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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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**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, 4901:5-3,
4901:5-5, and 4901:5-7 of the Ohio
Administrative Code, pursuant to Chapter
4928, Revised Code, to Implement Senate Bill
No. 221.**)
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Case No. 08-888-EL-ORD

**INITIAL COMMENTS OF COLUMBUS SOUTHERN POWER COMPANY
AND OHIO POWER COMPANY**

INTRODUCTION

By entry dated August 20, 2008, the Commission initiated this docket to implement Senate Bill No. 221 by considering the adoption of proposed rules to be found in OAC Chapter 4901:1-39 (Energy Efficiency and Demand Reduction Benchmarks Applicable Ohio Revised Code Sections: 4928.65 and 4928.66), OAC Chapter 4901:1-40 (Alternative Energy Portfolio Standard Applicable Ohio Revised Code Sections: 4928.64 and 4928.65), and OAC Chapter 4901:1-41 (Greenhouse Gas Reporting and Carbon Dioxide Control Planning). The August 20 Entry also initiated a review of the existing Rules for Long-Term Forecast Reports found in OAC Chapter 4901:5-1, Rules for Filing of Long-Term Forecast Reports found in OAC Chapter 4901:5-3, Rules for Electric Utility Forecast Report Filing Requirements found in OAC Chapter 4901:5-5, and Rules for Gas and Natural Gas Forecast Reports found in OAC Chapter 4901:5-7. The August 20 Entry invited comments from interested parties. Columbus Southern Power Company and Ohio Power Company (collectively, "AEP Ohio") submit certain targeted comments below in response to the Commission's invitation for input and reserves the ability to file reply comments on any matter raised by another commenter.

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OAC CHAPTER 4901:1-39: ENERGY EFFICIENCY AND DEMAND REDUCTION BENCHMARKS APPLICABLE OHIO REVISED CODE SECTIONS: 4928.65 AND 4928.66

It is not clear why Section 4928.65, Ohio Revised Code, is referenced in the title of this OAC Chapter. Section 4928.65, Ohio Revised Code, is appropriately referenced in OAC Chapter 4901:1-40 but does not need to be included here. Doing so creates an ambiguity and could cause confusion.

Rule 4901:1-39-01, Definitions

The proposed definition of “energy efficiency” is broad and abstract, which tends to suggest a concept that is vague in its application. AEP Ohio recommends using a definition based on language from the United State Department of Energy definition. It is more specific and captures the key concept more directly: reduction of electricity consumption while retaining comparable functionality for which the electric service was being used. Similarly, AEP Ohio recommends using a definition of “demand response” that is based on that developed by the U.S. Demand Response Coordinating Committee, in order to capture a more widely-accepted definition. AEP Ohio’s recommended language is set forth below.

➤ **Recommended Rule Changes for Rule 4901:1-39-01¹**

- (A) ~~“Demand response” means a change in customer behavior or a change in customer owned or operated assets that effects the quantity and/or timing of electricity consumed as a result of price signals or other incentives. Demand response can reduce kilowatts of demand and/or kilowatt hours of energy usage. Demand response includes economic interruption or reduction of customer load, and may include certain types of energy conservation. PROVIDING ELECTRICITY CUSTOMERS IN BOTH RETAIL AND WHOLESALE~~

¹ The rule language proposed by AEP Ohio in these comments is redlined starting from the proposed Staff rule language and does not attempt to replicate AEP Ohio’s proposed revisions on top of the layer of proposals being proposed by Staff.

ELECTRICITY MARKETS WITH A CHOICE WHEREBY THEY CAN RESPOND TO DYNAMIC OR TIME-BASED PRICES OR OTHER TYPES OF INCENTIVES BY REDUCING AND/OR SHIFTING USAGE, PARTICULARLY DURING PEAK PERIODS, SUCH THAT THESE DEMAND MODIFICATIONS CAN ADDRESS ISSUES SUCH AS PRICING, RELIABILITY, EMERGENCY RESPONSE, AND INFRASTRUCTURE PLANNING, OPERATION, AND DEFERRAL.

- (B) ~~“Energy efficiency” means the energy content of the useful output from a process, device, or system divided by the energy input into that process, device, or system~~ PROGRAMS OR MEASURES THAT ARE AIMED AT REDUCING THE ENERGY USED BY SPECIFIC END-USE DEVICES AND SYSTEMS, TYPICALLY WITHOUT AFFECTING THE SERVICES PROVIDED. THESE PROGRAMS OR MEASURES REDUCE OVERALL ELECTRICITY CONSUMPTION (REPORTED IN MEGAWATT HOURS), OFTEN WITHOUT EXPLICIT CONSIDERATION FOR THE TIMING OF PROGRAM-INDUCED SAVINGS. SUCH SAVINGS ARE GENERALLY ACHIEVED BY SUBSTITUTING TECHNOLOGICALLY MORE ADVANCED EQUIPMENT TO PRODUCE THE SAME LEVEL OF END-USE SERVICES (E.G. LIGHTING, HEATING, MOTOR DRIVE) WITH LESS ELECTRICITY. EXAMPLES INCLUDE HIGH-EFFICIENCY APPLIANCES, EFFICIENT LIGHTING PROGRAMS, HIGH-EFFICIENCY HEATING, VENTILATING AND AIR CONDITIONING (HVAC) SYSTEMS OR CONTROL MODIFICATIONS, EFFICIENT BUILDING DESIGN, ADVANCED ELECTRIC MOTOR DRIVES, HEAT RECOVERY SYSTEMS AND PROCESS EFFICIENCY IMPROVEMENTS.

Rule 4901:1-39-04, Benchmark report requirements

Subsections (A)(3) and (A)(4) require annual reporting of “all actions considered and taken to comply with the adjusted benchmarks for the prior calendar year” and “all plans for meeting future benchmarks.” Similar language is used in subsection (B)(5). These reporting requirements are burdensome and overbroad, to the extent they include “all” actions taken and considered. It is not clear why actions considered are of interest or relevance and requiring reporting of such information could have a chilling effect on an electric utility’s consideration of certain actions. Even with respect to actions taken, the Commission would only need reporting on the programs and measures implemented to achieve compliance with the mandates. The specifics on what is required for this reporting obligation are listed in proposed

subsection (B)(5) and the additional language regarding “all actions considered and taken” is not needed.

There is also another important issue in this regard that is not directly addressed in this rule. Given the enormous practical and logistical challenges involved in coordinating compliance with the various mandates imposed by S.B. 221, the reality is that the timing of an electric utility’s compliance and attainment of energy efficiency and demand reduction will not coincide perfectly with the timing of the statutory mandates. In other words, an electric utility will likely have to “over comply” in order to fully comply in a timely manner. For example, in order to achieve the required energy efficiency reductions in 2009, consistent with Section 4928.66(A)(1)(a), a set of programs will be assembled and implemented to achieve a reduction that may be close to, but is larger than, the 0.3% mandate. Some refer to this issue as “banking,” although that term may not be entirely descriptive or accurate. In any case, it would be unfair and would not provide a proper set of incentives for a utility to implement the most cost-effective programs in the most practical increments, if the total energy efficiency attainment (including the increment of “over compliance” from all prior years) cannot be used to meet subsequent years’ mandates. In this regard, AEP Ohio notes that “banking” is mentioned in Section 4928.64(C)(4)(b) as a legitimate compliance strategy. The Commission should include language to recognize this phenomenon and clarify that an electric utility will not be punished for staying ahead of the mandates. In the parlance of the proposed rule, an electric utility’s compliance efforts should not be limited to only those actions taken in the prior calendar year. AEP Ohio suggests language changes in subsections (A)(3) and (B)(5) to help clarify this point.

Subsection (B)(6) provides that a benchmark report shall include a ten-year projection of energy efficiency, peak demand reduction, demand response programs, and a five-year action plan for current programs including program budgets. There are too many variables to accurately make these ten-year projections. Similarly, a five-year budget would likely be misleading and of little value. The statute imposes the obligation of compliance on utilities and it does not provide for management of this process through regulations. It serves no useful purpose to require such extensive projections. AEP Ohio would prefer to eliminate the requirements. Even if the Commission is interested in proactively involving itself with a utility's management of such matters, the nature and extent of such reporting obligations seems to be burdensome and excessive, especially given the limited value of such long range projections; further, there should be disclaimer language attached to such reporting obligations as is proposed below.

In subsection (C), the proposed rules provide that Staff will subsequently publish guidelines for program measurement and verification (M&V) of compliance with Section 4928.66, Ohio Revised Code. It is the Commission's responsibility to determine compliance and it should not delegate this responsibility to Staff without any specific guidance. More importantly, it should not delegate without giving any notice to the affected utilities as to what the guidelines will provide. Given that the proposed rule ostensibly abdicates the responsibility to Staff for later implementation, the legality in this regard is questionable. Moreover, there is an inherent and fundamental due process problem with providing that a utility's compliance with current statutory obligations will be measured by standards that will be promulgated at some future date. Ideally, the Commission would decide and promulgate, with clarity and specificity, the M&V guidelines now. To be practical and current time constraints, AEP Ohio

recommends that the proposed rule provide that any M&V approach adhering to generally accepted industry standards, such as the 2001 International Performance Measurement and Verification Protocol (IPMVP) standards, will be deemed acceptable. If the Commission does not adopt any measurement and verification standards at this time or even give guidance as described above, it should, at a minimum, indicate that any Staff guidelines are not binding on the utilities or the Commission.

Subsection (C)(1) provides that an 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.” The wording in this statement implies that all of the standards embodied in the EISA are mandated by law in Ohio; this is not necessarily true. And the language used should make clear that only “specific” technologies or measures required by law cannot be used and only to the extent of such legal requirements. AEP Ohio suggests language to help clarify these points below.

➤ **Recommended Rule Changes for Rule 4901:1-39-04**

- (A)(3) A description of ~~all~~ ITS PRIOR actions ~~considered and taken~~ to comply with the adjusted benchmarks ~~for the prior calendar year~~.
- (A)(4) ~~All~~ CURRENT-plans for meeting future benchmarks OVER THE NEXT TWO YEARS.
- (B)(5) An electric utility shall describe ~~all~~ ITS PRIOR actions ~~considered and taken in the prior calendar year~~ to comply with the approved benchmarks, including: * * *
- (B)(6) An electric utility shall include in its benchmark report a ~~FIVE~~ten-year projection of energy efficiency, peak demand reduction, demand response programs, and a ~~TWO~~five-year action plan for current programs including program budgets, RECOGNIZING THAT SUCH PROJECTIONS AND PLANS ARE SUBJECT TO CHANGE AND ARE NOT BINDING.
- (C) An electric utility shall include in its benchmark report a description of all methodologies, protocols, and practices used or proposed to be used

in measuring and verifying program results. Staff may publish NON-BINDING guidelines for program measurement and verification of compliance with division (A)(1) of section 4928.66 of the Revised Code, ~~and the utility should identify and explain any deviations from such guidelines.~~ AN ELECTRIC UTILITY MAY USE ANY MEASUREMENT AND VERIFICATION APPROACH THAT ADHERES TO GENERALLY ACCEPTED INDUSTRY STANDARDS, SUCH AS THE 2001 INTERNATIONAL PERFORMANCE MEASUREMENT AND VERIFICATION PROTOCOL (IPMVP) STANDARDS.

- (1) An electric utility shall not count technologies or measures that are SPECIFICALLY mandated by law including those STANDARDS embodied in the Energy Independence and Security Act of 2007 THAT ARE MANDATORY.

Rule 4901:1-39-05, Recovery Mechanism

Subdivision (A) of this rule seems to qualify the timing and ability to recover costs of S.B 221 mandates until “approval of” an electric utility’s long-term forecast and benchmark reports. It is not clear what this means or when such approval would occur. It is not clear whether non-approval for an unrelated purpose would hold up the timing or ability to pursue cost recovery. There is no statutory condition like this on the utility’s ability to recover costs associated with these mandatory statutory obligations and there is no good reason to so limit a utility’s ability to do so. For example, AEP Ohio has a proposal pending as part of its Electric Security Plan to establish a rider for recovery of costs associated with these mandates. While all costs that pass through the rider would be subject to audit and reconciliation, as well as prudence review if appropriate, there is no condition that restricts the timing or ties cost recovery to approval of the long-term forecast report. As an additional reason not to adopt the proposed rule, the Commission should not prejudge such pending ESP proposals by adopting this proposed rule.

➤ **Recommended Rule Changes for Rule 4901:1-39-05**

- (A) ~~Upon approval of an electric utility's long term forecast and benchmark reports as set forth in Chapter 4901:1-5-1 of the Administrative Code, and this chapter, the AN ELECTRIC utility may file an application for recovery of costs due to peak demand reduction, demand response, energy efficiency program costs, appropriate lost distribution revenues, and potential shared savings, EITHER AS A STAND-ALONE APPLICATION OR UNDER A PROCEDURE ESTABLISHED AS PART OF AN ELECTRIC SECURITY PLAN.~~

Rule 4901:1-39-06, Commitment for integration by mercantile customers

Subdivision (A)(3) seems to suggest that a utility would always be involved in measurement and verification of customer-sited energy savings. Although it may be wise to provide for that possibility, it should not be generally presumed. Instead, the language should provide flexibility.

AEP Ohio anticipates that most of the agreements it will reach with mercantile customers will be forward-looking in nature and relate to future energy reductions and demand reductions associated with customer-sited capabilities and resources. There may be some retrospective aspects of such agreements but most will be forward-looking. Consequently, the language in subdivision (B) should be amended to allow both prospective and retrospective aspects.

For the reasons explained above in connection with proposed Rule 4901:1-39-04(C), the language in subdivision (C) regarding deviation from Staff-promulgated measurement and verification guidelines should be deleted here.

➤ **Recommended Rule Changes for Rule 4901:1-39-06:**

- (A)(3) Grant permission to the electric utility and staff to measure and verify energy savings and/or demand reductions resulting from customer-sited programs and resources, REGARDLESS OF WHETHER THE UTILITY PLANS TO DIRECTLY CONDUCT MEASUREMENT AND VERIFICATION.

- (B)(1) Baselines for kilowatt-hour consumption and kilowatt demand based upon averages of the three most recent years of metered data or, if metered data is not available, based upon a reasonable method of estimation.
- (2) ~~AN~~ **METHODOLOGY TO BE USED FOR AN** accounting of energy ~~saved~~ **SAVINGS ACHIEVED OR EXPECTED** and demand reductions achieved OR EXPECTED, and the resulting new levels of kilowatt-hour consumption and kilowatt demand.
- (3) A listing and description of programs undertaken OR PLANNED by the customer.
- (4) A description of measures taken OR PLANNED, devices or equipment installed OR PLANNED, processes modified OR PLANNED, or other actions taken OR PLANNED to increase energy efficiency and reduce demand.
- (5) An accounting of expenditures made AND EXPECTED for each program and for each program element.
- (6) The time line of when each program went into effect OR WILL GO INTO EFFECT, and when the energy savings and demand reductions took place OR ARE EXPECTED TO TAKE PLACE.
- (7) A copy of the formal declaration or agreement that commits the mercantile customer's programs for integration.
- (C) The application shall include a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results. ~~The application should also identify and explain all deviations from any guidelines which may be published by the staff for program measurement and verification of compliance.~~

**OAC CHAPTER 4901:1-40: ALTERNATIVE ENERGY PORTFOLIO
STANDARD APPLICABLE OHIO REVISED CODE SECTIONS: 4928.64
AND 4928.65**

Rule 4901:1-40-01, Definitions

The “double counting” definition embodied in proposed Rule 4901:1-40-01(M) is overbroad. Although the concept of prohibiting double counting for RECs may be reasonable in order to ensure that a particular certificate is only used once, AEP Ohio questions the validity

of this principle as applied to energy efficiency savings and renewable energy. This problem is also manifested in proposed Rule 4901:1-40-04(B)(7) which limits qualified resources to demand-side management and energy efficiency that are “above and beyond that used to comply with any other regulatory standard or programs” and in proposed Rule 4901:1-40-04(C) which limits qualified resources of mercantile customers not counted toward any other regulatory requirement. It is not clear why the proposed rules presume that energy efficiency and DSM done in compliance with Section 4928.66, Ohio Revised Code, cannot also serve to contribute toward compliance with meeting the mandates for advanced energy under Section 4928.64, Ohio Revised Code; similarly, it is not clear why the proposed rules presume that renewable energy resources cannot simultaneously satisfy Ohio’s portfolio requirements and any future federal portfolio requirements.

In S.B. 221, the Ohio General Assembly defined “advanced energy resource” in Section 4928.01(A)(34)(g), Ohio Revised Code, to specifically include “demand-side management and any energy efficiency improvement.” (emphasis added) Thus, the Ohio General Assembly chose to include “any energy efficiency improvement” in the definition of “advanced energy” for purposes of satisfying Section 4928.64, Ohio Revised Code, without any qualification as to whether the energy efficiency improvement was undertaken as part of another provision enacted at the same time, Section 4928.66, Ohio Revised Code. Indeed, the apparent purpose of including DSM and EE (terms used primarily in Section 4928.66, Ohio Revised Code) in the definition of “advanced energy resource” for purposes of Section 4928.64, Ohio Revised Code, suggests that dual compliance under both statutes was contemplated for the same DSM/EE activities. By contrast, the effect of the proposed rules is to amend that statute by placing a

substantial limit on that definition (*i.e.*, by adding the “above and beyond that used to comply with any other regulatory standard or programs” qualification).

Even beyond the matter of whether activities in compliance with Section 4928.66, Ohio Revised Code, can count toward compliance with Section 4928.64, Ohio Revised Code, the broad language in the proposed rules could cause other problems as well. For example, if the United State Congress imposed energy efficiency benchmarks on utilities, the propose rules would disadvantage Ohio utilities. Nothing in S.B. 221 provides for such a result or indicates that the Ohio General Assembly would intend to punish Ohio companies if subsequent federal mandates impose similar requirements. The Ohio General Assembly just wanted to get ahead of the energy efficiency and environmental policy curve – not place Ohio companies in “double jeopardy” subject to further ratcheting through any future federal compliance requirement. There is no reason why current or future prescriptions of either federal or Ohio law cannot count toward compliance with the S.B. 221’s mandates.

If the General Assembly wanted to only include energy efficiency that is “above and beyond that used to comply with any other regulatory standard or program,” it could have done so. But it did not. On the contrary, the General Assembly provided that “any energy efficiency improvement” counts as an advanced energy resource. The way proposed Rules 4901:1-40-01(M) and 4901:1-40-04(B)(7) are currently drafted effectively vetoes the General Assembly’s specific choice to include energy efficiency in the definition of advanced energy.

Finally in this regard, the definition of “double-counting” should not include renewable energy. There is a legitimate possibility that a renewable energy generation resource can be used to satisfy multiple regulatory mandates. Similar to the example outlined above for energy efficiency standards, if the United State Congress subsequently enacts a “25% by 2025”

national portfolio standard applicable to utilities, the proposed Rule 4901:1-40-01(M)'s definition would disadvantage Ohio utilities. Specifically, Ohio utilities would arguably be obligated to meet a "50% by 2025" standard under the proposed rule –this could occur even if the Congress provides that it does not intend to supplement State portfolio requirements that have already been enacted (because of the strict language used in the proposed rule). Such a result should be avoided through interpretive rules, especially since neither Congress nor the Ohio General Assembly would have directly required such an oppressive result. AEP Ohio has suggested language changes to avoid these problems.

➤ **Recommended Rule Changes for Rule 4901:1-40-01:**

- (M) "Double-counting" means utilizing ~~renewable energy~~, renewable energy credits, ~~or energy efficiency savings~~ to (1) satisfy multiple STATE regulatory requirements, (2) support multiple voluntary product offerings, (3) substantiate multiple marketing claims, or (4) some combination of these.

Rule 4901:1-40-03, Requirements

Subdivision (A)(3) provides that "costs incurred by an electric utility in complying with the requirements of the alternative energy portfolio standard shall be avoidable by any consumer that has exercised choice of electricity supplier." This language should be modified for clarification to include other important cost recovery principles. First, since this is the only reference to cost recovery found in this OAC Chapter, it should initially specify as a primary point that utilities will recover their compliance costs through rates. OAC Chapter 4901:1-40 does not presently contain a cost recovery provision within the proposed rules, unlike OAC Chapter 4901:1-39. Second, a shopping customer should only avoid paying for a utility's portfolio costs for the time period that the customer is served by a CRES provider. Third, even

though shopping customers avoid the utility's portfolio costs while they are being served by a CRES provider, that fact should not take away from the utility's full recovery of its compliance costs from remaining customers. These points should be clarified through adoption of the language changes suggested below.

Subdivision (C) of the proposed rule imposes an annual filing requirement on electric utilities to submit to staff a portfolio compliance plan (starting in 2010), utilizing a fifteen-year planning horizon. The statute imposes the obligation of compliance on utilities and it does not provide for management of this process through regulations. It serves no useful purpose to require such extensive projections. AEP Ohio would prefer to eliminate the requirements. Even if the Commission is interested in proactively involving itself with a utility's management of such matters, the nature and extent of such reporting obligations seems to be burdensome and excessive, especially given the limited value of such long range projections; a fifteen-year planning horizon is too long. Further, there should be disclaimer language attached to such reporting obligations as is proposed below.

Finally regarding subdivision (C), AEP Ohio suggests that projected REC inventories not be required as part of the report. Such information is confidential and could compromise an electric utility's position in the REC market, ultimately raising the cost of compliance to be recovered from ratepayers. If the Commission insists on such reporting, there should be an explicit recognition and requirement in the rule that it will be maintained on a confidential basis.

➤ **Recommended Rule Changes for Rule 4901:1-40-03:**

(A) (3) All costs PRUDENTLY incurred by an electric utility in complying with the requirements of the alternative energy portfolio standard shall be RECOVERABLE FROM THE UTILITY'S CUSTOMERS. SUCH

COSTS ARE avoidable by any consumer that has exercised choice of electricity supplier, DURING SUCH TIME THAT A SHOPPING CUSTOMER IS SERVED BY A CRES PROVIDER. THAT BYPASSABILITY SHOULD NOT, HOWEVER, DIMINISH THE UTILITY'S RIGHT TO FULLY RECOVER ITS PORTFOLIO COMPLIANCE COSTS. * * *

- (C) Beginning in the year 2010, each electric utility and electric services company shall annually submit to staff a plan for compliance with future annual advanced energy and renewable energy benchmarks, including solar, utilizing a ~~FIVE~~^{FIFTEEN}-year planning horizon, RECOGNIZING THAT SUCH PLANS ARE SUBJECT TO CHANGE AND ARE NOT BINDING. This plan, to be submitted by April fifteenth of each year, shall include at least the following items:
- (1) Baseline for the current and future calendar years.
 - (2) Supply portfolio projection, including both generation fleet and power purchases.
 - (3) Current ~~and projected~~ renewable energy credit inventories.

Rule 4901:1-40-04, Qualified resources

Regarding subdivision (B)(7), the extra-statutory condition that demand-side management and energy efficiency be “above and beyond that used to comply with any other regulatory standard” should not be adopted. Similarly, regarding subdivision (C), the condition that a qualified mercantile customer-sited resource not be counted for any other regulatory requirement should not preclude an energy efficiency or demand reduction resource from being counted toward a utility’s compliance with both Section 4928.64, Ohio Revised Code, and Section 4928.66, Ohio Revised Code. Consistent with the arguments outlined above regarding the broad “double counting” prohibition proposed Rule 4901:1-40-01, AEP Ohio also suggests modifying subsections (B)(7) and (C) of this proposed rule.

Under subdivision (D)(3), a REC may be used for compliance any time in the five calendar years following the date of its initial purchase or acquisition. Although this

“expiration date” is based on Section 4928.65, Ohio Revised Code, it should be clarified by using more of the key language included in that applicable statutory phrase. Without clarification, the term “acquisition” in the proposed rule language might be read to include a utility’s REC that was created by virtue of operation of its own renewable generation resource. The statutory provision makes clear that the REC expiration date only applies to RECs acquired from third parties, by describing the expiration date as follows: “five calendar years following the date of their purchase or acquisition from any entity, including, but not limited to, a mercantile customer or an owner or operator of a hydroelectric generating facility...” Therefore, the additional phrase “from any entity” should be added to subdivision (D)(3) of this rule.

➤ **Recommended Rule Changes for Rule 4901:1-40-04:**

- (B)(7) Demand-side management and energy efficiency, ~~above and beyond that used to comply with any other regulatory standard or programs.~~
- (C) The following new or existing mercantile customer-sited resources may be qualified resources for meeting electric utilities’ annual renewable energy resource benchmarks or advanced energy resource benchmarks, as applicable, provided that ~~it does not constitute double counting for any other regulatory requirement and that~~ the mercantile customer has committed the resource for integration into the electric utility’s demand-response, energy efficiency, or peak demand reduction programs pursuant to rule 4901:1-39-06 of the Administrative Code.
- (D)(3) A REC PURCHASED OR ACQUIRED FROM ANY ENTITY may be used for compliance any time in the five calendar years following the date of its initial purchase or acquisition.

Rule 4901:1-40-07, Cost cap

In subdivision (F), the proposed rule “retains the right” to increase a future year’s compliance obligation by the amount of any undercompliance in a previous year that is attributed to the three percent cost cap provision. This reservation is not consistent with the

statutory cost cap provision found in Section 4928.64(C), Ohio Revised Code. This provision would have the effect of over-riding the “3% off ramp” protection specifically adopted by the General Assembly. Subdivision (F) should be deleted.

➤ **Recommended Rule Changes for Rule 4901:1-40-07:**

- ~~(F) — The commission retains the right to increase a future year’s compliance obligation by the amount of any undercompliance in a previous year that is attributed to the three per cent cost cap provision.~~

OAC CHAPTER 4901:1-41: GREENHOUSE GAS REPORTING AND CARBON DIOXIDE CONTROL PLANNING

Rule 4901:1-41-01, Definitions

The reporting requirements in this proposed rule should be more specific to the actual name of the Climate Registry's reporting tool, and should limit the "carbon dioxide control plan" requirements to CO2 where economically feasible.

➤ **Recommended Rule Changes for Rule 4901:1-41-01:**

- (A) "Carbon dioxide control planning" means the establishment and implementation of a structured, verifiable process including goals, policies, and procedures, to measure carbon dioxide emissions and control options on both an INDIVIDUAL ELECTRIC GENERATING facility and a system-wide scale over five, ten and twenty-year periods.
- (C) "Climate registry" means the CLIMATE REGISTRY INFORMATION SYSTEM, AN international greenhouse gas measurement and reporting system, including accounting and verification measures, which provide voluntary or mandatory reporting requirements.

Rule 4901:1-41-02, Greenhouse Gas Reporting and Carbon Dioxide Control Planning

As with Rule 4901:1-41-01, the reporting requirements in this proposed rule should limit the "carbon dioxide control plan" requirements to CO2 where economically feasible and use consistent terminology and reporting processes. This approach better implements the authority given to the Commission, and avoids the situation of Commission rules addressing emissions control planning requirements for criteria air pollutants.

➤ **Recommended Rule Changes for Rule 4901:1-41-02:**

- (A) Any person which owns or operates an electric generating facility within Ohio shall ~~become a participating member in the climate registry for at least scope 1 (direct) greenhouse gas emissions, and shall~~ report AT LEAST SCOPE 1 (DIRECT) greenhouse gas emissions FROM EACH SUCH FACILITY according to the protocols approved by the climate registry, ~~or as otherwise directed by the commission.~~ ADDITIONAL REPORTING MAY BE DONE AT THE DISCRETION OF THE OWNER OR OPERATOR ACCORDING TO THE PROTOCOLS APPROVED BY THE CLIMATE REGISTRY. COPIES OF THE REPORTS SHALL BE FILED WITH THE COMMISSION NOT LATER THAN JUNE 30 OF EACH YEAR.
- (B) Any person which owns or operates an electric generating facility within Ohio shall file with the commission by April fifteenth of each calendar year ~~A an environmental control plan, including carbon dioxide control planning.~~ A copy of such plan shall be provided to the director of the Ohio environmental protection agency, or his designee.
- (C) The ~~environmental~~ CARBON DIOXIDE control plan shall include all relevant technical information on the current conditions, goals, and potential actions based upon the most current scientific and engineering design capability of any facility that has been designed to have the capability to control ~~the~~ emissions of ~~criteria pollutants and~~ carbon dioxide within the parameters of economically feasible best technology.

OAC CHAPTER 4901:5-1: LONG-TERM FORECAST REPORTS

Rule 4901:5-1-01, Definitions

The definition of "substantial change" in subdivision (I) should not differ from the statutory definition. With that in mind, the word "delivery" should be changed to

“consumption” in (I)(1). Regarding (I)(2), this language should refer to an intention to file an application under division (B)(2)(b) or (c) of §4928.143, Ohio Rev. Code, prior to the filing of the next LTFR. See the following comment.

➤ **Recommended Rule Changes for Rule 4901:5-1-01:**

(I) “Substantial change” includes, but is not limited to:

- (1) A change in forecasted peak loads or energy CONSUMPTION ~~delivery~~ over the forecast period of greater than an average of one-half of one per cent per year as calculated in rule 4905:5-3-03 of the Administrative Code.
- (2) The addition of a generating facility or facilities in an electric utility’s supply plans with the intention of filing an application under the provisions of the division (B)(2)(b) or (B)(2)(c) of section 4928.143 of the Revised Code, PRIOR TO THE REPORTING PERSON FILING ITS NEXT LONG-TERM FORECAST REPORT.

Rule 4901:5-1-03, Long-term forecast report, Requirements

Regarding subdivision (C)(1), AEP Ohio notes that the reporting person might intend to file an application under division (B)(2)(b) or (c) of §4928.143, Ohio Rev. Code, but not for several years. The rule should be amended to provide that the requirements of §4901:5-05, Ohio Admin. Code, do not apply unless the reporting person intends to file such an application prior to the filing of the next LTFR.

Regarding subdivision (C)(2), a new electric generating facility may have a life of fifty years or longer. Once construction and cost recovery of such a plant has been approved there is no reason to compel the filings of all the information required in proposed rule 4901:5-5-05 for the life of the plant. At most, those filing requirements should apply only for an LTFR filed after approval of the facility has been obtained and before the facility goes into operation.

Finally regarding this rule, The reference to Paragraph “(F) to (I)” should be changed to “(I) to (L).”

➤ **Recommended Rule Changes for Rule 4901:5-1-03:**

- (C)(1) When filing the long-term forecast report, an electric utility shall include all resource plan requirements set forth in rule 4901:5-5-05 of the Administrative Code, if the utility intends to file a subsequent application under division (B)(2)(c) of section 4928.143 of the Revised Code, PRIOR TO FILING ITS NEXT LONG-TERM FORECAST REPORT.
- (C)(2) ~~AN~~ IF COST RECOVERY ASSOCIATED WITH any electric generating facility ~~subject to recovery~~ HAS BEEN AUTHORIZED pursuant to division (B)(2)(b) and/or (B)(2)(c) of section 4928.143 of the Revised Code, AN electric utility shall include with its long-term forecast report all resource plan requirements set forth in rule 4901:5-5-05 of the Administrative Code, FOR ANY LONG-TERM FORECAST REPORT FILED AFTER SUCH AUTHORIZATION OF COST RECOVERY AND BEFORE THE FACILITY GOES INTO OPERATION. ~~for the life of~~
- (H) All long-term forecast reports shall contain a certificate of service signed by the person responsible for its filing, stating that the requirements of paragraphs ~~(F)~~ to ~~(I)~~ of this rule will be sent.

OAC CHAPTER 4901:5-3: RULES FOR FILING OF LONG-TERM FORECAST REPORTS

Rule 4901:5-3-01, Definitions

The comments provided regarding proposed rule 4901:5-1-01 (I) apply to this definition of “substantial change” as well.

➤ **Recommended Rule Changes for Rule 4901:5-3-01:**

- (E) “Substantial change” includes, but is not limited to:
 - (1) A change in forecasted peak loads or energy CONSUMPTION ~~delivery~~ over the forecast period of greater than an average of one-half of one per cent per year as calculated in rule 4905:5-3-03 of the Administrative Code.

- (2) The addition of a generation facility or facilities in an electric utility's supply plans with the intention of filing an application under the provisions of division (B)(2)(b) and/or (B)(2)(c) of section 4928.143 of the Revised Code, PRIOR TO THE REPORTING PERSON FILING OF ITS NEXT LONG-TERM FORECAST REPORT.

Rule 4901:5-3-03, Fees

AEP Ohio submits that the proposed change to “net energy for load” instead of the current language (“total energy”) should not be made. This rule refers to column eight Form FE4-D1. The data in that column reflects customer usage, i.e. “total energy.” Net energy for load” is the supply side of the equation. While “net energy for load” should equal “total energy” the terminology used should be consistent with the Form referenced in the rule so there will be no confusion in the calculation of the fees.

➤ **Recommended Rule Changes for Rule 4901:5-3-03:**

- (E)(2) For electric utilities, the fee shall be two and one-half mills per megawatt hour delivery based upon the TOTAL net energy ~~for load~~ for the most recent year for which actual data is reported on the most recently filed form FE4-D1 column eight.

OAC CHAPTER 4901:5-5: ELECTRIC UTILITY FORECAST REPORT FILING REQUIREMENTS

Rule 4901:5-5-01, Definitions

The definition of “electric transmission owner” in subdivision (G) should refer to “section 4935.04(A)(1)(a) of the Revised Code.”

Concerning subdivision (H), in the first sentence, “load” should read “demand.” This recommendation is consistent with AEP Ohio's comments regarding the definitions of “load” and “demand” found in the paragraph below. In the second sentence, “It” should be changed to “The effects” for clarity. Further “utility-provided electricity” is not a clear term. Is electricity

purchased from a CRES provider, but delivered through an electric distribution utility's facilities "utility provided?" Is "utility-provided electricity" intended to include all electricity except electricity generated by customer-owned generation? The term needs to be clarified in order for any informed comment to be provided on the substance of the rule.

The definition of "internal load" in (M) is stated in the context of the supply side. Load is more properly considered in the context of customer usage. The proposed definitions of "interruptible load," and "native load" appear to be in the context of customer usage. "Internal load" should be defined as "the sum of retail sales, wholesale requirements sales and line losses.

"Curtailed" and "reduced" are synonyms of each other. If two different meanings are intended a different choice of words is needed. Further, AEP Ohio does not believe that "supplier discretion" exists to interrupt service unless there is a "contractual agreement" granting that discretion. The word "or" should be deleted.

Regarding subdivisions (E) and (O), "Load" is defined as "demand." In (E), "demand" is defined as the number of KW to meet load at any given instant. The circularity in these definitions should be avoided. AEP Ohio suggests that the definitions of "demand" and "load" used by the Federal Energy Regulatory Commission should be used, as set forth below.

"Load shape" which is defined within the definition of "load modification" should be given its own definition paragraph, as shown below in AEP Ohio's recommended language.

The reference to "peak demand" and "peak load" further demonstrates the circularity of the definitions in (E) and (O). Peak measurement is typically a demand concept. Further, the words "predicted or actual" should be removed from the definition. Those adjectives will be used to define to which peak demand the user of the term is referring. "Predicted" and "actual" are distinctly different terms and cannot both be the peak demand. AEP Ohio suggests that the

definition of “peak demand” used by the Federal Energy Regulatory Commission be used, as set forth below.

The definition of “person” in subdivision (T) does not need to refer to two different sections of the Ohio Revised Code.

The definition of “reporting person” in subdivision (V) should refer to “section 4935.04 (C) of the Revised Code.”

Finally, for clarity, the end of the definition of “TTC” in subdivision (X) should refer to “all transmission lines or paths within the interconnected electric systems.”

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

- (E) “Demand” means the ~~number of kilowatts to meet load at any given instant~~ RATE AT WHICH ELECTRIC ENERGY IS DELIVERED TO OR BY A SYSTEM, PART OF A SYSTEM, OR PIECE OF EQUIPMENT, AT A GIVEN INSTANT OR AVERAGED OVER ANY DESIGNATED PERIOD OF TIME.
- (G) “Electric transmission owner” means owner of a major utility facility as defined in section 4935.04(A)(1)(a) of the Revised Code.
- (H) “Energy-price relationships” means the calculated or observed effect on peak DEMAND-load, load shape, or energy consumption resulting from changes in the retail price of electricity or other fuels. ~~THE EFFECTS~~ consists of both conservation effects which reduce customer energy use directly and effects which cause customers to switch to or from [??not clear what was intended??] ~~utility-provided electricity.~~
- (M) “Internal load” of a system means the ~~summation of the net output of its generators plus the net of interconnection receipts and deliveries~~ SUM OF THE RETAIL SALES, WHOLESALE REQUIREMENTS SALES AND LINE LOSSES.
- (N) “Interruptible load” means load that can be curtailed ~~or reduced~~ at the supplier discretion ~~or~~ in accordance with a contractual agreement.
- (O) “Load” means ~~demand~~ THE AMOUNT OF ELECTRICAL POWER DELIVERED OR REQUIRED AT ANY SPECIFIED POINT OR POINTS ON A SYSTEM. THE REQUIREMENT ORIGINATES AT THE ENERGY-CONSUMING EQUIPMENT OF THE CUSTOMER.

- (P) “Load modification” means the impact of a demand-side management, energy efficiency, demand reduction, price responsive demand, or demand response program designed to influence customers’ patterns of electricity use in order to modify the utility’s load shape. ~~Load shape is the distribution of a utility’s total electricity demand measured over time, usually expressed as a curve which plots megawatts supplied against time of occurrence, and illustrates the varying magnitude of the load during that time period.~~
- (NEW)² “LOAD SHAPE” MEANS THE DISTRIBUTION OF A UTILITY’S TOTAL ELECTRICITY DEMAND MEASURED OVER TIME, USUALLY EXPRESSED AS A CURVE WHICH PLOTS MEGAWATTS SUPPLIED AGAINST TIME OF OCCURRENCE, AND ILLUSTRATES THE VARYING MAGNITUDE OF THE LOAD DURING THAT TIME PERIOD.
- (S) “Peak demand or ~~“peak load”~~ means ~~the electric transmission owner or electric utility’s maximum sixty-minute integrated clock hour predicted or actual load for the year~~ THE LARGEST ELECTRIC POWER REQUIREMENT (BASED ON NET ENERGY FOR LOAD) DURING A SPECIFIC PERIOD OF TIME, USUALLY INTEGRATED OVER ONE CLOCK HOUR AND EXPRESSED IN MEGAWATTS (MW).
- (T) “Person” has the meaning set forth in SECTION ~~sections 4906.04 and 4935.04~~ (A)(2) of the Revised Code.
- (V) “Reporting person” means any person required to file a long-term forecast report under section 4935.04 (C) of the Revised Code.
- (X) “TTC” 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~~. WITHIN THE INTERCONNECTED ELECTRIC SYSTEMS.

Rule 4901:5-5-03, Forecasts for electric transmission owners

Sections (A) through (F) require a variety of information concerning planned and existing electric transmission systems. Certain of this information contains Critical Energy

² In the proposed rules there are two paragraphs with the letter “(U)” and two paragraphs with the letter “(V)”. When that is corrected and the new definition recommended above for “Load shape” is added, the lettering of several definitions in this rule will change.

Infrastructure Information (CEII). For instance, a discussion of transmission constraints and critical contingencies and inclusion of maps of the existing and planned transmission system, would reflect specific information making the transmission system vulnerable to vandalism or worse.

In recognition of the security risks associated with the public disclosure of this information and of the continuing interest in protecting the confidentiality of this information, the Commission should incorporate into these rules a provision which either requires that this information be made available for the Staff's review in Columbus, but not be filed or copied or, requires filing of the CEII but permits the CEII to be filed under seal and that the CEII be kept under seal by the Commission without the need for repeated filing of motions under §4901-1-24 (F), Ohio Admin. Code.³

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

(G) TO THE EXTENT ANY OF THE INFORMATION SOUGHT IN DIVISIONS (A) THROUGH (F) OF RULE 4901:5-5-03 CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION (CEII), THE REPORTING PERSON MAY CHOOSE TO:

(1) NOT FILE SUCH INFORMATION WITH THE COMMISSION, BUT INSTEAD MAKE SUCH INFORMATION AVAILABLE FOR REVIEW IN COLUMBUS, OHIO, BY THE COMMISSION'S STAFF. THE STAFF WILL NOT MAKE COPIES OF SUCH INFORMATION. OR

(2) FILE SUCH INFORMATION UNDER SEAL PURSUANT TO RULE 4901-1-24. THE CEII WILL REMAIN UNDER SEAL WITHOUT THE NEED FOR SUBSEQUENT FILINGS PURSUANT TO RULE 4901-1-24(F).

REGARDLESS OF WHICH OPTION THE REPORTING PERSON CHOOSES, IF THE STAFF BELIEVES THE INFORMATION IS NOT CEII IT WILL ATTEMPT TO RESOLVE THAT MATTER WITH THE

³ The concept of not filing CEII is consistent with proposed rule 4901:5-5-05 (B) (1) (c) which specifies that no proprietary information concerning research and development should be filed.

REPORTING PERSON. IF THAT ISSUE CANNOT BE RESOLVED THE STAFF MAY FILE A MOTION WITH THE COMMISSION FOR THE COMMISSION TO RESOLVE THE DISPUTE. IN PURSUING THAT COURSE OF ACTION THE STAFF WILL MAINTAIN THE CONFIDENTIALITY OF THE INFORMATION AT ISSUE.

Rule 4901:5-5-05, Resource plans for electric distribution utilities

AEP Ohio suggests that since “integrated resource plan” is defined in proposed rule 4901:5-5-01 (L), that term should be used throughout the rule (including the title of the rule), instead of simply “resource plan.”

Regarding subdivision (A), as noted in AEP Ohio’s comments concerning proposed rule 4901:5-1-03 (C)(2), integrated resource plans should not be required throughout the life of an electric generating facility subject to recovery pursuant to division (B)(2)(b) or (c) of §4928.143, Ohio Rev. Code. Further, there is no need to repeat in 4901:5-5-05 (A)(1)-(3), the same language that appears in 4901:5-1-03 (C) (1)-(3).

Subdivision (B)(1)(a) refers to “use of alternative energy resources pursuant to section 4928.64 of the Revised Code or techniques used to store energy for peak use.” AEP Ohio believes that “or” should be replaced with “including.” This change is consistent with §4928.64 (A) (1) (c), Ohio Rev. Code, which refers to storage technology that provides flexibility to modify demand or load and usage. The change also is consistent with §4928.64 (A) (2), Ohio Rev. Code, which permits the Commission to classify new technologies as advanced energy or renewable energy.

Subdivision (B)(1)(d) refers to “environmental regulations pursuant to section 4928.143 of the Revised Code.” AEP Ohio is uncertain what this reference contemplates.

Subdivision (C)(1) requires a “brief summary narrative of the electric generating system....” As the rule notes, division (E)(1) requires this information in detail. There is no need for a summary and a detailed narrative of the same information. AEP Ohio suggests dropping the requirement for a summary.

Further, the rule requires that for years in which a hearing on the LTFR is required, operating, maintenance and fuel expense by generating unit, by each year of the forecast period must be included in the LTFR. This requirement contradicts Am. Sub. S.B. No. 221 which did not re-adopt cost-of-service principles as the basis for establishing the Standard Service Offer. Moreover, since the required information is commercially sensitive, (C) (1) should be deleted.

Subdivision (E)(2)(b) requires a description of fuel procurement policies and procedures, the system’s fuel requirements, geographic source of fuel supply and the percentage of fuel supply under contract. For companies that have a fuel adjustment clause as part of their Standard Service Offer, these matters will be subject to review in periodic fuel clause proceedings. There is no need to duplicate the regulatory effort for the Commission, the utilities and potential intervenors. This portion of the rule should be deleted.

Subdivision (E)(3)’s focus on “cost-effectiveness,” “revenue requirement” and “rate impacts” bears no relationship to the establishment of an electric security plan (ESP) under §4928.143, Ohio Rev. Code. Further, S.B. 221 imposes certain resource plan requirements on electric distribution utilities. (See, §4928.64, Ohio Rev. Code). Consequently, the first sentence of the rule should be deleted. At a minimum, the reference to “rate impacts” should be deleted as being an unnecessary level of detail which is not determinable in a meaningful way for long-term planning.

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

4901:5-5-05 INTEGRATED resource plans for electric distribution utilities.

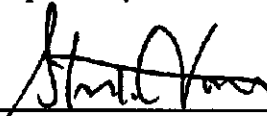
- ~~(A) — When filing the long term forecast report, the following shall be considered:~~
- ~~(1) — When filing the long termed forecast report, an electric utility shall include all resource plan requirements in rule 4901:5-5-05 subsequent to filing an application under division (B)(2)(b) and/or (B)(2)(c) of section 4928.143 of the Revised Code.~~
 - ~~(2) — An electric utility shall include all resource plan requirements set forth in rule 4901:5-5-05 with its long term forecast report for the life of any electric generating facility subject to recovery pursuant to division (B)(2)(b) and/or (B)(2)(c) of section 4928.143 of the Revised Code.~~
 - ~~(3) — An electric utility may include a resource plan as set forth rule 4901:5-5-05 with any long term forecast report filing.~~
- (B)(1)(a) Anticipated technological changes which may be expected to influence the reporting utility's generation mix, use of energy efficiency and peak demand reduction programs, availability of fuels, type of generation, use of alternative energy resources pursuant to section 4928.64 of the Revised Code INCLUDING or techniques used to store energy for peak use;
- (C)(1) ~~The reporting utility shall provide a brief summary narrative of the existing electric generation system (which is detailed in paragraph (B)(1) of this rule). If a hearing is to be held on the forecast in the current year, the reporting utility shall submit to the commission with its long term forecast report, the anticipated operating, maintenance, and fuel expense of each unit for each year of the forecast period. The commission may make exceptions to this paragraph for good cause.~~

- (E)(2)(b) A discussion of the future adequacy of the utility's projected system in both the short term and long term. ~~Additionally, the reporting utility shall provide, for the forecast period, a description of its overall fuel procurement policies and procedures. A description of the system's fuel requirements, the system's geographic source of fuel supply, and the percentage of fuel supply under contract shall be included.~~
- (E)(3) ~~The utility shall demonstrate the cost effectiveness of the plan through a comparison over the ten year forecast horizon of the revenue requirement and rate impacts of the selected plan and alternative plans evaluated pursuant to section 4928.143 of the Revised Code.~~ The selection of the plan shall demonstrate adequate consideration of the risks, reliability, and uncertainties associated with the person's selected plan and alternative plans, and of other factors the utility deems appropriate.

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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