilaterally determine it is appropriate to implement emergency curtailment measures.

Proposed Rule 4901:5-19-05 is entitled “Actions Taken Upon Declaration of Energy Emergency” and the preceding rule, 4901:5-19-04 governs “Pre-Emergency Actions.” Thus, it was presumably not the Commission’s intent in formulating Proposed Rule 4901:5-19-05 to require emergency curtailment measures outside the context of a properly-declared energy emergency. Nevertheless, the introductory language in proposed subdivisions (A) through (E) could be interpreted to allow for the Governor or the Commission to unilaterally determine that emergency action is warranted even where no emergency is declared. Consequently, the proposed rule language should be modified to clarify this important ambiguity.

Specifically, in each of the four stages of energy emergency, the language starts off “during an energy emergency and when the statewide normal burn days reach [forty, twenty-five, twenty or fifteen] days,” but then proceeds to add the phrase “or when it is otherwise determined by the Governor or the Commission.” If the intention with the “otherwise determined by the Governor or Commission” language is to retain the ability to implement emergency measures outside the context of an energy emergency declared by the Governor, then the language should be eliminated. But if the intention is to provide for flexibility to delay implementation of a stage or to allow, for example, curtailment measures from stage three to be implemented during stage two, that could be achieved through alternative language.

Accordingly, the AEP Companies offer amendment language below that allows flexibility for specific measures taken during a particular phase of an energy emergency – while also ensuring

that the mandatory emergency measures as a whole are only required during a declared emergency.

Second, the burn day triggers for each successive stage of energy emergency should be eliminated. The Governor and Commission should have flexibility in managing the energy emergency, once it is declared by the Governor. The gas emergency rules in OAC Chapter 4901:5-25 do not have specific triggers tied to each stage of a fuel emergency. Consistency among the OAC Chapters covering energy emergencies was one of the state purposes referenced in the Commission's entry initiating review of these rules.

On a more substantive level, there are a variety of different factors that might cause the Commission to deviate from the burn day triggers found in the current rules, even aside from the fact that those triggers are outdated and do not reflect the current regulatory or market environment. AEP's management-approved inventory targets are at or below 40 burn days; if all power producers had similar targets, the statewide normal burn days would be below 40 on a regular basis. The existing rules do not reflect the competitive nature of the generation function or the development of RTO-ISO markets. The Commission's updated rule should reflect the integrated nature of the electric grid and should recognize the new market realities and associated emergency procedures that have been implemented with the creation of RTOs/ISOs. RTO/ISO markets operate on a shorter time frame than traditional utility operations. And power suppliers no longer operate in isolation but have the ability to readily utilize into generation resources on the grid.

Accordingly, the Commission should amend the rules to more closely resemble the gas emergency rules in OAC Chapter 4901:5-25 and more accurately reflect the competitive nature of electric generation. Specifically, the Commission should eliminate the burn day triggers

found in the current rule. Alternatively, if the Commission does retain specific burn day triggers, the AEP companies recommend modifying the numbers as follows: 25 days for stage one, 20 days for stage two, 15 days for stage three and 10 days for stage four.

➤ **Recommended Rule Changes for 4901:5-19-05**

- (A) VOLUNTARY CURTAILMENT. DURING AN ENERGY EMERGENCY ~~AND WHEN THE STATEWIDE NORMAL BURN DAYS REACH FORTY DAYS, OR WHEN IT IS OTHERWISE DETERMINED BY THE GOVERNOR THAT SUCH ACTION IS APPROPRIATE,~~ THE FOLLOWING PROVISIONS SHALL BE APPLICABLE: * * *
- (B) MANDATORY CURTAILMENT - STAGE ONE. DURING AN ENERGY EMERGENCY ~~AND WHEN THE STATEWIDE NORMAL BURN DAYS REACH THIRTY DAYS, OR WHEN IT IS OTHERWISE DETERMINED BY THE GOVERNOR OR THE COMMISSION THAT SUCH ACTION IS APPROPRIATE,~~ THE FOLLOWING PROVISIONS SHALL BE APPLICABLE, IN ADDITION TO THOSE ALREADY IN EFFECT: * * *
- (C) MANDATORY CURTAILMENT - STAGE TWO. DURING AN ENERGY EMERGENCY ~~AND WHEN THE STATEWIDE NORMAL BURN DAYS REACH TWENTY-FIVE DAYS, OR WHEN IT IS OTHERWISE DETERMINED BY THE GOVERNOR OR THE COMMISSION THAT SUCH ACTION IS APPROPRIATE,~~ THE FOLLOWING PROVISIONS WILL BE APPLICABLE, IN ADDITION TO THOSE ALREADY IN EFFECT: * * *
- (D) MANDATORY CURTAILMENT - STAGE THREE. DURING AN ENERGY EMERGENCY ~~AND WHEN THE STATEWIDE NORMAL BURN DAYS REACH TWENTY DAYS, OR WHEN IT IS OTHERWISE DETERMINED BY THE GOVERNOR OR THE COMMISSION THAT SUCH ACTION IS APPROPRIATE,~~ THE FOLLOWING PROVISIONS SHALL BE APPLICABLE, IN ADDITION TO THOSE ALREADY IN EFFECT: * * *
- (E) MANDATORY CURTAILMENT - STAGE FOUR. DURING AN ENERGY EMERGENCY ~~AND WHEN THE STATEWIDE NORMAL BURN DAYS REACH FIFTEEN DAYS, OR WHEN IT IS OTHERWISE DETERMINED BY THE GOVERNOR OR THE COMMISSION THAT SUCH ACTIONS ARE APPROPRIATE,~~ ALL CONSUMERS SHALL DISCONTINUE ALL NONPRIORITY USE OF ELECTRICITY ON ALL DAYS OF EACH WEEK. ALL PREVIOUS MEASURES SHALL BE CONTINUED EXCEPT AS AMENDED BY THIS PARAGRAPH.

CHAPTER 4901:5-21, COAL ALLOTMENT

1. Proposed Rule 4901:5-21-01, Definitions

Proposed Rule 4901:5-21-02(J) references the fuel source advisory council, though no definition is included in Proposed Rule 4901:5-21-01 for this undefined term. The AEP Companies support the existence and use of a fuel source advisory council. The advisory council should be comprised of a broad base of industry representatives and should be consulted prior to declaration of any energy emergency. Accordingly, the definitions in OAC Chapter 4901:5-21 should contain a definition for the fuel source advisory council.

➤ Recommended Rule Changes for 4901:5-21-01

(I) "FUEL SOURCE ADVISORY COUNCIL" MEANS THE ADVISORY GROUP OF PUBLIC UTILITY INDUSTRY REPRESENTATIVES FORMED BY THE CHAIRMAN OF THE COMMISSION TO MONITOR AND ADVISE THE COMMISSION CONCERNING FUEL SUPPLY SHORTAGES AND RELATED MATTERS.

CHAPTER 4901:5-23, COAL EMERGENCY

2. Proposed Rule 4901:5-23-01, Definitions

Proposed Rule 4901:5-23-02(D) references the fuel source advisory council, though no definition is included in Proposed Rule 4901:5-23-01 for this undefined term. The AEP Companies support the existence and use of a fuel source advisory council. The advisory council should be comprised of a broad base of industry representatives and should be consulted prior to declaration of any energy emergency. Accordingly, the definitions in OAC Chapter 4901:5-23 should contain a definition for the fuel source advisory council.

➤ Recommended Rule Changes for 4901:5-23-01

(I) "FUEL SOURCE ADVISORY GROUP" MEANS THE ADVISORY GROUP OF ELECTRIC POWER PRODUCER REPRESENTATIVES FORMED BY THE CHAIRMAN OF THE

COMMISSION TO MONITOR AND ADVISE THE COMMISSION CONCERNING FUEL
SUPPLY SHORTAGES AND RELATED MATTERS.

3. Proposed Rule 4901:5-23-05, Actions Upon Declaration of Energy Emergency

Consistent with the above discussion regarding Proposed Rule 4901:5-19-05, the AEP Companies do not generally object to the curtailment measures or escalation stages found in this rule and AEP recognizes that such measures are appropriate in the event of a true energy emergency. But it should be made clear that the obligations only apply in the context of an energy emergency declared by the governor and filed with the secretary of state, pursuant to R.C. 4935.03. Accordingly, the “or otherwise determined by the governor or Commission” language should be modified to allow flexibility for specific measures taken during a particular phase of an energy emergency – while also ensuring that the mandatory emergency measures as a whole are only required during an emergency. These changes also make the OAC Chapters on energy emergencies similar and consistent, which was one of the state purposes referenced in the Commission’s entry for reviewing these rules.

➤ **Recommended Rule Change for 4901:5-23-05**

- (A) VOLUNTARY CURTAILMENT. UPON DECLARATION OF AN ENERGY EMERGENCY BY THE GOVERNOR, ~~OR AT SUCH TIME AS IT IS OTHERWISE DETERMINED BY THE GOVERNOR THAT~~ SUCH ACTION IS APPROPRIATE, THE FOLLOWING PROVISIONS SHALL BE APPLICABLE. * * *

CHAPTER 4901:5-25, GAS EMERGENCY

1. Proposed Rule 4901:5-25-01, Definitions

Proposed Rule 4901:5-25-02(E) references the fuel source advisory council, though no definition is included in Proposed Rule 4901:5-25-01 for this undefined term. The AEP Companies support the existence and use of a fuel source advisory council. The advisory council

should be comprised of a broad base of industry representatives and should be consulted prior to declaration of any energy emergency. Accordingly, the definitions in OAC Chapter 4901:5-25 should contain a definition for the fuel source advisory council.

➤ **Recommended Rule Changes for 4901:5-25-01**

(I) "FUEL SOURCE ADVISORY COUNCIL" MEANS THE ADVISORY GROUP OF PUBLIC UTILITY INDUSTRY REPRESENTATIVES FORMED BY THE CHAIRMAN OF THE COMMISSION TO MONITOR AND ADVISE THE COMMISSION CONCERNING FUEL SUPPLY SHORTAGES AND RELATED MATTERS.

2. Proposed Rule 4901:5-25-05, Actions Upon Declaration of Energy Emergency

Consistent with the above discussion regarding Proposed Rule 4901:5-19-05 and 4901:5-23-05, the AEP Companies do not generally object to the curtailment measures or escalation stages found in this rule and AEP recognizes that such measures are appropriate in the event of a true energy emergency. But it should be made clear that the obligations only apply in the context of an energy emergency declared by the governor and filed with the secretary of state, pursuant to R.C. 4935.03. Accordingly, the "otherwise determined by the governor or Commission" language should be modified to allow flexibility for specific measures taken during a particular phase of an energy emergency – while also ensuring that the mandatory emergency measures as a whole are only required during an emergency. These changes also make the OAC Chapters on energy emergencies similar and consistent, which was one of the state purposes referenced in the Commission's entry for reviewing these rules.

➤ **Recommended Rule Changes**

(A) VOLUNTARY CURTAILMENT. ~~UPON DECLARATION OF~~ DURING AN ENERGY EMERGENCY DECLARED BY THE GOVERNOR, OR AT SUCH TIME AS IT IS OTHERWISE DETERMINED BY THE GOVERNOR THAT SUCH ACTION IS APPROPRIATE, THE FOLLOWING PROVISIONS SHALL BE APPLICABLE: ***

- (B) MANDATORY CURTAILMENT - STAGE ONE. DURING AN ENERGY EMERGENCY DECLARED BY THE GOVERNOR, AT SUCH TIME AS THE GOVERNOR OR THE COMMISSION DETERMINES THAT IT IS APPROPRIATE, THE FOLLOWING PROVISIONS SHALL BE APPLICABLE IN ADDITION TO THE PROVISIONS SET FORTH IN PARAGRAPH (A) OF THIS RULE: ***
- (C) MANDATORY CURTAILMENT - STAGE TWO. DURING AN ENERGY EMERGENCY DECLARED BY THE GOVERNOR, AT SUCH TIME AS THE GOVERNOR OR THE COMMISSION DETERMINES THAT IT IS APPROPRIATE, THE FOLLOWING PROVISIONS SHALL BE APPLICABLE IN ADDITION TO THE PROVISIONS SET FORTH IN PARAGRAPH (B) OF THIS RULE: ***
- (D) MANDATORY CURTAILMENT - STAGE THREE. DURING AN ENERGY EMERGENCY DECLARED BY THE GOVERNOR, AT SUCH TIME AS THE GOVERNOR OR THE COMMISSION DETERMINES THAT IT IS APPROPRIATE, THE FOLLOWING PROVISIONS SHALL BE APPLICABLE IN ADDITION TO THE PROVISIONS SET FORTH IN PARAGRAPH (C) OF THIS RULE: ***
- (E) MANDATORY CURTAILMENT - STAGE FOUR. DURING AN ENERGY EMERGENCY DECLARED BY THE GOVERNOR, IF THE COMMISSION OR THE GOVERNOR DETERMINES THAT THE PROVISIONS OF PARAGRAPH (D) OF THIS RULE DO NOT ADEQUATELY PROTECT PRIORITY USE OR THE PUBLIC HEALTH, SAFETY OR WELFARE, THE COMMISSION, BY ORDER, MAY FURTHER CURTAIL OR RESTRICT GAS SUPPLY AND USAGE.

CHAPTER 4901:5-29, HEATING OIL AND PROPANE EMERGENCY

1. Proposed Rule 4901:5-29-01, Definitions

Proposed Rule 4901:5-29-02(A) references the fuel source advisory council, though no definition is included in Proposed Rule 4901:5-29-01 for this undefined term. The AEP Companies support the existence and use of a fuel source advisory council. The advisory council should be comprised of a broad base of industry representatives and should be consulted prior to declaration of any energy emergency. Accordingly, the definitions in OAC Chapter 4901:5-29 should contain a definition for the fuel source advisory council.

➤ Recommended Rule Changes for 4901:5-29-01

(L) "FUEL SOURCE ADVISORY COUNCIL" MEANS THE ADVISORY GROUP OF PUBLIC UTILITY INDUSTRY REPRESENTATIVES FORMED BY THE CHAIRMAN OF THE COMMISSION TO MONITOR AND ADVISE THE COMMISSION CONCERNING FUEL SUPPLY SHORTAGES AND RELATED MATTERS.

CHAPTER 4901:5-37, EMERGENCY REPORTING BY ELECTRIC ENTITIES

1. Proposed Rule 4901:5-37-01, Definitions

OAC Chapter 4901:5-37 uses the term "emergency," as defined in Proposed Rule 4901:5-37-01(D), instead of "energy emergency" as is used in each of the other Chapters being addressed in this rulemaking proceeding. "Emergency" is broadly defined to include *anticipated*, in addition to existing, shortages in supply and also includes constraints which have or *may* adversely affect the operation or reliability of transmission, distribution, or generation facilities. The AEP Companies recommend replacing the phrase "may adversely affect" with the phrase "is likely to affect" in order to reduce ambiguity and help clarify the meaning of "emergency" in this context. The definition of "bulk electric system" is discussed below in connection with Rule 3.

➤ Recommended Rule Change for 4901:5-37-01

(D) "EMERGENCY" MEANS AN ANTICIPATED OR EXISTING SHORTAGE IN THE SUPPLY OF ELECTRIC ENERGY, OR CONSTRAINT IN THE TRANSMISSION, DISTRIBUTION, OR GENERATION OF ELECTRICAL ENERGY, WHICH HAS OR ~~MAY~~ IS LIKELY TO ADVERSELY AFFECT THE OPERATION OR RELIABILITY OF TRANSMISSION, DISTRIBUTION, OR GENERATION FACILITIES.

ADD NEW DEFINITION:

"BULK ELECTRIC SYSTEM" MEANS FACILITIES AND CONTROL SYSTEMS NECESSARY FOR OPERATING AN INTERCONNECTED ELECTRIC ENERGY TRANSMISSION NETWORK (OR ANY PORTION THEREOF), AND ELECTRIC ENERGY FROM GENERATING FACILITIES NEEDED TO MAINTAIN TRANSMISSION SYSTEM RELIABILITY.

2. Proposed Rule 4901:5-37-02, General Provisions

Proposed Rule 4901:5-37-02(B) indicates that electric entities shall comply with the rules of this chapter during an emergency. The prior version of this rule, OAC 4901:5-01(C), contained language indicating that the obligation applied “unless otherwise ordered by FERC.” This was an important qualification and is even more relevant today in light of the RTO market structure and the FERC authority over the wholesale market and transmission services. This concern would also be mitigated if the Ohio Commission adopts the AEP Companies’ recommendation to eliminate the provisions in this Chapter relating to energy supply and limit these rules to operational emergencies.

➤ Recommended Rule Change for 4901:5-37-02

- (B) EACH ELECTRIC ENTITY SHALL COMPLY WITH THE RULES OF THIS CHAPTER AND ORDERS OF THE COMMISSION, UNLESS OTHERWISE ORDERED BY FERC, DURING AN EMERGENCY THAT HAS ADVERSELY AFFECTED, OR MAY ADVERSELY AFFECT, THE OPERATION OR RELIABILITY OF ELECTRIC SERVICE.

3. Proposed Rule 4901:5-37-03, Emergency Reporting to the Commission; Emergency Actions

As referenced above, OAC Chapter 4901:5-37 should be clarified to apply only during an emergency based on operational constraints. In this regard, proposed Rule 4901:5-37-03(A) should be prefaced to make clear that the reporting obligations apply “during an emergency.” For example, proposed Rule 4901:5-37-03(A)(3) could encompass demand-side management or other conservation activities of the companies absent clarification. In addition, the AEP Companies suggest that the provisions of subdivision (A) triggering a reporting obligation be modified for clarity and to become more consistent with comparable reporting obligations of the USDOE. The triggering events listed in subdivision (A) presently are vague, undefined and

overlap. Finally, some of the provisions, such as Rule 3(A)(5) and 3(B), are outdated and do not reflect the RTO/ISO markets and NERC's new role as ERO. In an emergency, such reporting obligations should be clear and concise so as to limit confusion and better ensure consistent compliance by all electric entities. The recommended changes below reflect an attempt to illustrate how that could be done.

➤ **Recommended Rule Change for 4901:5-37-03**

(A) **DURING AN EMERGENCY,** ~~EEACH~~ ELECTRIC ENTITY SHALL PROMPTLY REPORT TO THE COMMISSION: ***

- (1) ANY LOSS IN SERVICE FOR FIFTEEN MINUTES OR MORE OF ELECTRIC POWER SUPPLY TO A FIRM LOAD OF ~~ONE~~ **THREE** HUNDRED MEGAWATTS OR MORE.
- ~~(2) ANY ACTION TO REDUCE FIRM CUSTOMER LOADS IN ORDER TO MAINTAIN RELIABILITY OF THE POWER SUPPLY SYSTEM.~~
- ~~(32)~~ ANY APPEAL FOR THE PUBLIC TO CONSERVE ELECTRICITY **DURING AN EMERGENCY.**
- ~~(43)~~ ANY ACTION TO REDUCE FIRM CUSTOMER LOADS BY MANUAL SWITCHING, AUTOMATIC LOAD SHEDDING, OR OTHER MEANS USED TO MAINTAIN RELIABILITY OF THE POWER SUPPLY SYSTEM.
- ~~(54)~~ **IMPLEMENTATION OF THE NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL'S ENERGY EMERGENCY ALERT PROCEDURE ON BEHALF OF THE AFFECTED REPORTING ELECTRIC ENTITY.** ~~ANY EMERGENCY ALERT, NOTICE, OR STATEMENT ISSUED BY A RELIABILITY COUNCIL WHICH RELATES TO A UTILITY COMPANY'S OVERALL GENERATION OUTPUT.~~
- ~~(6)~~**(5)** **DURING AN EMERGENCY,** ~~ANY~~ OUTAGE OR INCIDENT WHICH DAMAGES OR RENDERS INOPERABLE **BULK ELECTRIC** SYSTEM EQUIPMENT LOCATED IN OHIO.
- ~~(7)~~ ~~WHEN A TRANSMISSION COMPANY DETERMINES THAT A NET OPERATING RESERVE DEFICIENCY WILL EXIST FOR THE NEXT CALENDAR DAY AND POWER SUPPLY AND/OR OPERATING RESERVE CANNOT BE OBTAINED OR PURCHASED.~~
- ~~(8)~~**(6)** ANY ACTION TAKEN PURSUANT TO THE RULES OF THIS CHAPTER.

EACH REPORT SHALL BE MADE BY FAX, VOICE MAIL, PERSONAL CONTACT OR OTHER COMMISSION DETERMINED MEANS WITH A DESIGNATED COMMISSION REPRESENTATIVE AND SHALL INCLUDE A DESCRIPTION OF THE SITUATION. REPORTS AND INFORMATION SUBMITTED UNDER THIS CHAPTER SHALL BE TREATED AS CONFIDENTIAL PENDING FURTHER ORDER BY THE COMMISSION PERTAINING TO THAT INFORMATION.

- (B) WHEN AN ELECTRIC ENTITY IS UNABLE TO RELIEVE AN EXISTING OR ANTICIPATED ENERGY SHORTAGE BY OBTAINING OR PURCHASING POWER THROUGH AN INTERCONNECTED SYSTEM, REGIONAL TRANSMISSION ORGANIZATION, OR AN INDEPENDENT SYSTEM OPERATOR, EACH ELECTRIC ENTITY SHALL IMPLEMENT AND FOLLOW:

~~(1) THE RELIABILITY COUNCIL'S LOAD SHEDDING PROCEDURES.~~

~~(2) THE PROVISION OF THE ELECTRIC ENTITY'S EMERGENCY PLAN, AS APPROVED BY THE COMMISSION, IF APPLICABLE.~~

4. Proposed Rule 4901:5-37-04, Sudden or Unanticipated Emergency Resulting in Overloading Transmission Facilities

The introductory language in proposed Rule 4901:5-37-04 provides that electric entities shall perform certain acts "as required" during sudden or unanticipated outages caused by overloading. The comparable language in Proposed 4901:5-37-05 reads "as required and as applicable." The electric entity should have discretion and flexibility in resolving these sudden unanticipated operational problems and the language should so indicate. And the electric entity should only be required to take measures that resolve the emergency condition. For example, one might read the list in Proposed Rule 4901:5-37-04 to mean an electric entity has to perform every single action instead of only those actions needed to resolve the problem. These problems could be solved by replacing both references with the phrase "as appropriate." That appears to be the overall intent, although the language is presently somewhat vague.

➤ **Recommended Rule Change for 4901:5-37-04**

WHEN SUDDEN OR UNANTICIPATED GENERATION OR TRANSMISSION OUTAGES CAUSE AN OVERLOADING OF AN ELECTRIC ENTITY'S FACILITIES OR INTERCONNECTION CIRCUITS THAT OPERATE AT A NOMINAL SIXTY HERTZ, THAT ELECTRIC ENTITY SHALL PERFORM ANY OR ALL OF THE FOLLOWING ACTIONS, AS APPROPRIATE REQUIRED:

5. Proposed Rule 4901:5-37-05, Anticipated Emergency Conditions

The Proposed Rule is listed as 4901:5-37-04 when it should be numbered 4901:5-37-05.

The “as required and as applicable” language should be replaced by the phrase “as appropriate,” consistent with the above discussion.

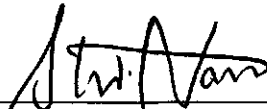
➤ **Recommended Rule Change for 4901:5-37-05**

WHEN ANTICIPATED SHORTAGES OF ELECTRICAL ENERGY CANNOT BE RELIEVED BY AUTOMATIC RESERVE SHARING AND EMERGENCY PURCHASES OR OTHER SOURCES WITHIN OR OUTSIDE THE INTERCONNECTED AREA, EACH ELECTRIC ENTITY SHALL PERFORM ANY OR ALL OF THE FOLLOWING ACTIONS, AS APPROPRIATE REQUIRED ~~AND AS APPLICABLE~~:

CONCLUSION

For the foregoing reasons, the AEP Companies recommend the above changes be adopted by the Commission in finalizing its rule review.

Respectfully submitted,



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