

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, 4901:5-3, 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
CONSTELLATION NEWENERGY, INC.,
DIRECT ENERGY SERVICES, LLC, AND
INTEGRYS ENERGY SERVICES, INC.
PROPOSED RULES FOR ALTERNATIVE AND
RENEWABLE ENERGY TECHNOLOGIES AND RESOURCES**

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I. Introduction

Now come Constellation NewEnergy, Inc., Direct Energy Services, LLC, and Integrys Energy Services, Inc. (hereinafter collectively referred to as the "Competitive Suppliers") and in response to the Commission's Entry of August 8, 2008 ("August 8th Entry"), submit the following Reply Comments on the promulgated rules for: Chapter 4901:5-1; Chapter 4901:5-3; Chapter 4901:5-5; and Chapter 4901:5-7 of the Ohio Administrative Code. Each of the Competitive Suppliers is a certificated competitive retail electric service provider ("CRES") and is active in the Ohio energy market. The Competitive Suppliers provided initial comments on September 9, 2008, when the Commission originally promulgated changes to the rules in the above listed Chapters of the Ohio Administrative Code.

The Competitive Suppliers appreciate the sheer number of initial comments the Commission received in this proceeding on a broad variety of topics. These Reply

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Comments are submitted in response to the September 9, 2008 Initial Comments submitted by no less than thirty-five (35) other parties in this proceeding. Where there is a reference to “Initial Comments”, the reference is to the September 9, 2008 Initial Comments of that party. The absence of a response for any particular issue raised in the initial comments which is not addressed in these Reply Comments should not be construed to be either an endorsement or rejection of that position.

II. Comments on Selected Rule Amendments

Competitive Suppliers offer the following Reply Comments in response to select Initial Comments and proposed revisions to the proposed rules. The suggested revisions by the Competitive Suppliers are designed to provide needed clarity and consistency to certain of the proposed rules aligning the wording of the proposed rules with the statutory language in Amended Substitute Senate Bill 221 or with other existing administrative rules, processes, and procedures.

A. Renewable Energy Resources Should Be Procured Pursuant to a Competitive Process

LS Power Associates, L.P. (“LS Power”) recommends that the Commission employ competitive procurement practices to meet the alternative energy resource mandate of SB 221.¹ LS Power articulates a number of compelling reasons why competitive procurement practices represent the best way to ensure that the electric utilities provide cost-effective retail service.² The Competitive Suppliers wholeheartedly

¹ LS Power Initial Comments at 2.

² Id. at 2-5.

support LS Power’s recommendation. Other states, including Illinois, utilize competitive procurement processes to meet similar alternative energy resource mandates. It has been well-documented that competitive markets greatly enhance the development of wind, solar, and renewable energy. A recent White Paper issued by PennFuture, the leading environmental organization in Pennsylvania, lends significant quantitative and qualitative support for this position. (A copy of the PennFuture White Paper is attached hereto and made a part hereof as Attachment A.)

B. 4901:1-40-01 Definitions

The Competitive Suppliers offer several comments and recommendations to a number of the proposed changes to certain definitions contained in the proposed rules.

1. “deliverable into this state”

Duke Energy Ohio, Inc. (DE-Ohio) proposed that the definition of “deliverable into this state” be revised to include facilities located in the Midwest Independent System Operator (MISO) or PJM Regional Transmission Organizations as long as the utility or applicable CRES provider demonstrates an available transmission path.³ This proposed revision is consistent with a similar recommendation contained in the Initial Comments of the Competitive Suppliers and reflects the practical reality of the ability to deliver electric generation from within the Regional Transmission Organizations into various Ohio service territories.

2. Clean Coal

The Competitive Suppliers support the comments made by GreenField Steam regarding the word “clean coal” in section 4901:1-40-01(F).⁴ The word “clean coal” should be replaced with the term “processed coal” in order to provide a more accurate term.

3. Solar Thermal

Both GreenField Steam & Electric and the Ohio Consumer and Environmental Advocates (“OCEA”) advocated in their Initial Comments that the definition of “solar thermal” be restricted to “solar thermal electric”.⁵ The Competitive Suppliers request that the Commission reject their recommendation and expand the scope of “solar thermal” to recognize all types of “solar thermal” since it can be used to both produce electric generation but also to displace it.

Furthermore, other commissions, including the Arizona Corporation Commission, have recognized Renewable Energy Credits (“RECs”) from “solar thermal” processes, including “solar water heating system”, “a solar industrial process heating and cooling system”, “solar space cooling system”, or a “solar space heating system” in their renewable energy standards.⁶ As a result, the Competitive Suppliers request that the Commission recognize this unique situation.

³ DE-Ohio Initial Comments at 6.

⁴ Greenfield Steam & Electric Initial Comments at 1.

⁵ Greenfield Steam Initial Comments at 1; OCEA Initial Comments at 37-38.

⁶ Arizona Corporation Commission, In The Matter Of The Proposed Rulemaking For The Renewable Energy Standard and Tariff Rules, Docket No. RE-00000C-05-0030, Decision No. 69127, November 14, 2006.

DE-Ohio recommends that the definition of “solar thermal” be expanded to include: “solar thermal water heating”,⁷ which means the heating of water through collectors or other heat exchangers directly from sunlight. The Competitive Suppliers agree with DE-Ohio and recommend that this definition should also allow for the heating of water or other solutions since water is not the only liquid used in such applications. In summary, the Competitive Suppliers request that the Commission expand the definition of “Solar Thermal” so that it properly includes all types of solar thermal.

Furthermore, current PJM Interconnection (“PJM”) Generation Attribute Tracking System (“GATS”) and/or the Midwest Renewable Energy Tracking System (“MRETS”) do not track these types of solar thermal systems. As Regional Transmission Organizations (“RTOs”), they rely solely on electric generation measured through a meter. The proposed Rule found in 4901:1-40-04 (D)(2)(c) allows for the Commission to approve another credible tracking system. As a result, The Competitive Suppliers recommend a collaborative working group be created to discuss and recommend a REC tracking system for these types of solar thermal products.

4. Demand Response

The Competitive Suppliers support the recommendation of Enernoc, Inc., regarding participation in Demand Response programs outside of electric distribution utility programs.⁸ Customers should have the opportunity to participate in any program that meets the goals of Amended Substitute Senate Bill 221 and should not be limited to only those offered by an electric distribution utility. Failure to allow Ohio sited industrial and commercial customers to utilize the most favorable demand response or interruptible

⁷ DE-Ohio Initial Comments at 7.

programs places Ohio businesses at a competitive disadvantage with industrial and commercial customers sited in adjoining states.

The Competitive Suppliers support the recommendation made by COSE that if small commercial users are able to aggregate their resources to qualify as a mercantile customer, and can commit their demand reductions, etc. to the utility, then they too should be able to apply for and receive these exemptions.⁹ Furthermore, we agree that these cost recovery exemptions are very important to small commercial users who will see rising energy costs and make further investment in these demand reduction and energy efficiency programs.

5. Renewable Energy Certificates (“RECs”)

The Competitive Suppliers support the recommendation made by American Municipal Power – Ohio, Inc. (“AMP-Ohio”) to amend the definition of REC to ensure that RECs may be divided so as to separate the portion of the attribute that is derived from greenhouse gas (“GHG”) *destruction* (i.e., via flaring or other combustion), which can then be counted as a “carbon credit,” from the portion of the attribute that is derived from the *generation* of renewable electricity, which can be counted as a REC.¹⁰ AMP also recommends that this would apply only to RECs that are derived from technologies that generate electricity using landfill gas, other biogas, or any other renewable energy resource that contains methane or other GHGs.¹¹ The Competitive Suppliers also support this clarification of the proposed Rule.

⁸ Enernoc Initial Comments at 2-3.

⁹ COSE Initial Comments at 2.

¹⁰ AMP-Ohio Initial Comments at 2-3.

¹¹ *Id.* at 2-3.

In 4901:1-40-01(DD), the definition of REC requires that RECs be fully aggregated. According to 4901:1-40-1(U), fully aggregated means that the REC “shall retain all of its attributes...and that specific attributes are not separated from the renewable energy credit and sold individually.” In AMP’s Initial Comments, they indicated they agree that generally RECs should be fully aggregated, and this principle should not apply to the “carbon credit” portion of the attribute.¹² The Industrial Energy Users-Ohio (“IEU-Ohio”) also address this issue. IEU-Ohio asserts that SB 221 does not provide for a limitation on the use of fully aggregated RECs.¹³ The Competitive Suppliers support this conclusion of IEU-Ohio.

C. 4901:1-40-03 Requirements

The Competitive Suppliers support the proposed rule in Section 4901:1-40-03(A)(3) as follows:

“All energy 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.”¹⁴

The Competitive Suppliers strongly object to the assertion by DE-Ohio that absent an unavoidable charge, it is unlikely that utilities will invest in significant

¹² *Id.* at 3.

¹³ IEU-Ohio Initial Comments at 13.

¹⁴ DE-Ohio Initial Comments at 7-8.

renewable capacity additions.¹⁵ Furthermore, the Competitive Suppliers oppose the recommendation made by DE-Ohio that an unavoidable charge for constructed capacity dedicated to Ohio for the life of the plant or purchased capacity newly dedicated to serve load in Ohio should be established.¹⁶ This is an improper attempt by DE-Ohio to circumvent the express language in Amended SB 221. Such an interpretation is in direct conflict with the plain language in Amended SB 221 and should be rejected.

Finally, Columbus Southern Power Company and Ohio Power Company (collectively, “AEP”) also address these points regarding cost recovery and bypassability associated with meeting the alternative energy portfolio standard.¹⁷ The Competitive Suppliers do not oppose AEP’s suggested modifications to proposed Rule 4901:1-40-03 that clarify the scope of the bypassability for customers that exercise choice of electricity supplier.¹⁸

D. 4901:1-40-04 Qualified Resources, Advanced Energy

The Competitive Suppliers support the recommendation by the American Wind Energy Association (“AWEA”), Wind on the Wires (“WOW”), Ohio Advanced Energy (“OAE”), and Environment Ohio (“EO”), collectively the “Joint Commenters” regarding the needed to clarify that credit toward the advanced energy benchmark for such capacity

¹⁵ Duke Energy Initial Comments at 8.

¹⁶ Id. at 8.

¹⁷ AEP Initial Comments at 12-13.

¹⁸ Id. at 12-13.

additions and efficiency improvements does not render an *entire* existing generating facility an “advanced energy resource”.¹⁹

The Competitive Suppliers support the request made by Rolls-Royce Fuel Cell System’s (“RRFCS”) to modify section 4901:1-40-04(7) to include fuel cells without specification or qualification to feedstock.²⁰

E. 4901:1-40-07 Cost Cap

The Competitive Suppliers oppose the recommendation of AMP-Ohio to include language in this section of Code specifically indicating that if the cost cap is determined to be in effect, it does not free the electric distribution utility or electric service company from its obligations under any contractual arrangement pertaining to the AEPS.²¹ AMP-Ohio fails to provide any rationale or basis for such a revision to the proposed Rule.

F. 4901:1-40-08 Annual Compliance Payments

The Competitive Suppliers support the recommendation of GreenField Steam and Electric that the compliance payment should not be an “all or nothing” payment.²² The Competitive Suppliers agree the payment should be applied proportionally, even if the 3 percent cost cap is exceeded, because the cost of renewable energy does not necessarily scale linearly with increasing rates of deployment; rather, initial deployments may be more efficient than later deployments, because later deployments may be installed in less

¹⁹ AWEA, WOW, OAE, EO Initial Comments at 10.

²⁰ Rolls Royce Initial Comments at 1.

²¹ AMP-Ohio Initial Comments at 5.

²² GreenField Steam Initial Comments at 1.

favorable conditions. Similarly, as deployment rates change, that affects industry supply and demand for the equipment, which affects prices.

III. Conclusion

The Competitive Suppliers thank the Commission for this opportunity to comment on the rules in Chapter 4901:5-1; Chapter 4901:5-3; Chapter 4901:5-5; and Chapter 4901:5-7 of the Ohio Administrative Code. The Competitive Suppliers request that the Commission adopt the rule changes described in their Reply Comments and those described above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Comments was served upon the following persons this 26th day of September, 2008 via electronic mail or via U.S. first class mail, postage prepaid and will be served by electronic mail or via U.S. first class mail by the close of business on September 26, 2008, on all other parties not listed below who timely file Reply Comments in this case.



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Competitive PJM Market Boosts Wind, Solar and Renewable Energy

Wind, solar and renewable electricity are booming. There are powerful forces driving the boom from markets to policy.

Fossil fuel prices have skyrocketed and become more volatile than ever. Nobody knows how much oil will cost next month, let alone five or 10 years from now. But renewable energy generation – with a zero cost of fuel – can offer a fixed price for five, 10 or even 20 years. This price stability is extremely valuable and is being sought after by smart buyers. Recently the City of Houston was saving money by buying electricity generated from wind power as opposed to “generic” grid power.

For years, the energy price signal has been seriously distorted by the failure to include the pollution, health and national security costs of various energy sources in the price of energy. But now those external costs are increasingly included in the price of energy, as all economists agree that they should be. Carbon and other global warming gasses are just one example of the external costs that are being properly internalized to the price of energy. As external costs are included in the cost of energy, the result is that sources of energy like wind, geothermal and solar that have zero pollution, health or national security costs are finally getting a more level playing field. And once the field is leveled, these energy sources are doing better and better.

Technology advances, especially in solar, are also making renewable energy more and more competitive. In a world where oil supply is peaking and energy demand is increasing, better and better renewable energy technology is becoming the smart economic and environmental option.

Another factor driving renewable energy is the existence of a well-organized competitive wholesale power market. These markets are operated by independent system operators (ISOs) and regional transmission organizations (RTOs), such as PJM Interconnection (PJM) that operates the electric grid for Pennsylvania and much of 14 other states, and are recognized as important forces for the growth of wind generation.

The competitive market structure provides many options for renewable energy developers, including the ability to sell

generation resources into PJM's capacity auction. PJM's capacity auction is part of its Reliability Pricing Model (RPM) program. RPM secures the rights to future generation capacity to help assure power grid reliability. PJM's organized competitive market provides a transparent process that allows generators and customers to provide generation and demand curtailment resources to meet capacity requirements. The generation and demand curtailment resources receive a payment in return for the commitment to provide capacity.

PJM has issued a summary report on the results of the first five capacity auctions. The report indicates that more than 300 megawatts (MW) of wind generation resources (over 275 MW of new wind turbines with the remainder uprates of existing wind generators) have been accepted in the RPM auction and will receive future capacity payments. A rough estimate of auction results for 2011/2012 indicates that a wind generator would be able to receive a capacity payment between \$40,000 and \$50,000 per MW per year. That means a 100-megawatt wind plant that has a bid accepted in the RPM auction could receive an annual payment of approximately \$650,000. Such payments will help to enhance the economics of wind development, promoting its growth in Pennsylvania and the greater PJM multi-state region.

PennFuture led the way in urging PJM to recognize wind energy as a capacity resource. In 2002, we petitioned PJM to include wind as a limited capacity resource. PJM, in turn, amended its rules to recognize capacity from wind generation within its territory, allowing owners of wind capacity to bid into PJM's RPM auctions.

The fact that PJM recognizes wind energy capacity clearly demonstrates that wind generation is a reliable energy resource that can be depended upon to provide future capacity needs. Additionally, having the option to bid and potentially receive revenue through capacity payments makes Pennsylvania, and the greater PJM region even more appealing for wind energy investment.

Below is a chart from PJM's “2011/2012 RPM Base Residual Auction Results” that shows the diverse types of generation that bid into PJM's RPM program and will now receive capacity payments.

	Delivery Year	CO2 (M)	Gas (M)	Oil (M)	Coal (M)	Nuclear (M)	Solar (M)	Wind (M)	Other (M)
New Capacity Units (CAP MW)	2007/2008			98.7	9.3			19.8	
	2008/2009			87.0				99.1	99.1
	2009/2010	309.5		23.8		53.0			478.3
	2010/2011	283.3		23.0				141.4	447.7
	2011/2012	418.4	1,135.0			704.8		1.1	75.2
Capacity From Reliability Units (CAP MW)	2007/2008					47.9			47.9
	2008/2009					184.8			184.8
	2009/2010								0.0
	2010/2011	150.0							150.0
	2011/2012	86.0							86.0
Upgrades to Existing Capacity Resources (CAP MW)	2007/2008	134.3		128.9	95.0	735.6		92.0	1,095.8
	2008/2009	108.2		31.0	16.0	108.8		26.8	289.8
	2009/2010	162.2		209.0		182.8		194.8	748.8
	2010/2011	117.3		74.3		48.0		180.3	419.9
	2011/2012	369.2		145.8		186.8		292.1	993.9
TOTAL	2,200.6	2,200.6	182.6	306.3	1,806.8	777.2	1.1	307.9	7,891.9

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Access to a competitive wholesale power market is a key factor in promoting renewable energy development in a region. A recent United States Department of Energy (DOE) report noted, "Not surprisingly, ISOs and RTOs host a disproportionate amount of wind generation: 74 percent of installed wind capacity is now located in ISO and RTO regions even though only 44 percent of wind energy potential and only 53 percent of electric demand is in these areas." Another DOE report entitled *20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply* stated, "Experience has shown that using well-functioning hour-ahead and day-ahead markets and expanding access to those markets are effective tools for dealing with wind's variability. A deep, liquid real-time market is the most economical approach to providing the balancing energy required by wind plants with variable outputs." Finally, the American Wind Energy Association (AWEA) recently passed a board resolution asserting that AWEA will "promote competitive regional wholesale electricity markets through policy proposals and by communicating to policy makers about the opportunity to use such markets to integrate more renewable energy and address climate change goals."

According to AWEA, the record-setting 5,400 megawatts of wind capacity installed domestically in 2007 more than doubled the previous record for U.S. installed capacity set in 2006. Pennsylvania has also seen strong growth in wind energy development. The nine wind projects operating in Pennsylvania today generate approximately 771,055 megawatt-hours of clean electricity each year – enough to power 85,672 homes annually. New projects are continually coming online and by the end of the year it is expected that wind turbines in Pennsylvania will produce 1 percent of the electricity consumed in the state each year, or 1,461,503 megawatt-hours annually. That is enough electricity to power 162,389 homes each year.

The PJM-operated competitive market is an incredible asset to wind energy development in Pennsylvania and the entire PJM region. Thanks to the PJM market, Pennsylvania will enjoy more new investments in renewable energy. These investments will create a virtuous circle of increased grid capacity, energy resource diversity, and environmental improvement. That all adds up to better electricity prices and more reliability for our consumers too. Yet another example of how "every environmental victory grows the economy."