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 amendments 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 221.	)	Case No. 08-888-EL-ORD

REPLY COMMENTS OF
DUKE ENERGY OHIO

Introduction

In its Entry dated August 20, 2008, the Public Utilities Commission of Ohio (Commission) proposed certain changes to its regulations pertaining to alternative and renewable energy technologies and resources and emission control reporting requirements. The Commission sought comments to be filed on September 9, 2008 and reply comments September 26, 2008.

Duke Energy Ohio (DE-Ohio) timely submitted initial comments in response to the Commission's proposed rules, as did many other parties. DE-Ohio respectfully submits its brief reply comments below.

Definitions

In its Comments, the Ohio Consumer and Environmental Advocates (OCEA) correctly note that the Commission has a long tradition of using stakeholders and/or parties to oversee demand side management programs. However, following this comment is the unfounded statement that utilities have a "traditional disinterest" in demand side resources. Because of this claimed "traditional disinterest", OCEA proposes a definition for the term "Collaborative" that encompasses a sweeping proposal that parties and stakeholders essentially take over the responsibility for demand side management programs. Such management by committee is unnecessary and a bad idea. First, the utilities are not disinterested in demand reduction programs. In fact, DE-Ohio has an extensive portfolio of demand side management programs, and in fact DE-Ohio has recently proposed a very aggressive initiative for demand reduction with its Save-a-Watt program. Second, taking the responsibility for these efforts away from the utility is contrary to the intent and spirit of Amended Substitute Senate Bill 221, (SB 221). DE-Ohio opposes the inclusion of the suggested definition.

Rule 4901:1-39-04 Benchmark Report Requirements

In DE-Ohio's Initial Comments as well as the Initial Comments and Objections by The Dayton Power and Light Company (DP&L) we have noted that one can measure actual peak demand and actual energy usage at any point in time. However, to calculate the required benchmarks for energy savings and peak demand reductions, it is

mandatory to start with a baseline computation so as not to have a continuously moving target. As noted further by DP&L, the relevant statute, R.C. 4928.66(A)(2)(a), and the Commission's proposed rule are ambiguous as to whether or not the baseline is computed for a single period or on a rolling three-year period. DE-Ohio agrees that the Commission should clarify this requirement so that there is no compounding effect that makes the compliance target impossible to meet. DE-Ohio concurs with DP&L that in order to avoid the compounding potential of a rolling baseline computation, the regulations for energy savings should be defined as set forth in DP&L's Initial Comments. This language is consistent with the statute and provides an actual target with which the utilities can comply.

Rule 4901:1-39-05 Recovery Mechanism

OCEA's comments with respect to this rule, which are labeled "Program Planning Process," suggest that the distribution utilities coordinate similar program offerings to ensure statewide coordination and program implementation. DE-Ohio respectfully suggests that program coordination on a statewide basis is not always a desirable approach. Some programs are suited to certain geographic regions and should be tailored to the customer base. Each utility has different portfolios of program content and differing customer bases and needs. Consequently, the language proposed by OCEA would not best serve the intent of the Commission Staff or of SB 221.

Reporting Frequency

OCEA proposes that utilities report on the implementation of energy efficiency and demand response programs on a quarterly basis. Although OCEA points to quarterly reports in Vermont, it does not offer much to otherwise support its suggested rule change. DE-Ohio does not support the notion of quarterly reporting on these programs. In addition to being a very costly practice, quarterly reports would be somewhat wasteful as it is doubtful that results would change precipitously on a quarterly basis. Micro-monitoring in this manner would not be helpful to the process and one must question what additional information such reports would provide that would not be captured in annual reports.

4901: 1-39-058 Recovery Mechanism

In its comments, OCEA suggests that utilities be required to submit a filing to the Commission at the end of every two years to seek incentives for meeting energy efficiency standards. The Commission would then determine whether or not the utility is entitled to incentives. This two-year plan would impose an undue delay in the utilities' recovery of their costs for implementation of these programs. A two-year delay is unprecedented and inefficient and would not be consistent with the requirements of R.C. 4828.64(C)(1), which specifically states that the Commission will *annually* review compliance. The legislators clearly contemplated an annual review to

determine compliance or non-compliance. Incentives flow out of these reviews. A two-year review is inconsistent with the intent of SB 221.

Rule 4901:1-40-04(B) Modifications to qualified advanced energy resources to specify what portion of generation can be sued to meet the AEPS

In its comments, Vertus seeks modification to this rule to specify that when a utility makes changes or modifications to its existing sources of power, only the incremental increase in output should be counted toward meeting the AEPS benchmarks. Vertus states that otherwise a 500 mw generation facility could have its entire generation deemed as advanced energy resource. DE-Ohio disagrees with Vertus' analysis. If DE-Ohio opts to spend hundreds of millions of dollars to implement clean coal technology to treat the full amount of a particular plant's flue gas emissions, that entire plant output should qualify to meet the benchmarks. DE-Ohio's analysis is more likely to encourage appropriate investment and is consistent with the current draft of the rule in that it states that qualified resources include clean coal technology if placed in service after January 1, 1998. To only permit the incremental output to qualify would render the investment unjustified.

Additionally, DE-Ohio disagrees with Vertus' request to exclude clean coal technologies which treat flue gases at the back end of a plant. This is an unduly restrictive application of SB 221 and overlooks potential technologies that would otherwise apply.

4901:1-41, "GREENHOUSE GAS REPORTING AND CARBON DIOXIDE CONTROL PLANNING"

DE-Ohio generally agrees with the initial comments and points collectively made by DP&L, Columbus Southern Power Company and Ohio Power Company (joint comments), and The Cleveland Electric Illuminating Company and The Toledo Edison Company (joint comments) in this matter on this particular Chapter/Rule pertaining to proposed carbon dioxide control planning requirements.

In addition, DE-Ohio believes that implementing additional rules, regulations, and filing requirements, along with their associated costs, on, "Any person which owns or operates an electric generating facility within Ohio...," is not the way to ensure reliable and economic supply of electricity in Ohio. This action would discourage investment in new generating facilities within Ohio by introducing more costs and uncertainty, as compared to other jurisdictions without these requirements, thereby robbing Ohio of potential tax base, local jobs, and the ancillary economic benefits associated with power producing projects and low cost power supplies.

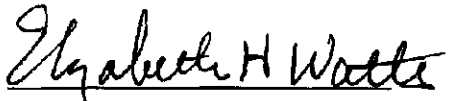
Large scale coal-fired capture, compression, transportation and ultimate storage (sequestration) of carbon dioxide technologies are still in the infancy stage of research and development. Implementation of detailed and cumbersome, and in some cases overreaching rules and requirements that may ultimately be either in addition to, or in conflict with, federally enacted carbon dioxide controls, is premature and possibly detrimental to securing reliable and economic electric supply in Ohio.

For these reasons and concerns, DE-Ohio fully supports the comments and suggestions of others that: 1.) The proposed rules for this section should be strictly limited to carbon dioxide emissions, and NOT include any other criteria pollutants to avoid overlapping requirements of United States Environmental Protection Agency and/or the Ohio Environmental Protection Agency, and 2.) the Commission not implement rules 4901:1-41-02(B) and (C), O.A.C., of this section until such time that there is enough technical and commercial pricing information available and federal climate change legislation, or other federal carbon dioxide control regulation is enacted to allow for the planning and plans as required in these sections.

Conclusion

DE-Ohio appreciates the Commission's efforts to craft rules which will successfully implement the requirements of SB 221. DE-Ohio respectfully urges the Commission to make the changes suggested in DE-Ohio's Initial and Reply Comments.

Respectfully submitted,



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