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

Reply Comments of the Ohio Farm Bureau Federation

On May 1, 2008, Gov. Ted Strickland signed into law Amended Substitute Senate Bill No. 221 (SB 221) which revises Chapter 4928 of the Ohio Revised Code, to address alternative energy resources, renewable energy credits, advanced clean coal technology, and federal environmental reporting regulations. Upon consideration of SB 221 and current forecast reporting rules contained in Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code , the Commission Staff proposed modifications to forecast rules and the creation of new chapters focusing on energy efficiency, implementation of an alternative energy portfolio standard and carbon sequestration planning issues.

On August 20 the Public Utilities Commission of Ohio (PUCO) issued an entry seeking comments on proposed rules as detailed in Case No. 08-888-EL-ORD. Initial comments were to be submitted to the Commission on September 9, 2008, with reply comments to be filed no later than September 26, 2008.

The Ohio Farm Bureau Federation (OFBF) appreciates the opportunity to be involved in this process, and filed initial comments concerning these rules. Moreover, Farm Bureau leaders have examined initial comments submitted by the Ohio Consumers Counsel, a variety of organizations representing Ohio's industrial, small business and environmental concerns, energy service providers and investor owned utilities. Accordingly, OFBF submits the following reply comments for your consideration:

Energy Efficiency and Demand Reduction Benchmarks

4901:1-39-01 (A) Demand Response: OFBF agrees with Nucor Steel that customers involved in demand response programs as detailed in 4901:1-39-01 (A) that participate in interruptible rate programs to help control their energy costs should be recognized for their efforts to reduce peak demand.

OFBF calls question to Columbus Southern Power Company and Ohio Power Company (AEP) suggestions for the definition of demand response in 4901-39-01 (A). In most cases, "providing a choice" to respond to changes and "effecting change" in customer behavior are two different outcomes.

4901:1-39-01 (B) Energy Efficiency: While OFBF agrees with Nucor Steel above, the organization calls for further discussion on its suggestion that companies utilizing recycled materials as a processing feedstock - in this case, scrap steel instead of raw iron ore - should be recognized as an energy efficiency effort as detailed in 4901:1-39-01 (B). OFBF feels that there needs to be a more direct "generation" connection going into a particular process, device or system. Moreover, if such an industry has practiced such a policy for several years or decades prior to implementation of these new rules, why should they automatically receive energy efficiency credit for the practice now?

OFBF understands that the draft definition and its focus on processes, devises and systems needs to be simple, and broad enough to recognize and incorporate any new concept or technology that could be developed in the future. Farm Bureau is concerned that AEP's proposed definition of energy efficiency in 4901-39-01 (B) and its listing of example technologies for this definition could provide a limiting factor – They could be construed as the only technologies recognized under the rule.

OFBF feels that suggestions brought forth in comments from Duke Energy Ohio, Incorporated (Duke) should be further explored. Its suggestions for 4901:1-39-01 (B) where the definition of energy efficiency should deal with an accepted, common input-output and not the utilization of certain materials for processing, could have merit. Customer-sited or committed energy efficiency programs as detailed in 4901:1-39-04 (B) (5) (a) should incorporate programs and services provided by approved third-party vendors.

4901:1-39-04 (B) Benchmark Report Requirements – Calculations & Amendments: Section 4901:1-39-04 (B) discusses creating a baseline for energy savings using the average of the total kilowatt hours purchased by the electric utility's Ohio distribution customers. OFBF assumes "customers" in this context means all customers – mercantile and residential energy consumers. Moreover, it assumes that the utility has a responsibility to work with all customer classes to achieve energy savings. In its initial comments OFBF called attention to the fact that mercantile customers were identified as a specific customer class where programs were focused. Consequently, the organization sees the need and responsibility for the utility to offer and/or promote similar program options for residential customers.

Again, OFBF feels that suggestions brought forth in comments from Duke should be further explored. Customer-sited or committed energy efficiency programs as detailed in 4901:1-39-04 (B) (5) (a) should incorporate programs and services provided by approved third-party vendors.

OFBF calls attention to and agrees with a suggestion by Enernoc, Incorporated to have the utility list and support utilization of qualified third party service providers to assist/provide services that recognize the unique need and load requirements of all customers. If this support is promoted and employed in utility sanctioned programs, these rules should include provisions to capture demand response and energy efficiency activities of qualified third party service providers in utility compliance reporting requirements.

Similar provisions have been brought forward by LS Power Associates, Greenfield Steam and Electric and other groups.

The Kroger Company's suggestions can further enhance 4901:1-9-04 (B) (5) (a). The company supports the use of independent service providers to provide energy efficiency and demand response programs, and the utility should not receive credit toward achieving benchmarks that are not due to their efforts in this area. These services could be coordinated by the utility through a competitive RFP process that recognizes the needs for all rate classes.

Kroger brings to light another important point – Less recognition and credit should be given for implementing basic energy efficiency and demand response programs during the first few years of the process. Naturally, a lot of "low hanging fruit" could be found and capitalized upon. More credit should be given for efforts that show a continual process toward incorporating more demanding energy efficiency and demand response practices that yield further results. Customers showing continual, aggressive work in these efforts could be recognized through a special electric rate.

Farm Bureau supports a recommendation made by the Ohio Energy Group that the Commission and Staff consider revision of 4901:1-39-04 (B) (4) to read that, "in any such proposal, the electric utility shall demonstrate that it has exhausted all *reasonable* compliance options.

Alternative Energy Portfolio Standard

4901:1-40-01 (E) Biomass Energy: OFBF recognizes the fact that the definition of biomass energy encompasses a variety of resources – organic plant and animal materials, agricultural crops, tree crops, crop by products, residues, food wastes and others. The focus of the definition is to invite, support and encourage a variety of industries that have access to hydrocarbon-rich feed stocks and byproducts to utilize these resources to create energy.

While the organization strongly advocates conservation – wise use of natural resources – it understands that the responsibility for management of these resources should be under direct responsibility of the landowner, for both public and private property. Accordingly, OFBF is concerned about suggestions forwarded by the American Wind Energy Association (AWEA), Wind on the Wires (WOW), Ohio Advanced Energy (OAE), Environment Ohio (OE) and others to limit utilization of biomass resources by excluding forest crops or agricultural crops or crop residues derived from federal lands or land that was not cleared prior to enactment of SB 221.

These groups do not take into consideration that forest lands in Ohio, both public and private, are under management plans, many incorporating harvesting strategies – both clear cut and selective - that encompass decades. They do not recognize management efforts of state and federal agencies such as the USDA and ODNR and/or work by the Ohio Forestry Association. Moreover, these groups do not take into consideration that federal lands under management of the U.S. Army Corps of Engineers, the Muskingum Watershed Conservancy District and other authorities throughout Ohio actually have ground in dry reservoir areas behind key flood control dams that could be easily used for annual and perennial non-forest biomass production.

Similarly, some farmers have enrolled some of their land holdings in the federal Conservation Reserve Program (CRP). Many CRP participants are now looking at opportunities where this ground could be used to grow perennial biomass crops, while still maintaining the soil and water conservation strategies upon which the ground was enrolled in the first place.

Barring landowners, both public and private, from any opportunity to be involved in effective biomass production goes beyond the spirit and statutory language created by SB 221. Incorporation of this language could be considered an illegal, constitutional "takings" violating the spirit of both state and federal law. OFBF recommends that the Commission and Staff weigh these options carefully as they evaluate the definition of biomass energy.

OFBF is concerned about Duke's suggestion to include wood acquired through demolition/construction to this rule. If the wood materials can be safety sorted and cleaned of any other solid wastes and materials so they can meet the requirements of wood wastes as detailed in the definition, they could be considered.

4901:1-40-01 (II) Solid Wastes: The Commission and Staff should evaluate the suggestions brought forth by AWEA, WOW, OAE, EO and other groups on adjustment to the definition of solid wastes and possible detrimental impacts of utilizing authorized US EPA Waste to Energy programs as advanced energy generation resources.

4901:1-40-03 (A) Requirements: Farm Bureau supports one recommendation brought forth by the City of Hamilton. With regard to 4901:1-40-03 (A) (2) (a), the phrase, "generated by the facilities located within this state" needs to be clarified as to hydroelectric facilities which may be located in river systems that located in Ohio and/or create the border between Ohio and other states.

However, the organization is concerned about other initial comments of the City of Hamilton, Ohio. Yes, we agree that this municipal electric utility should be commended for its work in coordination with AMP-Ohio on the utilization and development of hydroelectric generating facilities that will provide for a majority of their citizens and certain other customers. However, as detailed in 4928.01 (A) (11) of the Ohio Revised Code, and "Electric Utility" excludes a "Municipal Electric Utility" as defined in 4928.01 (A) (11). As a result, only investor-owned utilities under the direct jurisdiction of the PUCO are covered by SB 221 and provisions detailed in 4901:1-40. Unless the City of Hamilton voluntary "opts in" to the program and/or has entered delivery contracts selling its generation in a way that it could be delivered to an Ohio-based investor-owned utility, its claims in this matter should not be considered.

Moreover, careful consideration should be given on Renewable Energy Credit (REC) sales. When Ohio-based investor-owned utilities purchase RECs to fulfill SB 221 provisions, priority should be given to purchase RECs where the underlying renewable generation could be delivered to an Ohio-based investor-owned or opt-in utility.

4901:1-40-04 (A) Qualified Resources: Farm Bureau is concerned about Norton Energy Storage's interpretation of its technology as a renewable energy resource. Yes, this storage facility could fit the requirements as detailed in 4901:1-40-04 (A) (8) (a) (b). However, the facility simply stores energy created by a source of generation. Unless this source of generation meets the definition of being renewable, the consequent energy storage facility should not be considered as a renewable technology. In other words, consideration could be given to this technology as "renewable" if the owner/operator could show that it has long-term power delivery contracts using renewable generation to operate such a facility.

4901:1-40-04 (C) Customer Sited Sources: OFBF calls attention to 4901:1-40-04 (C) as it details how mercantile customer-sited resources may be used to satisfy a utility's renewable energy benchmark obligations. Granted, interested mercantile customers would have to enter an agreement that provides both incentives and penalties; however, through their new relationship with the utility and increased attention to detail, they are more apt to achieve lower electric costs.

Again, where is the residential customer in this part of the process? Many residential energy consumers are looking at on-site renewable energy technology for their home. They want this technology to help them control their energy costs, as well as provide a basis for additional financial incentives and benefits provided through a closer relationship with the electric utility. The Commission's work with advanced metering initiatives (AMI) and customer-friendly revisions for Ohio's interconnection rules will see little use unless recognition of residential customer-sited resources is part of this process.

4901:1-40-07 Cost Cap: With the passage of SB 221, Section 4928.64 (C) (3) of the Ohio Revised Code reads, "an electric distribution utility or an electric services company need not comply with a benchmark under division (B) (1) *or* (2) of this section to the extent that its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three percent or more." OFBF supports the position that the word "or" in this context actually splits advanced energy generation in (B) (1) from renewable energy generation in (B) (2). Consequently, the Commission and Staff should clarify that the costs for advanced and renewable generation cannot be combined when determining the three percent price cap. Although and electric distribution utility or an electric services company might reach the three percent cap on projects concerning advanced generation, it does not relieve them of their responsibility of developing renewable generation projects and vice-versa.

Similar to its suggestions as detailed in 4901:1-39-04 (B), OFBF calls attention to and agrees with a suggestion by Enernoc, Incorporated to have the utility engage in a competitive RFP process to list and support utilization of qualified third party service providers to provide renewable energy resources to consumers at the lowest possible price. Similar provisions have been brought forward by LS Power Associates, Greenfield Steam and Electric, AWEA, WOW, OAE, EO and other groups

Greenhouse Gas Reporting & Carbon Dioxide Control Planning

4901:1-41-01 (D) Electric Generating Facility: Section 4901:1-41.01 (D) defines an "electric generating facility" as a plant and associated facilities capable of producing electricity. Moreover, Section 4901:1-41-02 (A) says that any person which owns and operates an electric generation facility within Ohio shall become a participating member in the climate registry, and (B) says that such a person would be responsible for filing specific reports with the Commission.

In theory, under this draft rule all electric generation assets, encompassing megawatt-level systems delivering generation into the transmission grid, as well as kilowatt-level systems designed principally for on-site use with net metering capabilities into the distribution network would apply. OFBF suggests that this definition and its impact on the rule mentioned needs to be reexamined.

The Commission Staff should draw a dividing line between the purpose/scope of megawatt and kilowatt level generation facilities detailed above. Definition of an Electric Generating Facility as found in Section 4901:1-41-01 (D) of this draft could be revised to better reflect the definition, purpose and scope of a Major Utility Facility as defined in Chapter 4935.04 of the Ohio Revised Code.

Similarly, OFBF supports the recommendations brought forward on this matter by Buckeye Power, Incorporated.

4901:1-41-02(A) Greenhouse Gas Reporting & Carbon Dioxide Control Planning: OFBF supports The Climate Registry's recommended language to help add clarity and to better define which organization should receive reported greenhouse gas data so the rule does not overextend the scope of the Climate Registry's requirements.

Final Comments

OFBF understands that once approved, these rules will be subject to review by the Joint Committee on Agency Rule Review (JCARR) process. Moreover, the organization looks forward to working with the Commission, Staff, the Ohio Consumers Counsel and other interested parties representing energy consumers as the rule making process continues on other provisions as addressed in SB 221.

Once again, thank you for your time and consideration.

Respectfully Submitted,

Dale R. Arnold

Dale R. Arnold
Director, Energy Services
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218-2383
Phone: 614.246.8294
Fax: 614.246.8694
E-Mail darnold@ofbf.org