

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for)
 Alternative and Renewable Energy)
 Technologies and Resources, and)
 Emission Control Reporting Requirements,)
 and Amendment of Chapters 4901:5-1,)
 4901:5-5, and 4901:5-7 of the Ohio)
 Administrative Code, Pursuant to Chapter)
 4928, Revised Code, to Implement Senate)
 Bill No. 221.

Case No. 08-888-EL-ORD

INITIAL COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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September 9, 2008

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INITIAL COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

I. INTRODUCTION AND BACKGROUND

To implement the recently passed Amended Substitute Senate Bill 221 ("SB 221"), the Public Utilities Commission of Ohio ("Commission") issued the third of three sets of Commission Staff proposed rules in an August 20, 2008 Entry. The proposed rules touch on portfolio requirements, alternative energy resources, renewable energy credits, clean coal technology, federal environmental regulations and other subjects which are or are not related to SB 221. In addition, the Commission's August 20, 2008 Entry indicated that the Commission Staff is proposing various modifications to the forecast rules and the creation of the following three new utilities division chapters of the Ohio Administrative Code ("O.A.C."):

- 4901:1-39 Energy Efficiency and Demand Reduction Benchmarks
- 4901:1-40 Alternative Energy Portfolio Standard
- 4901:1-41 Greenhouse Gas Reporting and Carbon Dioxide Control Planning

The Industrial Energy Users-Ohio ("IEU-Ohio") provides its comments for Commission review on the proposed rules. IEU-Ohio's failure to address any particular portion of the proposed rules or questions should not be interpreted as IEU-Ohio's acceptance of such proposed rules.

II. COMMENTS

A. General Comments

The proposed rules have been issued without conducting any workshops or informal conferences to gather information and to consider the perspective of the parties who will be affected by these rules. The absence of this useful process may be understandable given the time available for issuing rules. But, the quality of the proposed rules suffers as a result.

The portfolio requirements in SB 221 are new to Ohio law. Accordingly, this is an area where the Commission rule making authority could have narrowed or resolved issues related to implementation and compliance. Instead, the Commission proposed rules that push off the resolution of issues, that are, in some cases, inconsistent with SB 221, and effectively create a bias against reliance on customer-sited capabilities to meet or exceed the portfolio requirements at a time when the need to retain and expand Ohio's manufacturing base has received recognition from the Governor and the Ohio General Assembly.

As these comments are being submitted, it is September 2008 and the portfolio obligations attach beginning in January 2009. As discussed below, the proposed rules are in need of significant modification.

In some instances, the proposed rules mirror or nearly mirror the exact language from provisions in SB 221. Consistent with previous comments IEU-Ohio has submitted, IEU-Ohio sees no value in establishing rules that simply repeat statutory provisions or that appear to paraphrase statutory language in ways that may bring confusion to the meaning of the law as written by the General Assembly. If any rules are necessary in this context, they should simply reference the applicable Revised Code section so as to eliminate any need to revise the rule once adopted, should the applicable Revised Code section be modified. For example, proposed rule 4901:1-40-03(A)(2), regarding alternative energy portfolio standards, is nearly verbatim to Section 4928.64(B)(1) and (2), Revised Code, except that the referenced date ("by the end of the year 2024") in proposed rule 4901:1-40-03(A) differs from what is stated in Section 4928.64(B), which sets the compliance time as being "by 2025 and thereafter...."

In addition, IEU-Ohio recommends that the proposed rules state that compliance with the portfolio requirements including the energy efficiency, demand reduction and alternative energy mandates are applicable to an electric distribution utility ("EDU") regardless of whether the EDU is operating under a market rate option under Section 4928.142, Revised Code, or an electric security plan under Section 4928.143, Revised Code.

Finally, IEU-Ohio notes that in all phases of the proposed rules, Commission Staff proposes to use the term "electric utility" in place of "electric distribution utility" or EDU. This change in the terminology may cause confusion inasmuch as several of the rules proposed by Staff will refer to an "electric utility" while the applicable Revised

Code section references the term EDU.¹ Thus, as pointed out by FirstEnergy's August 12, 2008 Initial Comments in Case No. 06-653-EL-ORD, changing the term "EDU" to the term "electric utility" has the effect of including a broader range of entities to conform to rules which are only intended for EDUs, therefore introducing unintended ambiguity or results.

B. 4901:1-39-03 - Filing and Review of the Benchmark Report

Proposed subsection (C) provides that the Staff shall file a report and any recommendations regarding an EDU's compliance with energy efficiency and peak demand reduction benchmarks. However, the proposed rule does not prescribe a time deadline for the Staff report to be submitted to the Commission or any indication of how or when the Commission will address the report.

C. 4901:1-39-04 - Benchmark Report Requirements

This proposed rule addresses the steps EDUs must take to update their calculated baselines as well as the reporting to demonstrate compliance with energy efficiency and peak demand reduction requirements. The proposed rule, however, fails to provide the process by which the 2009 benchmarks may be achieved and evaluated to ensure that such review is performed on an efficient and timely basis and more importantly, that the 2009 benchmarks are achieved.

The proposed rule fails to give proper recognition to the emphasis placed upon customer-sited capabilities to be used towards compliance with energy efficiency and peak demand reduction requirements.

Section 4928.66(A)(2)(c), Revised Code, specifically prescribes that measurement of compliance with the statutory benchmarks "shall be measured by

¹ Compare, for example, proposed rule 4901:1-39-04 with Section 4928.66(A)(2)(c), Revised Code.

including the effects of all demand response programs for mercantile customers of the subject electric distribution utility and all such mercantile customer-sited energy efficiency and peak demand reduction programs, adjusted upward by the appropriate loss factors.” (Emphasis added). Additionally, Section 4928.66(A)(2)(d), Revised Code, states that “Division (A)(2)(c) of this section shall be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand response, energy efficiency, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to Section 4905.31 of the Revised Code.” (Emphasis added).

The statutory language indicates that customer-sited demand response, energy efficiency and peak demand capabilities are to be the primary vehicle through which EDUs satisfy these statutory requirements. The rules must therefore recognize the preference for the customer-sited opportunities by requiring that the electric distribution utilities address how they intend to meet the specified benchmarks through the measures identified in SB 221, including the customer-sited capabilities, in their applications filed pursuant to Sections 4928.142 and 4928.143, Revised Code.

Additionally, proposed subsection (B)(1) sets forth the benchmark for energy savings, stating that “the baseline for energy savings shall be the average of the total kilowatt hours purchased by the electric utility’s Ohio distribution customers in the preceding three calendar years as reported in the utility’s three most recent forecast reports or reporting forms.” The language of the proposed rule, however, is inconsistent with Section 4928.66(A)(2)(a), Revised Code, which states, “The baseline for energy savings under division (A)(1)(a) of this section shall be the average of the total kilowatt

hours the electric distribution utility sold in the preceding three years....” As stated in the general comments above, the proposed rule should either reference the applicable Revised Code section or should be revised to maintain consistency with the applicable section of the Revised Code so as to mitigate potential ambiguity and confusion.

Similarly, proposed subsection (B)(2), which sets forth the benchmark for baseline peak demand reduction states, “The baseline for peak demand reduction shall be the highest seasonal hourly integrated peak demand in each of the past three calendar years as reported in the utility’s three most recent forecast reports or reporting forms.” Again, the proposed language is inconsistent with the language set forth in Section 4928.66(A)(2)(a), which states that “...the baseline for a peak demand reduction under division (A)(1)(b) of this section shall be the average peak demand on the utility in the preceding three calendar years.” The proposed rule must be revised to maintain consistency with the applicable section of the Revised Code.

Proposed subsection (B)(7) states that “An electric utility shall include in its benchmark report an assessment and market valuation of demand reduction potential and energy efficiency resources.” The proposed language does not identify what the market valuation should entail, and more importantly, how and for what purpose the market valuation will be used.

Proposed subsection (C)(1) states that in an electric utility’s annual benchmark report to the Commission, “[a]n electric utility shall not count technologies or measures that are mandated by law including those embodied in the Energy Independence and Security Act of 2007.” This restriction exceeds the authority delegated to the Commission. SB 221 does not specify that any tool or technology is prohibited from

being counted in the electric distribution utility's benchmark report in achieving the performance levels mandated by the General Assembly.

D. 4901:1-39-05 – Recovery Mechanism

Subsection (A)(1) limits recovery of transmission and distribution infrastructure investments pursuant to Section 4928.66, Revised Code, to "those investments that are attributable to energy efficiency purposes as opposed to reliability or market purposes." The proposed limitation appears to be intended to prevent double recovery opportunities. IEU-Ohio suggests that rather than focus on what actual components should be permitted or not permitted for recovery purposes, the Commission should adopt rules that are directed at the objective (no double recovery).

Moreover, the proposed rule too narrowly identifies the customer-sited capabilities that can be integrated into the EDU's portfolio by focusing only on peak demand reduction, demand response, or energy efficiency capabilities. This is unreasonable and beyond the provisions of SB 221 inasmuch as Section 4929.66(A)(2)(c), Revised Code, states in part that "any mechanism designed to recover the cost of energy efficiency and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand response, energy efficiency, or peak demand reduction programs, if the commission determines that the exemption reasonably encourages such customers to commit those capabilities to those programs." Clearly, the legislation does not limit the opportunity for a customer-sited exemption to just situations where the capability is connected to peak demand

reduction, demand response, or energy efficiency programs. Therefore, IEU-Ohio suggests that the proposed rules be revised to eliminate such limitations and broaden the proposed rule to be consistent with SB 221.

E. 4901:1-39-06 - Commitment for Integration by Mercantile Customers

As a general matter, this proposed rule proposes certain requirements for special arrangements between electric utilities and mercantile customers who 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. Consistent with IEU-Ohio's previous comments to rules implementing SB 221, IEU-Ohio suggests that the Commission be less rigid with any proposed rule requirements until the Commission and other stakeholders gain more experience on the issues being considered and instead focus more on the administrative and substantive process for those issues in the initial phases of rule implementation.

As an example, proposed subsection (B) sets forth additional provisions for mercantile customers and EDUs to file applications for approval of special arrangements, including requests for exemption from the rate recovery mechanism of the electric utilities as set forth in proposed rule 4901:1-39-05. This is good as far as it goes. But, proposed rule 4901:1-39-06(B) provides that in order to qualify for the rate recovery exemption, the mercantile customer must consent to providing data on its facilities to the United States Environmental Protection Agency's ("USEPA") portfolio manager as described in proposed rule 4901:1-39-04. This rule mimics proposed rule 4901:1-39-0(C)(2) which requires the EDU to report information to the USEPA through

the portfolio manager database. However, unlike proposed rule 4901:1-39-0(C)(2), there is no option for the customer to opt-out of submitting this data to the USEPA.

IEU-Ohio has several concerns with this proposed rule. First, the USEPA portfolio manager database allows users to track and assess energy and water consumption within individual buildings as well as across their entire building portfolio. Users enter energy consumption and cost data into their portfolio manager account to benchmark building energy performance, assess energy management goals over time, and identify strategic opportunities for savings and recognition opportunities, and is then shared with other portfolio manager users. IEU-Ohio is concerned that use of the USEPA's portfolio manager may subject users to public disclosure of the energy usage and cost information, as well as other commercially sensitive data. Thus, while IEU-Ohio is not opposed to voluntary use of the USEPA's portfolio manager, mandatory participation is not appropriate.

Second, SB 221 contains no linkage to participation in the USEPA's portfolio manager as a condition of eligibility for exemption from cost recovery mechanisms for energy efficiency and demand response expenditures, and therefore the proposed rule requirement exceeds the Commission's statutory authority.

Finally, the USEPA's portfolio manager may provide a useful tool for customers to benchmark their energy efficiency improvements against similar facilities. However, based upon the proposed rules, it is not clear what benefit, if any, Ohio would derive by requiring participation in the USEPA's portfolio manager. The proposed rules require customers to submit information to the USEPA, but do not appear to contemplate that Ohio would use this information in any fashion. Thus, while there is a clear

administrative burden associated with the proposed rule, the benefits of doing so are missing.

It may be possible for mercantile customers and electric utilities to use the information from the USEPA portfolio manager or other similar program as a tool to document the energy efficiencies gained from the customer-sited programs. If this is the intent, IEU-Ohio recommends the rules be clarified to reflect these intentions. However, in the absence of clarification, the proposed rule imposes administrative burden with no corresponding benefits.² Therefore, absent clarification, IEU-Ohio recommends the rule be deleted.

With respect to the proposed items in subsection (B)(1) through (7), which Staff suggests be required as part of an application for approval of a special arrangement under proposed rule 4901:1-39-06, IEU-Ohio notes that the information being requested all relates to backward-looking data. The historical perspective of the proposed rule ignores, unreasonably and unlawfully, the opportunity for an exemption to be connected to the future implementation of a customer-sited program.

F. 4901:1-40-01 - Definitions and 4901:1-40-04 - Qualified Resources

Subsection (M) defines "Double-counting" as "utilizing renewable energy, renewable energy credits, or energy efficiency savings to (1) satisfy multiple regulatory requirements, (2) support multiple voluntary product offerings, (3) substantiate multiple marketing claims, or (4) some combination of these." Subsection (C) of proposed rule 4901:1-40-04 prohibits a mercantile customer from contributing customer-sited resources towards an EDU's benchmark requirement if it could constitute double

² In the absence of any express rule, mercantile customers would still be able to voluntarily use the USEPA portfolio manager to benchmark energy efficiency, as some IEU-Ohio members presently elect to.

counting towards any other regulatory requirement. As drafted, this language is overly broad and may place inappropriate impediments on the use of customer-sited capabilities. For example, a customer cogeneration facility that relies upon biomass as its primary fuel should be eligible to count towards the renewable portfolio requirements. However, if such a facility seeks and obtains from the Federal Energy Regulatory Commission ("FERC") designation as a qualifying facility (i.e. another regulatory requirement), the proposed rule may have the effect of preventing the resource from being counted towards Ohio's renewable portfolio standards as it could be characterized as double counting.

IEU-Ohio suspects that the intention of the proposed rule is to not allow double counting towards multiple renewable resource requirements that may exist, and therefore suggests that the proposed rule be modified to clarify this intent. If that is not the intent, however, IEU-Ohio suggests the proposed rule be deleted as the prohibition on satisfying multiple regulatory requirements is not embodied within SB 221 and is overly broad.³

Consistent with its comments regarding proposed rule 4901:1-39-04, IEU-Ohio suggests that proposed rule 4901:1-40-4 be expanded to give proper recognition to customer-sited capabilities to be used towards compliance with advanced energy requirements. Such facilities are eligible to meet the demand reduction and energy efficiency benchmarks required under Section 4928.66, Revised Code.

³ In fact, the proposed rule appears to be directly at odds with SB 221 regarding multiple regulatory requirements. Customer-sited advanced energy projects that may be used to qualify with portfolio requirement under Section 4928.64, Revised Code, are also eligible to meet energy efficiency and peak demand reduction requirements under Section 4928.66, Revised Code.

G. 4901:1-40-04 - Qualified Resources

Proposed subsection (D)(2) provides that if an electric utility uses renewable energy credits ("RECs") as a means of achieving partial or complete compliance to satisfy its renewable energy resource benchmarks, it must be a member in good standing in the PJM generation attributes tracking system ("GATS"), the Midwest renewable energy tracking system, or another credible tracking system subsequently approved for use by the Commission.

The proposed rule does not properly implement the requirements of Section 4928.65, Revised Code, which states, "The rules also shall provide for this state a system of registering renewable energy credits by *specifying* which of any generally available registries *shall be used* for that purpose and not by creating a registry." Thus, before an "Ohio REC" can be created, there must be a specification of at least one REC registry and that REC registry must be capable of identifying what actions and performance will produce an "Ohio REC" so that it can properly issue an Ohio REC. The proposed rule fails entirely to consider how certificates issuable by a registry for demand response or energy efficiency might also be used to facilitate compliance with the Ohio requirements as well as any audit function associated with that compliance. The proposed rule appears to ignore the actions that Ohio and its agent, the Commission, must take to enable the creation of an Ohio REC.

In addition, the limitation in subsection (D)(3) states that a REC may be used for compliance any time in the five calendar years following the date of its *initial* purchase or acquisition goes beyond the language specified in Section 4928.65, Revised Code, which states that "An electric utility or electric services company may use renewable

energy credits any time in the five calendar years following the date of their purchase or acquisition from any entity....” As stated in the General Comments section of these Initial Comments, IEU-Ohio suggests that such a language change can lead to unintended ambiguity, confusion, and even worse, misapplication of the law. As such, the Commission should modify the proposed language to be consistent with the Section 4928.65, Revised Code.

Finally, the limitation in proposed subsection (D)(5) that RECs remain fully aggregated to be applied towards compliance is beyond the requirements of SB 221. Proposed rule 4901:1-40(U) defines “Fully aggregated” to mean that a renewable energy credit shall retain all of its attributes, including those pertaining to air emissions, and that specific attributes are not separated from the renewable energy credit and sold individually. SB 221 does not provide for this limitation and therefore the Commission should delete this subsection from the proposed rules. If a non-aggregated REC is used for compliance as permitted by SB 221, then it is reasonable to assume that it produces compliance at a lower total cost.

Proposed subsection (E)(2) states that the Commission may approve, suspend, or deny an application for certification of resources or technologies to ensure that the resources or technologies would count as a qualified resource, and that if the Commission does not act on the application within sixty days, the application is deemed automatically approved on the sixty-first day after the filing date. However, proposed subsection (E)(5) states that “Certification of a resource or technology shall not predetermine compliance with annual benchmarks, and does not constitute any commission position regarding cost recovery.” The combination of the two subsections

offer nothing but uncertainty regarding the ability for entities to rely on what the Commission approves as being a qualified resource, and essentially turns this rule into an opportunity for the Commission to avoid being responsible for its up front determination.

During the SB 221 legislative discussions, much attention was paid to the need for clear, up-front, requirements as a means of enabling new markets in advanced technologies, alternative energy resources, energy efficiency and peak demand reduction products or services. Rules that effectively leave stakeholders wondering if or when the Commission will ignore an upfront determination regarding what actions will or will not be counted for compliance purposes are rules that work against the letter and spirit of SB 221.

H. 4901:1-40-06 – Force Majeure

This proposed rule sets forth the process by which an electric utility or electric services company may seek a force majeure determination for all or part of a minimum renewable energy or solar energy benchmark. The proposed rule states that such a request shall demonstrate that the electric utility or electric services company pursued all reasonable compliance options, including but not limited to, REC solicitations, REC banking, and long-term contracts, as well as an assessment of the availability of qualified in-state resources and resources within the PJM interconnection regional transmission organization and Midwest independent system operator. IEU-Ohio suggests that given the importance of customer-sited capabilities as discussed above with respect to proposed rule 4901:1-39-04, that this proposed rule must require a similar demonstration of efforts to engage customer-sited capabilities.

I. 4901:1-40-07 – Cost Cap

Proposed subsection (D) states that “Any costs included in a commission-approved unavoidable surcharge for construction expenditures or environmental expenditures of generation resources may be excluded from consideration as a cost of compliance under the terms of the alternative energy portfolio standard.” The proposed rule, however, does not state under what circumstances such expenditures may be excluded, although it appears that the proposed subsection intends to address issues of double counting. IEU-Ohio suggests that if that is Staff’s intent, then it may be more practical to modify the proposed subsection to state that if full cost recovery is being achieved through one mechanism, it shall not be available through any other mechanism.

Proposed subsection (E) states that if the Commission makes a determination that the three per cent generation rate cost cap provision is triggered under Section 4928.64(C)(3), Revised Code, then “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.” The proposed rule, however, does not set forth any direction on how the utility should prioritize the measures undertaken to reach the required benchmarks up to the 3 per cent cap. IEU-Ohio suggests, consistent with its comments regarding proposed rule 4901:1-39-04, that any customer-sited capabilities should have priority for contributing to the benchmark requirements, prior to the 3 per cent cap being triggered.

J. 4901:1-41-01 – Definitions (Greenhouse Gas Reporting and Carbon Dioxide Control Planning)

Proposed subsection (F) sets forth a definition for "Person," stating that it "has the meaning set forth in sections 4906.01 and 4935.04 of the Revised Code." IEU-Ohio is concerned that the use of the term "person" as defined in the proposed subsection (F) may include entities not intended to be subjected to the proposed rules for greenhouse gas reporting and carbon dioxide control planning.

For example, the proposed rules would apply to "any person which owns or operates an electric generating facility within Ohio" and the definition of "person" is codified in Sections 4906.01 and 4935.04, Revised Code. Section 4906.01(A), Revised Code, defines "person" as "an individual, corporation, business trust, association, estate, trust, or partnership or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity" and Section 4935.04(A), Revised Code, merely incorporates this definition into that Chapter. In addition, the definition of "electric generating facility" means an "electric generating plant and associated facilities capable of producing electricity." It is not clear exactly what type of facility would be considered an "electric generating plant" or be characterized as "associated facilities capable of producing electricity."

Consequently, the Commission's proposed rules may impact entities not intended to be subject to the requirements contained within SB 221. Section 4928.68, Revised Code, limits the applicability of these rules to "each electric generating facility that is located in this state, is owned or operated by a public utility that is subject to the commission's jurisdiction, and emits greenhouse gases, including facilities in operation on the effective date of this section." (Emphasis added). IEU-Ohio therefore suggests

that the Commission modify the definition of "person" in subsection (F) and/or make other modifications to synchronize this proposed rule with Section 4928.68, Revised Code to clarify what entities must comply with these reporting mechanisms.

K. 4901:5-1-01 – Definitions and 4901:5-1-02 – Purpose and Scope (Long-Term Forecast Reports)

Proposed subsection (G) defines person as it does above in proposed rule 4901:1-41-01(F), but unlike proposed rule 4901:1-41-01(F), proposed rule 4901:5-1-02(B) clarifies who the rule would actually apply to, stating that the provisions in the chapter shall apply "to each person owning or operating a major utility facility in this state, or furnishing gas, natural gas, or electricity directly to more than fifteen thousand customers within this state." IEU-Ohio suggests that the definition under proposed rule 4901:5-1-01(G) and the purpose and scope section under proposed rule 4901:5-1-02(B) be modified to explicitly state that the long-term forecast reporting rules should not apply to customer-generators.

L. 4901:5-1-03 – Long-Term Forecast Reports Requirements

This proposed rule sets forth requirements for the long-term forecasting reports, but does not specify what the purpose of the report shall be and the process for which approval of the report will undergo. The rule identifies a lot of information that must be prepared and submitted but offers no guidance on how and when the information will result in Commission determinations that are binding.

M. 4901:5-3-01 – Definitions (Filing Fees for Long-term forecast reports).

Proposed subsection (B) defines "Electric transmission owner" as "the owner of a major utility facility as defined in section 4925.04 of the Revised Code." This definition has the effect of including within it, projects that should not be included, such as gas or

natural gas projects that meet the definition of "major utility facility" under Section, 4935.04, Revised Code.⁴ As such, the Commission should modify the proposed rule to more specifically cite to Section 4935.04(A)(1)(a), which appears to be the intent of the proposed definition.

N. 4901:5-5-01 – Definitions (Electric utility forecast reports filing requirements)

Proposed subsection (G) provides the same definition of "Electric transmission owner" as in proposed rule 4901:5-3-01. As such, IEU-Ohio has the same concerns and suggestion regarding the use of that definition in this proposed rule. IEU-Ohio also echoes its concerns regarding the definition of person, defined in proposed subsection (T) and reiterates IEU-Ohio's comments set forth above regarding proposed rules 4901:1-41-01(F) and 4901:5-1-01(G).

Proposed subsection (V) defines "system capability" to mean "the installed capability of all generating units on the utility system plus firm purchases." IEU-Ohio suggests that the proposed definition does not make sense and again may have the unintended consequence of including, within the definition, generating units that should

⁴ Section 4935.04, Revised Code, states:

(A) As used in this chapter:

(1) "Major utility facility" means:

(a) An electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more;

(b) A gas or natural gas transmission line and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of one hundred twenty-five pounds per square inch.

"Major utility facility" does not include electric, gas, or natural gas distributing lines and gas or natural gas gathering lines and associated facilities as defined by the public utilities commission; facilities owned or operated by industrial firms, persons, or institutions that produce or transmit gas or natural gas, or electricity primarily for their own use or as a byproduct of their operations; gas or natural gas transmission lines and associated facilities over which an agency of the United States has certificate jurisdiction; facilities owned or operated by a person furnishing gas or natural gas directly to fifteen thousand or fewer customers within this state.

not be considered within the proposed rule. For example, the proposed definition would seem to include as part of a system capability, a merchant generating system that is on the FirstEnergy system but not within FirstEnergy's control.

Proposed subsection (X) defines ITC, stating that it "means total transfer capacity as defined by the regional reliability organization standards and is the measure of the ability of the interconnected electric systems to reliably move or transfer power from one area to another over system conditions all transmission lines or paths between those areas under specified." The proposed definition is unclear and does not adequately define "regional reliability organization standards". In addition, the proposed rule does not define the term "reliably".

O. 4901:5-5-02 – Forecast report requirements for electric utilities and transmission owners

IEU-Ohio suggests that the Commission modify proposed subsection (C)(3) to include customer-sited capabilities. In addition, and in conjunction with that suggestion, IEU-Ohio suggests that the Commission add a subsection to (C)(3) that would provide some specific but non-limiting examples of such customer-sited opportunities and also allow parties to seek an up-front and binding determination of how these capabilities will count for portfolio compliance purposes.

P. 4901:5-5-05 – Resource plans for electric distribution utilities

Subsection (A)(1) and (2) provides for certain requirements for the electric utility to file with its long-term forecast report, which includes all resource plan requirements in rule 4901:5-5-05 subsequent to filing an application under division (B)(2)(b) and/or (B)(2)(c) of Section 4928.143 of the Revised Code. Consistent with IEU-Ohio's

comments above, IEU-Ohio suggests that each electric utility also file within its long-term forecast reports the customer-sited capabilities that it plans to incorporate.

Q. Chapter 4901:5-7 – Gas and natural gas forecast reports

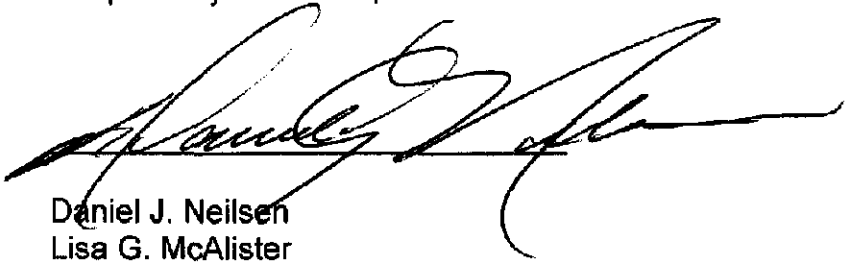
IEU-Ohio is concerned that the inclusion of the gas and natural gas forecast report rules may not have been known to all of the stakeholders that would be interested with how such rule revisions would apply to gas or natural gas companies or customers. As such, IEU-Ohio suggests that the Commission re-issue an entry that provides specific notice to all such interested stakeholders to ensure that all parties have proper notice to provide substantive comments on the proposed rules or changes to the rules.

Notwithstanding IEU-Ohio's suggestions immediately above, IEU-Ohio suggests that proposed rule 4901:5-7-01(B) regarding the definition of "Energy conservation" be revised to include non-customer adoption and use of measures, standards, equipment, or techniques as well.

III. CONCLUSION

For the reasons discussed herein, IEU-Ohio respectfully requests that the Commission incorporate IEU-Ohio's suggestions into the proposed rules.

Respectfully submitted,

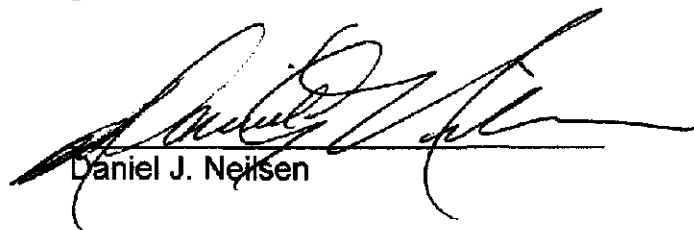
A handwritten signature in black ink, appearing to read "Daniel J. Neilsen", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Initial Comments of Industrial Energy Users-Ohio* has been served, by regular U.S. Mail, postage prepaid, upon Langdon D. Bell, Bell & Royer Co., LPA, 33 South Grant Avenue, Columbus, OH 43215, and David Marchese, Haddington Ventures, LLC, 2603 August, Suite 900, Houston, TX 77057 this 9th day of September, 2008.



Daniel J. Neilsen