

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for)	
Alternative and Renewable Energy)	
Technology, Resources, and Climate)	
Regulations, and Review of Chapters 4901:5-)	Case No. 08-888-EL-ORD
1, 4901:5-3, 4901:5-5, and 4901:5-7 of the)	
Ohio Administrative Code, Pursuant to)	
Chapter 4928.66, Revised Code, as Amended)	
by Amended Substitute Senate Bill No. 221)	

**APPLICATION FOR REHEARING
BY THE
OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

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**APPLICATION FOR REHEARING
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OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

The undersigned members of the Ohio Consumer and Environmental Advocates (collectively “OCEA”)¹ jointly submit this Application for Rehearing pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A) regarding the Opinion and Order (“Order”) in the above-captioned case issued by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) on April 15, 2009. The OCEA members appreciate the PUCO’s work in developing thoughtful, well-conceived rules that advance the intent of SB 221 through most of this set of rules. However, the OCEA members submit that the Commission’s Order is unreasonable and unlawful in the following particulars:

The Commission’s Order is unreasonable and unlawful because the Commission failed, as a quasi-legislative decision-maker, to formulate definitions and rules regarding Energy efficiency and

¹OCEA includes the Office of the Ohio Consumers’ Counsel, NOAC (City of Toledo and Lucas County), Ohio Partners for Affordable Energy, Citizens for Fair Utility Rates, Neighborhood Environmental Coalition, Cleveland Housing Network, Empowerment Center for Greater Cleveland, Counsel for Citizens Coalition, Citizen Power, Natural Resources Defense Council, Edgemont Neighborhood Coalition of Dayton, Sierra Club Ohio Chapter, and Environment Ohio, and as to the alternative energy portfolio standards and long-term forecast reporting rules only the Ohio Environmental Council.

demand reduction benchmarks (Chapter 4901:1-39) that meet the statutory requirements of R.C. 4928.141(A) and R.C. 4928.66(B) and (C). *Amoco v. Petro. Undergr. Stor. Tank Release Comp. Bd.*, 89 Ohio St.3d 477, 483.

The Commission's Order is unreasonable and unlawful because the Commission failed, as a quasi-legislative decision-maker, to formulate definitions and rules regarding the alternative Energy portfolio standards (Chapter 4901:1-40) that meet the statutory requirements of R.C. 4928.66 and serve the public policy goals embodied in recent legislation. *Amoco v. Petro. Undergr. Stor. Tank Release Comp. Bd.*, 89 Ohio St.3d 477, 483.

The Commission's Order is unreasonable and unlawful because the Commission failed, as a quasi-legislative decision-maker, to formulate rules regarding the long-term forecast reports filed by electric utilities and transmission owners (Chapter 4901:5-5) that meet the Statutory requirements of R.C. 4935.04. *Amoco v. Petro. Undergr. Stor. Tank Release Comp. Bd.*, 89 Ohio St.3d 477, 483.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING
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OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

I. INTRODUCTION

Members of the Ohio Consumer and Environmental Advocates (collectively “OCEA”) jointly submitted comments and reply comments regarding rules proposed in an Entry dated August 20, 2008. OCEA members requested that the Public Utilities Commission of Ohio (“PUCO” or “Commission”) adopt revisions to the proposed rules as set forth in those filings. These filings emphasized the need for full and complete data to inform the PUCO’s important decisions and the burden placed on utilities to prove that their requests are justified. Rules are instrumental in setting forth a transparent minimum level of expectation that can be monitored by all parties. While many of the rules developed by the Commission will provide benefits to the public, there are nevertheless rules that the Commission should revise to comply with Ohio law. OCEA members urge the Commission to reconsider its Order to keep in the forefront the public interest and the utilities’ duty to serve that interest in a fair and reasonable manner.

II. THE COMMISSION’S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE DEFINITIONS AND RULES REGARDING ENERGY EFFICIENCY AND DEMAND REDUCTION BENCHMARKS (CHAPTER 4901:1-39) THAT MEET THE STATUTORY REQUIREMENTS OF R.C. 4928.141(A) AND R.C. 4928.66(B) AND (C). *AMOCO V. PETRO. UNDERGR. STOR. TANK RELEASE COMP. BD.*, 89 OHIO ST.3D 477, 483.

A. The Commission’s Order Failed to Set Reasonable Definitions (4901:1-39-01) that Meet the Requirements of R.C. 4928.66 as established by S.B. 221.

The final rules adopt a number of definitions that supplement those originally proposed as set out on August 20, 2008. The below-stated modification to the approved definitions should be included in the Commission’s entry on rehearing.

Ohio Adm. Code 4901:1-39-01(L) Independent program evaluator

The Commission should alter the proposed definition to clarify that the Commission will choose the independent program evaluator and therefore remove a potential conflict of interest. The party who chooses or hires a program evaluator will have the most influence over the evaluator. For this reason, in many cases the Commission has chosen and hired the auditors in electric fuel component cases,² in gas cost recovery cases,³ and in current fuel and purchased power cases.⁴ As another example, the Commission ordered, in an investigation case, that the auditor should not be

² Repealed Ohio Adm. Code 4901:1-11.

³ See Ohio Adm. Code 4901:1-14.

⁴ See Case No. 07-974-EL-UNC, Entry (January 21, 2009).

employed by the telephone company it is auditing.⁵ In that investigation case, the Commission ordered that the independent auditor should be selected by the PUCO Staff⁶ and that the auditor should not rely on the utility it is auditing for regulatory interpretations or clarifications of the Commission's rules.⁷

The Commission has the responsibility to ensure that claimed energy savings or peak demand reductions have been achieved under R.C. 4928.66(B). Utilities have strong incentives to influence program evaluators if they are concerned that they have not met the statutory benchmarks because they will face penalties if they do not. Therefore, the Commission should retain as much influence over independent program evaluators as possible and can only meet its obligations under R.C. 4928.66(B) to verify program results by choosing the program evaluator.

PROPOSED CHANGE:

- (L) "Independent program evaluator" means the person or firm PAID FOR ~~hired~~ by the electric utility BUT HIRED BY the commission ~~staff~~ to measure and verify the energy savings and/or electric utility peak-demand reduction resulting from each approved program and to conduct a program process evaluation of each approved program. Such person shall work at the sole direction of the commission staff.

Ohio Adm. Code 4901:1-39-01(O) Nonenergy benefits

The Commission should incorporate a standard way of calculating the nonenergy benefits, such as the Societal Test, into the definition of "nonenergy

⁵ See In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code, Case No. 99-938-TP-COI, Entry (October 19, 2000) at 2 ¶ 4.

⁶ See Id. at 3-4 ¶8.

⁷ See Id. at 3 ¶5.

benefits.” The Societal Test should become the standard method for calculating “nonenergy benefits” because it evaluates parameters that will not be evaluated by the Total Resource Cost Test. The Societal Test differs from the Total Resource Cost Test because it includes the effects of externalities (e.g. environmental, national security), excludes tax credit benefits, and uses a different societal discount rate.⁸

The Commission’s determinations as to the cost-effectiveness of energy efficiency programs among utilities will be more consistent if the same test is used by all parties to calculate nonenergy benefits. This consistency will be especially necessary to determine whether there are nonenergy benefits that are sufficiently “substantial” to include a program in a portfolio plan that is not cost-effective as permitted under Ohio Adm. Code 4901:1-39-04.

PROPOSED CHANGE:

- (O) “Nonenergy benefits” means societal benefits that ARE CALCULATED USING THE SOCIETAL TEST AND do not affect the calculation of program cost-effectiveness pursuant to the total resource cost test. ~~Including~~ THE SUPPLEMENTAL SOCIETAL BENEFITS CONSIDERED IN THE SOCIETAL TEST INCLUDE but ARE not limited to benefits of low-income customer participation in utility programs; reductions in greenhouse gas emissions, regulated air emissions, water consumption, natural resource depletion to the extent the benefit of such reductions are not fully reflected in cost savings; enhanced system reliability; or advancement of any other state policy enumerated in section 4928.02 of the Revised Code

⁸ See California Standard Practice Manual (October, 2001) at 19.

B. The Commission’s Order Failed to Set Out Mandated Requirements for Benchmark and Annual Status Reports (4901:1-39-05) that Meet the Requirements and Policy Goals Set Forth in R.C. 4928.66 by S.B. 221.

Ohio Adm. Code 4901:1-39-05(C)(2)(b) Benchmark and annual status reports.

The Commission should change the term “may” to “shall” in the last sentence of section 4901:1-39-05(C)(2)(b). This change would provide consistency with the rest of the section, and would establish a policy that provides transparency for all parties that are interested in these reports. Additionally, it is not clear in this section what the Commission would issue an order about, but if the Commission issues an order requiring guidelines for program measurement and verification, it would seem that the Staff should publish guidelines for program measurement and verification. The Commission should order the Staff to publish guidelines for program measurement and verification to ensure more accurate measurements and consistency. Because the Commission is required to verify the energy savings of the utilities’ programs under R.C. 4928.66(B), the Commission should provide guidelines or even rules or adopt an industry recognized standard protocol manual such as the International Performance Measurement and Verification Protocol for measurement and verification. Otherwise the Commission cannot reasonably verify that the programs are meeting their energy savings goals as required by R.C. 4928.66(B).

PROPOSED CHANGE:

- (C)(2)(b) A measurement and verification report from the independent program evaluator to verify the energy savings and peak-demand reduction projections utilized in the evaluation of the cost-effectiveness of each energy efficiency and demand-side management program reported in the electric utility’s portfolio status report. Such report shall include documentation of expenditures, measured and verified savings, and cost-effectiveness of each program.

Measurement and verification processes shall confirm that the measures were actually installed, the installation meets reasonable quality standards, and the measures are operating correctly and are expected to generate the predicted savings. Upon commission order, the staff ~~may~~ SHALL publish guidelines for program measurement and verification.

C. The Commission’s Order Failed to Set Provisions for the Annual Reports and Commission Verification Report (4901:1-39-06) that Comply with Statutory Requirements Stated in R.C. 4928.66.

Ohio Adm. Code 4901:1-39-06(B) Review of annual reports and issuance of the Commission verification report.

As Ordered, this rule does not accurately reflect the requirements of R. C. 4928.66, which requires that forfeitures be made and that they be deposited to the Advanced Energy Fund. The Commission should change Ohio Adm. Code 4901:1-39-06 (B) to comply with the terms of R.C. 4928.66 (C), which states: “the Commission shall assess a forfeiture on the utility as provided...Revenue from any forfeiture assessed under this division shall be deposited to the credit of the advanced energy fund created under section 4928.61 of the Revised Code.”

The Commission’s rules should adequately reflect S.B. 221 to ensure that all parties have easy access to what is expected of them and what the consequences are if utilities do not meet those expectations. In any case, the Commission is required to adopt rules regarding the annual report it must file that verify the annual levels of energy savings under R.C. 4928.66(B) and those rules are not complete without addressing the statutorily mandated consequences of non-compliance. Waiving the statute is not an option.

PROPOSED CHANGE:

- (B) Upon receipt of such report, the staff shall review the report and any timely filed comments, and file its findings and recommendations regarding program implementation and compliance with the applicable benchmarks, and any proposed modifications thereto, verifying the electric utility's compliance or noncompliance with its approved program portfolio plan and the mandated energy efficiency improvements and peak-demand reductions. If staff finds that an electric utility has not demonstrated compliance with the approved program portfolio plan or annual sales or peak-demand reductions required by division (A) of section 4928.66 of the Revised Code, staff ~~may~~ SHALL recommend THE remedial action and/or the assessment of a forfeiture. REVENUE FROM ANY FORFEITURE ASSESSED SHALL BE DEPOSITED TO THE CREDIT OF THE ADVANCED ENERGY FUND CREATED UNDER SECTION 4928.61 OF THE REVISED CODE. Additionally, the staff may recommend modifications to a program within the electric utility's program portfolio plan.

D. The Commission's Order Failed to Set Provisions for the Recovery Mechanism (4901:1-39-07) that Meet the Requirements Set Forth in R.C. 4928.141 by S.B. 221.

Ohio Adm. Code 4901:1-39-07(A)(2) Recovery mechanism.

The Commission should clarify that under 4901:1-39-07(A)(2) mercantile customers must still contribute to lost distribution revenues because mercantile customers contribute to the utility's lost distribution revenues in the same way that other customers do even if they commit their advanced energy programs to the utility's programs. Allowing these mercantile customers to avoid the DSM riders is sufficient benefit for the commitment of their own programs to the utility.

Lost distribution revenues have nothing to do with generation and to allow these mercantile customers to avoid lost distribution revenue costs is a violation of R.C. 4928.141(A) that requires the utility to provide consumers "on a comparable and

nondiscriminatory basis within its service territory, a standard service offer.”

Accordingly the provision should be revised to say:

PROPOSED CHANGE:

(A)(2) Mercantile customers who commit their peak-demand reduction, demand response, or energy efficiency projects for integration with the electric utility's programs may jointly with the electric utility, apply for exemption from such DEMAND SIDE MANAGEMENT PROGRAM COST recovery as set forth in rule 4901:1-39-09 of the Administrative Code. MERCANTILE CUSTOMERS WHO COMMIT THEIR PEAK-DEMAND REDUCTION, DEMAND RESPONSE, OR ENERGY EFFICIENCY PROJECTS FOR INTEGRATION WITH THE ELECTRIC UTILITY'S PROGRAMS ARE STILL RESPONSIBLE FOR PAYING THEIR SHARE OF THE UTILITY LOST DISTRIBUTION REVENUES AS DETERMINED AND AUTHORIZED FOR RECOVERY BY THE COMMISSION.

III. THE COMMISSION’S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE DEFINITIONS AND RULES REGARDING THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS (CHAPTER 4901:1-40) THAT MEET THE STATUTORY REQUIREMENTS OF R.C. 4928.66 AND SERVE THE PUBLIC POLICY GOALS EMBODIED IN RECENT LEGISLATION. *AMOCO V. PETRO. UNDERGR. STOR. TANK RELEASE COMP. BD.*, 89 OHIO ST.3D 477, 483.

A. The Commission’s Order Failed to Set Reasonable Definitions (4901:1-40-01) that Meet the Requirements and Policy Goals Set Forth in R.C. Chapter 4928 by S.B. 221.

The final rules adopt a number of definitions that supplement those originally proposed as set out on August 20, 2008. The below-stated modification to the approved definitions should be included in the Commission entry on rehearing.

Ohio Adm. Code 4901:1-40-01(G) Co-firing

The Commission should add to the definition of “Co-firing” to clarify that not only should the Commission consider the fuel used in determining the energy savings,

but should also consider the efficiency of the combustion unit in burning the renewable fuel because most boilers are not optimized for biomass burning. If the fuel is not really appropriate for the plant, using the fuel may be a waste of a renewable energy source. The Commission is obligated to verify energy savings under R.C. 4928.66(B), and cannot do so accurately unless it also takes into consideration the efficiency of the plant used to make renewable energy generation.

PROPOSED CHANGE:

- (G) "Co-firing" means simultaneously using multiple fuels in the generation of electricity. In the event of co-firing, the proportion of energy input comprised of a renewable energy resource AND THE EFFICIENCY OF THE UNIT IN COMBUSTING THE RENEWABLE FUEL shall dictate the proportion of electricity output from the facility that can be considered a renewable energy resource.

Ohio Adm. Code 4901:1-40-01(L) Distributed generation

The definition should be altered to clarify that the distributed generation may be owned by the customer or a third party. This change is consistent with the Commission's discussion in the Order.⁹ Encouraging diverse supplies is a goal of S.B. 221 under R.C. 4928.02(C):

Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities.

Additionally, encouraging customers or third-parties to own distributed generation is also a goal under R.C. 4928.02(F):

Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of

⁹ See Order (April 15, 2009) at 28.

distributed generation, so the customer-generator or owner can market and deliver the electricity it produces.

Additionally, this clarification is consistent with R.C. 4928.66(A)(2)(d):

Programs implemented by a utility may include demand-response programs, customer-sited programs . . .

For that reason, Ohio Adm. Code 4901:1-40-01(L) should be revised accordingly:

PROPOSED CHANGE:

(L) “Distributed generation” means electricity production, OWNED BY THE CUSTOMER OR A THIRD PARTY, that is on-site and is capable of supplying energy to the utility distribution system.

B. The Commission’s Order Failed to Set Out Mandated Requirements for Complying with the Implementation of the Alternative Energy Portfolio Standard (4901:1-40-03) that Meet the Requirements of R.C. 4928.66 by S.B. 221.

Ohio Adm. Code 4901:1-40-03(B) Requirements.

Ohio Adm. Code 4901:1-40-03(B)(1) should be modified to accurately reflect R.C. 4928.64(B), which states: “The baseline for a utility's or company's compliance with the alternative energy resource requirements of this section shall be the average of such total kilowatt hours it sold in the preceding three calendar years.” As ordered, Ohio Adm. Code 4901:1-40-03(B)(1) does not reflect the statutory requirement that all sales, not just sales under a standard service offer, count towards the baseline. In fact, the existing language would not incorporate the special contract/reasonable arrangement electricity sales being approved by the Commission.

The Commission’s failure to include special contract/reasonable arrangement sales in the baseline does not create an actual picture of the non-renewable generation being sold during a year. Therefore the baseline under the rule as approved by the Commission would undermine the Commission’s calculation of actual energy savings by

utilities and the Commission's obligation to accurately verify energy savings under R.C. 4928.66. In addition, failure to count all sales would create a greater likelihood that the 3% cap would be exceeded.

In order to correct this problem, the rule should be revised to state the following:

PROPOSED CHANGE:

- (B) The baseline for compliance with the alternative energy resource requirements shall be determined using the following methodologies:

- (1) For electric utilities, the baseline shall be computed as an average of the three preceding calendar years of the total annual number of kilowatt-hours of electricity sold ~~under its standard service offer~~ to any and all retail electric customers whose electric load centers are served by that electric utility and are located within the electric utility's certified territory. The calculation of the baseline shall be based upon the average, annual, kilowatt-hour sales reported in that electric utility's three most recent forecast reports or reporting forms.

- C. **The Commission's Order Failed to Set Out Requirements for the Qualified Resources to be Permitted as Part of the Implementation of the Alternative Energy Portfolio Standard (4901:1-40-04) that Meet the Requirements and Policy Goals Set Forth in R.C. Chapter 4928.66 by S.B. 221.**

Ohio Adm. Code 4901:1-40-04(E) Qualified resources.

The proposed certification process contemplates a sixty (60) day timeframe for project approval (extensible to a total of one hundred and fifty (150) days if the application should be suspended during this initial period.) There may be certain classes of application (for instance, small solar facilities located within the states' boundaries) where a determination of certification eligibility may be more streamlined, absent the need to prove deliverability, or other comparatively complex determinations.

In this case, it may be desirable to compress the certification timeframe, as two (2) months could constitute a significant proportion of an eligible plants' production and make it difficult to meet the annual benchmarks. Compressing the certification timeframe would be consistent with the State purpose articulated under R.C. 4928.02(D):

Encourage innovation and market access for cost-effective supply and demand- side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure.

This streamlined process should be reflected in a new section that would be placed directly after 4901:1-40-04(E)(3):

PROPOSED NEW SECTION:

- (4) FOR APPLICATIONS LESS THAN 2 MEGAWATTS IN NAMEPLATE CAPACITY, PHYSICALLY LOCATED WITHIN THE BOUNDARIES OF THE STATE, AND USING AN ALREADY APPROVED RENEWABLE ENERGY RESOURCE, THE COMMISSION MAY APPROVE, SUSPEND OR DENY AN APPLICATION WITHIN THIRTY DAYS OF IT BEING FILED. IF THE COMMISSION DOES NOT ACT WITHIN THIRTY DAYS, THE APPLICATION IS DEEMED AUTOMATICALLY APPROVED ON THE SIXTY-FIRST DAY AFTER THE DATE FILED.

The Commission should preserve the considerable REC value that may be associated with an approved generator that has already been operating for some time, with a new section that would be placed at the end of Ohio Adm. Code 4901:1-40-04(E)(8):

PROPOSED NEW SECTION:

- (8) AN APPROVED APPLICANT MAY REGISTER ANY ELIGIBLE GENERATION WITH THE APPROPRIATE ATTRIBUTE TRACKING SYSTEM, FROM THE DATE

OF THE FIRST COMMERCIAL OPERATION OF THE
SYSTEM.

- IV. **THE COMMISSION’S ORDER IS UNREASONABLE AND UNLAWFUL BECAUSE THE COMMISSION FAILED, AS A QUASI-LEGISLATIVE DECISION-MAKER, TO FORMULATE RULES REGARDING THE LONG-TERM FORECAST REPORTS FILED BY ELECTRIC UTILITIES AND TRANSMISSION OWNERS (CHAPTER 4901:5-5) THAT MEET THE STATUTORY REQUIREMENTS OF R.C. 4935.04. *AMOCO V. PETRO. UNDERGR. STOR. TANK RELEASE COMP. BD.*, 89 OHIO ST.3D 477, 483.**

Ohio Adm. Code 4901:5-5-06 Integrated resource plans for electric utilities.

Ohio Adm. Code 4901:5-5-06(A)(1) Integrated resource plan shall contain a narrative discussion and analysis

Ohio Adm. Code 4901:5-5-06(A)(1) should be modified to require a discussion and analysis on *any* changes that may influence the reporting utility’s energy and demand forecasts. To accurately reflect the intent of R.C. 4935.04(F)(5), which states: “Utility company forecasts of loads and resources are reasonable in relation to population growth estimates made by state and federal agencies, transportation, and economic development plans and forecasts...,” the rule should require the electric utilities to evaluate more than just technological changes (i.e. demographic and economic changes). As ordered, Ohio Adm. Code 4901:5-5-06 (A)(1) does not include enough information to reflect the statutory requirement that the forecasts are reasonable in relation to numerous changes in society.

PROPOSED CHANGE:

- (A)(1) Anticipated ECONOMIC, DEMOGRAPHIC, AND technological changes which may be expected to influence the reporting person'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 or techniques used to store energy for peak use.

Ohio Adm. Code 4901:5-5-06(C)(1)(a) Need for additional electricity resource options.

Ohio Adm. Code 4901:5-5-06(C)(1)(a) should be modified to require the electric utilities to include load duration curves as well as the system load profile. The load duration curves will allow parties to review how many hours per year that the system is at its peak. In some situations systems may be at their peak 10-50 hours per year and then drop off fairly steeply the rest of the time. To accurately permit the parties to evaluate the “range of projected loads during the period” of the electric utilities in accordance with R.C. 4935.04(C)(2) the load duration curves will also be needed. These curves can be very useful for evaluating the mix of resources chosen, among base load, intermediate load, and peaking.

PROPOSED CHANGE:

(C)(1)(a) System load profile AND DURATION CURVES

Ohio Adm. Code 4901:5-5-06(C)(1)(b)

Ohio Adm. Code 4901:5-5-06(C)(1)(b) should be expanded to require that generation forced outage and availability rates should also be documented. This information can be critical to the utility’s resource plan if the generation resource is constrained. Without this modification, the rule is not inclusive of important resource planning information and therefore not reasonable as required by R.C. 4935.04(C).

PROPOSED CHANGE:

(C)(1)(b) Maintenance requirements of existing and planned units, INCLUDING BUT NOT LIMITED TO GENERATING PLANT FORCED OUTAGE AND AVAILABILITY RATES.

Ohio Adm. Code 4901:5-5-06(C)(1)(c)

Ohio Adm. Code 4901:5-5-06(C)(1)(c) should be modified to require the electric utilities to include the number of units that will be contemplated. It can be important that a 150 MW wind plant actually consist of separate turbines while a 150 MW thermal plant is just one machine. The wind plant with separate turbines and the thermal plant would have significantly different maintenance outage/forced outage profiles. The plan should specify, for multiple unit central station renewables, how many actual machines are contemplated. Requiring the reporting person to identify the number of units accurately reflects the intent of R.C. 4935.04(C)(1) and (3) that require the report to include “a general description of the resource plan to meet demand.”

PROPOSED CHANGE:

(C)(1)(c) NUMBER OF UNITS, unit size and availability of existing and planned units.

Ohio Adm. Code 4901:5-5-06(C)(1)(d)

Ohio Adm. Code 4901:5-5-06(C)(1)(d) should be modified to clarify that forecast uncertainty includes uncertainty with respect to the assumptions such as population, economic conditions etc. and uncertainty with respect to the relationship between those assumptions and electricity use. R.C. 4935.04(C)(1) requires a report to include “a year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of the resource plan to meet demand.” Without clarification the reporting person may provide a limited report addressing only the uncertainties of the electricity used. Therefore, the requirement should state that the report must be comprehensive in its evaluation of the forecasting uncertainties.

PROPOSED CHANGE:

(C)(1)(d) ALL ForecastING uncertaintyIES CONSIDERED
INCLUDING BUT NOT LIMITED TO THOSE
MODELED

Ohio Adm. Code 4901:5-5-06(C)(1)(e)

Ohio Adm. Code 4901:5-5-06(C)(1)(e) should be modified to clarify and take notice that most thermal plants degrade in performance over their lives, and therefore any performance forecast should be done based on their remaining useful lives or twenty years, whichever is less. Without clarification the reporting person may provide a limited report providing plant performance for only a truncated period of time. Therefore, the requirement should state that the report must include an analysis of the performance over no less than twenty years. Ohio Adm. Code 4901:5-5-06(C)(1)(e) should be modified to address the fact that twenty years of data is required by R.C. Chapter 4935. R.C. 4935.04(C)(6) states

A month-by-month forecast of both energy demand and peak load for electric utilities, and gas sendout for gas and natural gas utilities, for the next two years. The report shall describe the major utility facilities that, in the judgment of such person, will be required to supply system demands during the forecast period. The report from a gas or natural gas utility shall cover the ten- and five-year periods next succeeding the date of the report, **and the report from an electric utility shall cover the twenty-, ten-, and five-year periods next succeeding the date of the report....**¹⁰

Without the additional clarification the reporting person may provide less information than is required by statute. Therefore, the requirement should state that the report must include an analysis of the performance over the life of the resource.

PROPOSED CHANGE:

¹⁰ R.C. 4935.04(C)(6) (emphasis added).

- (C)(1)(e) Electricity resource option uncertainty with respect to cost availability, commercial in-service dates, and performance
OVER THE LIFE OF THE RESOURCE BUT NO LESS
THAN A TWENTY YEAR PERIOD.

Ohio Adm. Code 4901:5-5-06(C)(1)(g)

Ohio Adm. Code 4901:5-5-06(C)(1)(g) should be modified to include buying power as well as selling power. R.C. 4935.04(C)(1) requires a report to include “a year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of the resource plan to meet demand.” Without clarification that the utility must also report the ability to buy power, as well as sell power, the utilities report cannot be considered comprehensive and therefore does not comply with R.C. 4935.04(C)(1)

PROPOSED CHANGE:

- (C)(1)(g) Power interchange with other electric systems, including consideration of the ability to BUY AND sell power.

Ohio Adm. Code 4901:5-5-06(C)(1)(h)

Ohio Adm. Code 4901:5-5-06(C)(1)(h) should be modified to clarify what the phrase “lost load assessments” means. If the intent is to require the reporting person to include load shifting or load reduction that decreases margin the rule should be more specific.

Ohio Adm. Code 4901:5-5-06(C)(1)(i)

Ohio Adm. Code 4901:5-5-06(C)(1)(i) should be modified to clarify the information that is expected to comply with the “regulatory climate” factor. Forecast uncertainty includes uncertainty with respect to the assumptions such as population,

economic conditions etc. and uncertainty with respect to the relationship between those assumptions and electricity use.

Ohio Adm. Code 4901:5-5-06(C)(1)(j)(i)

Ohio Adm. Code 4901:5-5-06(C)(1)(j)(i) should be modified to require specific information about the utility's reserve margin and loss of load probability. R.C.

4935.04(C)(1) requires a report to include "a year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of the resource plan to meet demand." The reserve margin and loss of load information will allow the parties to determine the veracity of each utility's resource plan in meeting forecasted demand.

Without this information the rules do not comply with the regulatory requirements of R.C. 4935.04(C)(1).

PROPOSED CHANGE:

- (C)(1)(j) Reliability criteria, including a discussion and analysis of the reporting person's reliability criteria and factors influencing their selection, including, but not limited to:
 - (i) Reliability measures used and factors SUCH AS RESERVE MARGIN AND LOSS OF LOAD PROBABILITY.

Ohio Adm. Code 4901:5-5-06(D)(3) Integrated resource plan.

The Commission should require each electric utility to demonstrate the cost-effectiveness of the integrated resource plan through a comparison over the *twenty-year forecast horizon* (not a ten-year forecast horizon as proposed) of the revenue requirement and rate impacts of the selected plan and alternative plans evaluated. A twenty-year

requirement is consistent with the reporting requirements that are required by R.C.

4935.04(C)(6):

The report shall describe the major utility facilities that, in the judgment of such person, will be required to supply system demands during the forecast period.... **The report from an electric utility shall cover the twenty-,ten-, and five year periods next succeeding the date of the report....**¹¹

PROPOSED CHANGE:

- (D)(3) The electric utility shall demonstrate the cost-effectiveness of the plan through a comparison over the ~~ten~~TWENTY-year forecast horizon of the revenue requirement, ~~and~~ rate, AND BILL impacts of the selected plan and alternative plans evaluated. 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 electric utility deems appropriate.

Ohio Adm. Code 4901:5-5-06(E) Electricity resource forecast forms.

Ohio Adm. Code 4901:5-5-06(E)(4)(a)

The Commission should expand Form FE-R4 to also include an actual load duration curve and a resource stack laid over the utility's load duration curve. This information is consistent with the requirements of R.C. 4935.04(1) and will provide all parties the information needed to determine the need for new generation (especially peak generation) or whether another non-generation resource could be procured in a least cost manner. Excluding the requirement that load duration curves be provided leaves a gap in the integrated resource plan and is therefore unreasonable.

PROPOSED CHANGE:

¹¹ R.C. 4935.04(C)(6). (emphasis added)

- (E)(4)(a) Form FE-R4: Actual Generating Capability Dedicated to Meet Ohio Peak Load AND ACTUAL LOAD DURATION CURVE WITH GENERATION RESOURCE STACK.

Ohio Adm. Code 4901:5-5-06(E)(4)(b)

The Commission should expand Form FE-R5 to also include projected load duration curves and resource stacks laid over the utility's load duration curve. This will assist the Commission and other parties in determining the need for new generation over time (especially peak generation) or whether another non-generation resource could be procured in a least cost manner. This requirement is consistent with the expectations of R.C. 4935.04(C)(1) and the requirement that the electric utility provide information regarding its resource plan to meet demand in the future. Excluding the requirement that load duration curves be provided leaves a gap in an integrated resource plan and is therefore also unreasonable.

PROPOSED CHANGE:

- (E)(4)(b) Form FE-R5: "Projected Generating Capability Changes To Meet Ohio Peak Load." A summary and reconciliation of the information given in form FE-R10 shall be provided by the completion of form FE-R5. PROJECTED LOAD DURATION CURVES WITH GENERATION RESOURCE STACKS SHALL ALSO BE PROVIDED.

V. CONCLUSION

The Commission should carefully consider this Application for Rehearing along with the Initial Comments and Reply Comments previously submitted by the OCEA members. The Commission should make changes to the rules stated in the Order as set out in this Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Rehearing has been served via First Class U.S. Mail, postage prepaid, to the following persons this 15th day of May, 2009.

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