

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 4901:5-1, ) Case No. 08-888-EL-ORD  
4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio )  
Administrative Code, Pursuant to Amended )  
Substitute Senate Bill No. 221. )

ENTRY NUNC PRO TUNC

The Commission finds:

- (1) On June 17, 2009, the Commission issued its entry on rehearing modifying its April 15, 2009 opinion and order, which adopted new regulations relating to energy efficiency and alternative energy resources, renewable energy credits, clean coal technology, and environmental regulations, pursuant to Amended Substitute Senate Bill No. 221 (SB 221).
- (2) Finding 20 of the entry on rehearing responds to the interpretation of new Rule 4901:1-39-05(D), but incorrectly reflects a change to the wording of this provision as adopted by the Commission's April 15, 2009 opinion and order, and inaccurately indicates that a modification is being made by the entry on rehearing. Upon reconsideration, the Commission determined that no modification was necessary. Accordingly, the Commission will modify Finding 20 of the entry on rehearing, nunc pro tunc, as follows:

We will also clarify that the "double counting" prohibition in Rule 39-05(D) narrowly applies to standards set by law or regulation that create specific technical performance standards and do not apply to general mandates or benchmarks for energy efficiency and peak-demand reduction like those contained in SB 221. Additionally, if federal energy efficiency standards are adopted that are not technology- or device-specific, but rather specify percentage savings objectives with regard to a baseline, impacts from electric utility programs should be counted towards both state

and federal standards. If such legislation is enacted, the Commission will provide specific guidance on whether and how programs under this rule shall be counted. WE FIND, THEREFORE, THAT NO MODIFICATION OF RULE 39-05(D) IS NECESSARY. ~~We will, however, clarify Rule 39-05(D) as follows:~~

~~An electric utility shall not count in meeting any statutory benchmark the adoption of measures that are required to comply with energy performance standards set by law or regulation, and applicable to specific devices or technologies, including, but not limited to, those embodied in the Energy Independence and Security Act of 2007, or an applicable building code.~~

- (3) Finding 26 of the entry on rehearing clarifies that a modification to new Rule 4901:1-39-07(A)(2) is being made, but inadvertently fails to comport with the precise wording of the adopted rule. Accordingly, the Commission will modify the second paragraph of Finding 26 of the entry on rehearing, nunc pro tunc, as follows:

Kroger's arguments ignore an important mitigating phrase included in Rule 39-07(A)(1) which states that recovery of transmission and distribution energy efficiency expenditures is limited to the extent the investment was made for energy efficiency purposes. In addition, transmission and distribution energy efficiency programs will need to go through the planning and review processes in Rules 39-03 and 39-04. While we note that the incentives and circumstances for transmission and distribution energy efficiency investments are different from customer energy efficiency investments, they are not so different as to warrant a separate cost-recovery mechanism. Each transmission and distribution energy efficiency program will be considered in the program portfolio plan proceeding, and can be distinguished therein from customer energy efficiency programs.

Therefore, we decline to modify the rule as suggested by Kroger. We will, however, correct a clerical error, Rule 39-07(A)(2) has been modified as follows:

Mercantile customers, who commit their peak-demand reduction, demand response, or energy efficiency projects for integration with the electric utility's programs AS SET FORTH IN RULE 4901:1-39-08 OF THE ADMINISTRATIVE CODE, may, INDIVIDUALLY OR jointly with the electric utility, apply for exemption from such recovery ~~as set forth in rule 4901:1-39-08 of the Administrative Code.~~

- (4) Finding 31 of the entry on rehearing adopts certain modifications to Rule 4901:1-39-08 but fails to reflect the deletion of the words "and intervals" at the end of paragraph (A)(1) of Rule 4901:1-39-08. Accordingly, the Commission will modify the fourth paragraph of Finding 31 of the entry on rehearing, nunc pro tunc, as follows:
  - (1) Address coordination requirements between the electric utility and the mercantile customer WITH REGARD TO VOLUNTARY REDUCTIONS IN LOAD BY THE MERCANTILE CUSTOMER, WHICH ARE NOT PART OF AN ELECTRIC UTILITY PROGRAM OR TARIFF, including specific communication procedures ~~and intervals.~~
- (5) Finding 64 of the entry on rehearing sets forth modifications to a renumbered paragraph (F) of Rule 4901:1-40-04. However, the fourth paragraph of Finding 64 incorrectly uses the designation of "(E)" rather than "(F)" as the number of the provision. Accordingly, the Commission will modify the fourth paragraph of Finding 64 of the entry on rehearing, nunc pro tunc, to correctly designate that paragraph (F) of Rule 4901:1-40-04 is being modified.

- (6) Findings 86 and 87 of the entry on rehearing set forth certain modifications to Rule 4901:5-1-01, but inadvertently failed to include the correct rule reference in the definition of "substantial change" under paragraph (L)(1) of this rule, and failed to provide a complete citation in the definition of "electric transmission owner" under paragraph (D) of this rule. Accordingly, the second paragraph of Finding 86 will be modified, nunc pro tunc, to change the reference to Rule 4901:5-3-03, rather than 4905:5-3-05. Further, a second paragraph should be added to Finding 87 of the entry on rehearing, nunc pro tunc, to include the following correction:

The Commission will also clarify the definition of "electric transmission owner" in Rule 5-1-01(D) to read as follows:

(D) "Electric transmission owner" means the owner of a major utility facility as defined in DIVISION (A)(1)(A) OF section 4935.04 of the Revised Code.

- (7) Finding 96 of the entry on rehearing discusses the adoption of modifications to new Rule 4901:5-5-06(C)(1)(h), but does not show the provision as changed from the version adopted in the April 15, 2009 opinion and order. Therefore, the Commission will modify the third paragraph of Finding 96 of the entry on rehearing, nunc pro tunc, to add the following:

The Commission will, however, modify Rule 4901:5-5-06(C)(1)(h) to read as follows:

Price-responsive demand and price elasticity, ~~including, but not limited to, the value of lost load assessments~~ due to the voluntary implementation of time-differentiated pricing  
**OPTIONS AND ASSESSMENTS OF THE VALUE OF LOST LOAD.**

It is, therefore,

ORDERED, That Findings 20, 26, 31, 64, 86, 87, and 96 of the entry on rehearing be modified, nunc pro tunc, as set forth above. It is, further,

ORDERED, That Rule 4901:5-1-01 be adopted as modified herein, and filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative

Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That a copy of this entry be served upon all parties filing comments in this docket and all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

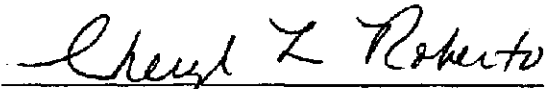
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie




Cheryl L. Roberto

RMB:ct

Entered in the Journal

JUN 24 2009



Renee J. Jenkins  
Secretary

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

4901:5-1-01      **Definitions.**

As used in Chapters 4901:5-1 to 4901:5-7 of the Administrative Code:

- (A) "Business office" means any office maintained by the reporting person where bills issued by the reporting person may be paid and discussed with its representatives.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "~~EDU~~Electric utility" ~~means electric distribution utility and for the purpose of this chapter means an electric utility company that supplies at least retail electric distribution service to more than fifteen thousand customers within Ohio~~ has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (D) "Electric transmission owner" ~~for the purpose of this chapter means the owner of a major utility facility as defined in~~ division (A)(1)(a) of section 4935.04 of the Revised Code.
- (E) "Gas distribution line and associated facility" means a pipeline and associated facilities other than gathering or transmission line in a distribution area.
- (F) "Gas gathering line and associated facility" means a pipeline and associated facilities which transport gas from a current production facility to a transmission line or main.
- (G) "Gas or natural gas transmission line and associated facilities" has the meaning set forth in rule ~~4906-1-02~~ 4906-1-01 of the Administrative Code.
- (H) "Long-term forecast report" has the meaning set forth in section 4935.04 of the Revised Code.
- (I) "Major utility facility", has the meaning set forth in division (A)(1) of section 4935.04 of the Revised Code.
- (J) "Person" has the meaning set forth in ~~sections~~ section 4906.01 and 4935.04 of the Revised Code.
- (K) "Reporting person" means any person required to file a long-term forecast report under section 4935.04 of the Revised Code.
- (L) "Substantial change" includes, but is not limited to:
  - (1) A change in forecasted peak loads or energy ~~delivery~~ consumption 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~~ 4901:5-3-03 of the Administrative Code.

**\*\*\* DRAFT – NOT FOR FILING \*\*\***

(2) Demonstration of good cause to the commission by an interested party.

(M) "Electric generating facility" means an electric generating plant and associated facilities capable of producing electricity.