

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The Commission finds:

- (1) On July 31, 2008, Amended Substitute Senate Bill No. 221 (SB 221) was enacted to, among other things, substantially revise Chapter 4928 of the Revised Code, to address energy efficiency and alternative energy resources, renewable energy credits, clean coal technology, and environmental regulations.
- (2) On April 15, 2009, the Commission issued its opinion and order (April 15 Order), adopting three new chapters of the Ohio Administrative Code (O.A.C.): Chapter 4901:1-39: Energy Efficiency and Demand Reduction Benchmarks, Chapter 4901:1-40: Alternative Energy Portfolio Standard, and Chapter 4901:1-41: Greenhouse Gas Reporting and Carbon Dioxide Control Planning. The April 15 Order also modified relevant forecast rules contained in Chapters 4901:5-1, 4901:5-3, and 4901:5-5, O.A.C.
- (3) On May 15, 2009, applications for rehearing were filed pursuant to Section 4903.10, Revised Code, by 15 parties or groups. On June 17, 2009, the Commission issued an entry on rehearing (June 17 Entry) addressing the substantive issues raised and modifying many of the rules adopted in the April 15 Order. Two applications for rehearing were filed with respect to the June 17 Entry; and on October 15, 2009, the Commission issued an entry on rehearing further modifying several of the rules which had been adopted by the April 15 and June 17, 2009 decisions.
- (4) Upon further consideration, we will revise certain rules adopted in our rehearing entry to correct clerical errors and

making further clarifications to Rules 4901:1-39-05, 4901:1-39-08, and 4901:1-40-04.

- (5) First, we will clarify the provision in Rule 4901:1-39-05(C)(1), regarding the compliance demonstration to be included in an electric utility's portfolio status report, to read as follows:

Compliance demonstration. Each electric utility shall include a section in its portfolio status report detailing its achieved energy savings, ACHIEVED demand reductions, and the expected DEMAND reductions that its programs were reasonably designed to achieve, relative to its corresponding baselines...

- (6) Second, we will clarify our intent of the presumption included in Rule 4901:1-39-05(F) by modifying the rule as follows:

A mercantile customer's energy savings and peak-demand reductions shall be measured by including the effects of all demand-response programs ~~for~~ OF THE mercantile customers CUSTOMER and all mercantile customer-sited energy efficiency and peak-demand reduction programs. A mercantile customer's energy savings and peak-demand reductions shall be presumed to be the effect of a demand response, energy efficiency, or peak-demand reduction program to the extent they involve the early retirement of FULLY functioning equipment, ~~which is not yet fully depreciated~~, or the installation of new equipment that achieves reductions in energy use and peak demand that exceed the reductions that would have occurred had the customer used standard new equipment or practices WHERE PRACTICABLE. Electric utilities may make an alternative demonstration that mercantile customer energy savings or peak demand reductions are effects of such a program.

- (7) With respect to paragraph H of Rule 4901:1-39-05, the Commission notes that, in the event of the adoption of federal energy efficiency benchmarks, we would expect that compliance with such requirements would be coordinated with

Ohio benchmarks, and not treated as additional requirements to be met by the electric utilities.

- (8) We will also correct Paragraph A of Rule 4901:1-39-08 by deleting subparagraphs one through four, the substance of which was moved to Rule 4901:1-39-05(G). In addition, this provision is being revised to recognize those circumstances where the cost to the electric utility for incorporating the mercantile customer's program is less than the electric utility's incremental cost of energy. We also observe that the cost to the electric utility includes the administrative costs and any incentives paid, including the value of an exemption from the energy efficiency rider. Accordingly, Rule 4901:1-39-08(A) will be revised as follows:

A demonstration that energy savings and peak-demand reductions associated with the MERCANTILE customer's program are the result of investments that meet the total resource cost test, OR THAT THE ELECTRIC UTILITY'S AVOIDED COST EXCEEDS THE COST TO THE ELECTRIC UTILITY FOR THE MERCANTILE CUSTOMER'S PROGRAM.

~~(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.~~

~~(2) Specify the qualifying circumstances under which demand reductions may be effectuated by the customer.~~

~~(3) Grant permission to the electric utility and staff to measure and verify energy savings and/or peak demand reductions resulting from customer-sited projects and resource.~~

~~(4) Identify all consequences of noncompliance by the customer with the terms of the commitment.~~

- (9) The Commission also finds that the following modifications to Rule 4901:1-40-04(A)(8) more accurately reflect the statutory

directive to qualify storage facilities that will promote the better utilization of a renewable energy resource that primarily generates off peak, pursuant to Section 4928.01(A)(35), Revised Code:

(A) The following resources or technologies, if they have a placed-in-service date of January 1, 1998, or after, are qualified resources for meeting the renewable energy resource benchmarks:

(8) A **Storage** STORAGE facility, if it complies with the following requirements:

(a) The electricity used to pump the resource into a storage reservoir must qualify as a renewable energy resource, **OR THE EQUIVALENT RENEWABLE ENERGY CREDITS ARE OBTAINED.**

(b) The amount of energy that may qualify from a storage facility is the amount of electricity dispatched from the storage facility ~~and shall exclude the amount of energy required to initially pump the resource into the storage reservoir.~~

(10) The Commission finds that Rules 4901:1-39-05, 4901:1-39-08, and 4901:1-40-04, as modified herein, should be adopted. The rules adopted by this Commission are attached to this entry for filing in this docket but, as in prior rules proceedings, will not be included in the hard-copy distribution of this entry that will be served upon all parties of record. Instead, we find it more prudent and efficient to publish the adopted rules on the Commission's website at www.puco.ohio.gov/puco/rules/ via the link titled "Implementation of S.B. 221 - Green Rules: Proposed Rules for Energy Efficiency & Alternative Energy Portfolio Standard, and Modifications to Forecast Rules" or by searching for the Commission's Docketing Information System under Case No. 08-888. Members of the public without internet access may request a paper copy by contacting the Commission's Docketing Division at (614) 466-4095.

It is, therefore,

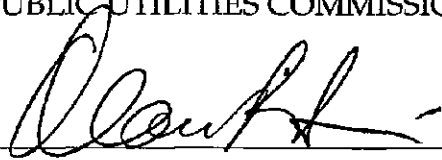
ORDERED, That Rules 4901:1-39-05, 4901:1-39-08, and 4901:1-40-04, as modified herein, are adopted. It is, further,

ORDERED, That Chapters 4901:1-39 and 4901:1-40, and Rule 4901:5-5-06, be refiled 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 the final rules become effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the review date for Chapters 4901:1-39, and 4901:1-40 shall be September 30, 2013. It is, further,

ORDERED, That a copy of this entry, without the rule attachment, be served upon all parties filing comments in this docket and all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



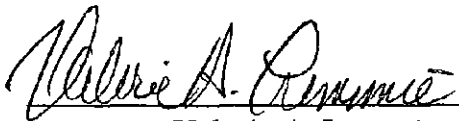
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



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RMB:dh

Entered in the Journal

OCT 28 2009



Renee J. Jenkins
Secretary

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4901:1-39-05

Benchmark and annual status reports.

- (A) Initial benchmark report. Within sixty days of the effective date of this rule, each electric utility shall file an initial benchmark report with the commission that identifies the following information:
- (1) The energy and demand baselines for kilowatt-hour sales and kilowatt demand for the reporting year; including a description of the method of calculating the baseline, with supporting data.
 - (2) The applicable statutory benchmarks for energy savings and electric utility peak-demand reduction.
- (B) An electric utility may file an application to adjust its sales and/or demand baseline. The baseline shall be normalized for weather and for changes in numbers of customers, sales, and peak demand to the extent such changes are outside the control of the electric utility. The electric utility shall include in its application all assumptions, rationales, and calculations, and shall propose methodologies and practices to be used in any proposed adjustments or normalizations. To the extent approved by the commission, normalizations for weather, changes in numbers of customers, sales, and peak demand shall be consistently applied from year to year.
- (C) Portfolio status report. By March fifteenth of each year, each electric utility shall file a portfolio status report addressing the performance of all approved energy efficiency and peak-demand reduction programs in its program portfolio plan over the previous calendar year which includes, at a minimum, the following information:
- (1) Compliance demonstration. Each electric utility shall include a section in its portfolio status report detailing its achieved energy savings, achieved demand reductions, and the expected demand reductions that its programs were reasonably designed to achieve, relative to its corresponding baselines. At a minimum, this section of the portfolio status report shall include each of the following:
 - (a) An update to its benchmark report.
 - (b) A comparison with the applicable benchmark of actual energy savings and peak-demand reductions achieved by electric utility programs.
 - (c) An affidavit as to whether the reported performance complies with the statutory benchmarks.
 - (2) Program performance assessment. Each electric utility shall include a section in its portfolio status report demonstrating whether it has successfully implemented the energy efficiency and demand-reduction programs approved in its program

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portfolio plan. At a minimum, this section of the annual portfolio status report shall include each of the following:

(a) A description of each approved energy efficiency or peak-demand reduction program implemented in the previous calendar year including:

(i) The key activities undertaken in each program, the number and type of participants, a comparison of the forecasted savings to the verified savings achieved by such program, the magnitude of anticipated savings, and a trend analysis of how anticipated savings will be realized over the life of the program.

(ii) All energy savings counted toward the applicable benchmark as a result of energy efficiency improvements implemented by mercantile customers and committed to the electric utility.

(iii) All peak-demand reductions counted toward the applicable benchmark as a result of energy efficiency improvements, demand response, or demand reduction improvements implemented by mercantile customers and committed to the electric utility.

(iv) A description of all transmission and distribution infrastructure improvements made by the electric utility that reduce line losses to the extent the reduction in line losses has been applied to meet the applicable benchmarks with a calculation and description of the net impact of such improvements on losses.

(b) An evaluation, measurement, and verification report that documents the energy savings and peak-demand reduction values and 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 any process evaluations and 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 publish guidelines for program measurement and verification.

(c) A recommendation for whether each program should be continued, modified, or eliminated. The electric utility may propose alternative programs to replace eliminated programs, taking into account the overall balance of programming in its program portfolio plan. The electric utility shall describe any alternate program or program modification by providing at least the information required for proposed programs in its program portfolio plan pursuant to this chapter. An electric utility may seek written

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staff approval to reallocate funds between programs serving the same customer class at any time, provided that the reallocation supports the goals of its approved program portfolio plan and is limited to no more than twenty-five per cent of the funds available for programs serving that customer class. In addition, an electric utility may change its program mix or budget allocations at any time, as long as it provides notice to all parties in the proceeding in which the program portfolio plan was approved.

(D) Independent program evaluator report. Subsequent to the filing of the electric utility's portfolio status report, the independent program evaluator will prepare and file a report of the independent program evaluator's activities and conclusions in monitoring, verifying, and evaluating the energy savings and peak-demand reductions resulting from the electric utility programs and mercantile customer activities. The report shall also include the verification and evaluation, through the use of due-diligence techniques including project inspections, of the electric utility's evaluation, measurement, and verification report.

(E) An electric utility may satisfy its peak-demand reduction benchmarks through a combination of energy efficiency and peak-demand response programs implemented by electric utilities and/or programs implemented on mercantile customer sites where the mercantile program is committed to the electric utility.

(1) For energy efficiency programs, an electric utility may count the programs' effects resulting in coincident peak-demand savings.

(2) For demand response programs, an electric utility may count demand reductions towards satisfying some or all of the peak-demand reduction benchmarks by demonstrating that either the electric utility has reduced its actual peak demand, or has the capability to reduce its peak demand and such capability is created under either of the following circumstances:

(a) A peak-demand reduction program meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization approved by the Federal Energy Regulatory Commission.

(b) A peak-demand reduction program equivalent to a regional transmission organization program, which has been approved by this commission.

(F) A mercantile customer's energy savings and peak-demand reductions shall be measured by including the effects of all demand-response programs of the mercantile customer and all mercantile customer-sited energy efficiency and peak-demand reduction programs. A mercantile customer's energy savings and peak-demand reductions shall be presumed to be the effect of a demand response, energy efficiency, or peak-demand reduction program to the extent they involve the early retirement of fully functioning equipment, or the installation of new equipment that achieves reductions in energy use and peak demand that exceed the reductions that

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would have occurred had the customer used standard new equipment or practices where practicable. Electric utilities may make an alternative demonstration that mercantile customer energy savings or peak demand reductions are effects of such a program.

(G) A mercantile customer may file, either individually or jointly with an electric utility, an application to commit the customer's demand reduction, demand response, or energy efficiency programs for integration with the electric utility's demand reduction, demand response, and energy efficiency programs, pursuant to division (A)(2)(d) of section 4928.66 of the Revised Code. Such application shall:

(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, including specific communication procedures.

(2) Grant permission to the electric utility and staff to measure and verify energy savings and/or peak-demand reductions resulting from customer-sited projects and resources.

(3) Identify all consequences of noncompliance by the customer with the terms of the commitment.

(4) Include a copy of the formal declaration or agreement that commits the mercantile customer's programs for integration, including any requirement that the electric utility will treat the customer's information as confidential and will not disclose such information except under an appropriate protective agreement or a protective order issued by the commission pursuant to rule 4901-1-24 of the Administrative Code.

(5) Include a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results, and identify and explain all deviations from any program measurement and verification guidelines that may be published by the commission.

(H) 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, including but not limited to, those embodied in the Energy Independence and Security Act of 2007, or an applicable building code.

(I) Benchmarks not reasonably achievable. If an electric utility determines that it is unable to meet a benchmark due to regulatory, economic, or technological reasons beyond its reasonable control, the electric utility may file an application to amend its benchmarks. To the extent that forecasted peak demand and peak prices do not materialize for economic reasons, the electric utility may be granted a waiver of its

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benchmark for the difference between actual performance and expected performance of demand response programs.

- (J) Benchmarks not reasonably achievable. If an electric utility determines that it is unable to meet a benchmark due to regulatory, economic, or technological reasons beyond its reasonable control, the electric utility may file an application to amend its benchmarks. To the extent that forecasted peak demand and peak prices do not materialize for economic reasons, the electric utility may be granted a waiver of its benchmark for the difference between the actual and expected performance of demand response programs. In any such application, the electric utility shall demonstrate that it has exhausted all reasonable compliance options.

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4901:1-39-08 Mercantile customer exemptions.

An application to commit a mercantile customer program for integration filed pursuant to paragraph G of rule 4901:1-39-05 of the Administrative Code, may include a request for an exemption from the cost recovery mechanism set forth in rule 4901:1-39-07 of the Administrative Code. To be eligible for such exemption, the mercantile customer must consent to providing an annual report on the energy savings and electric utility peak-demand reductions achieved in the customer's facilities in the most recent year. The report shall include the following:

- (A) A demonstration that energy savings and peak-demand reductions associated with the mercantile customer's program are the result of investments that meet the total resource cost test, or that the electric utility's avoided cost exceeds the cost to the electric utility for the mercantile customer's program.
- (B) A statement distinguishing programs implemented before and after January 1, 2009, or in future reports filed for years subsequent to 2009, before and after the most recent year.
- (C) A quantification of the energy savings or peak-demand reductions for programs initiated prior to 2009 in the baseline period, recognizing that programs may have diminishing effects over time as technology evolves or equipment degrades.
- (D) A recognition that the energy saving and demand reduction effects during the electric utility's baseline period of any mercantile customer-sited energy efficiency or peak-demand reduction programs that are integrated into an electric utility's programs are excluded from the electric utility's baselines by increasing its baseline for energy savings and baseline for peak-demand reductions by the amount of mercantile customer energy savings and demand reductions.
- (E) A listing and description of the customer programs implemented, including measures taken, devices or equipment installed, processes modified, or other actions taken to increase energy efficiency and reduce peak demand, including specific details such as the number, type, and efficiency levels both of the installed equipment and the old equipment that is being replaced, if applicable.
- (F) An accounting of expenditures made by the mercantile customer for each program and its component energy savings and electric utility peak-demand reduction attributes.
- (G) The timeline showing when each program went into effect, and when the energy savings and peak-demand reductions occurred.
- (H) Any request for an exemption may be combined with any other reasonable arrangement, approved pursuant to Chapter 4901:1-38 of the Administrative Code, if

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such reasonable arrangement contains appropriate measurements and verification of program results.

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4901:1-40-04

Qualified resources.

(A) The following resources or technologies, if they have a placed-in-service date of January 1, 1998, or after, are qualified resources for meeting the renewable energy resource benchmarks:

- (1) Solar photovoltaic or solar thermal energy.
- (2) Wind energy.
- (3) Hydroelectric energy.
- (4) Geothermal energy.
- (5) Solid waste energy derived from fractionalization, biological decomposition, or other process that does not principally involve combustion.
- (6) Biomass energy.
- (7) Energy from a fuel cell.
- (8) A storage facility, if it complies with the following requirements:
 - (a) The electricity used to pump the resource into a storage reservoir must qualify as a renewable energy resource, or the equivalent renewable energy credits are obtained.
 - (b) The amount of energy that may qualify from a storage facility is the amount of electricity dispatched from the storage facility.
- (9) Distributed generation system used by a customer to generate electricity from one of the resources or technologies listed in paragraphs (A)(1) to (A)(8) of this rule.
- (10) A renewable energy resource created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998.

(B) The following resources or technologies, if they have a placed-in-service date of January 1, 1998, or after, are qualified resources for meeting the advanced energy resource benchmarks:

- (1) Any modification to an electric generating facility that increases its generation output without increasing the facility's carbon dioxide emissions (tons per year) in comparison to its actual annual carbon dioxide emissions preceding

the modification. In such an instance, it is the incremental increase in generation output that may be quantified and applied toward an advanced energy requirement.

(2) Any distributed generation system, designed primarily to meet the energy needs of the customer's facility that utilizes co-generation of electricity and thermal output simultaneously.

(3) Clean coal technology.

(4) Advanced nuclear energy technology, from:

(a) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission or other later technology.

(b) Significant improvements to existing facilities. In such an instance, it is the incremental increase in generation attributable to the improvement that may be quantified and applied toward an advanced energy requirement. Extension of the life of existing nuclear generation capacity shall not qualify as advanced nuclear energy technology.

(5) Energy from a fuel cell.

(6) Advanced solid waste or construction and demolition debris conversion technology that results in measurable greenhouse gas emission reductions.

(7) Demand-side management and energy efficiency, above and beyond that used to comply with any other regulatory standard or programs.

(C) The following new or existing mercantile customer-sited resources may be qualified resources for meeting electric utilities' annual, renewable- or advanced-energy resource benchmarks, as applicable, provided that it does not constitute double-counting for any other regulatory requirement and that the mercantile customer has committed the resource for integration into the electric utility's demand-response, energy efficiency, or peak-demand reduction programs pursuant to rule 4901:1-39-08 of the Administrative Code.

(1) Renewable energy resources from mercantile customers include the following:

(a) Electric generation equipment that uses a renewable energy resource and is owned or controlled by a mercantile customer.

(b) Any renewable energy resource of the mercantile customer that can be utilized effectively as part of an alternative energy resource plan of an electric utility and would otherwise qualify as a renewable energy resource if it were utilized directly by an electric utility.

(2) Advanced energy resources from mercantile customers include the following:

- (a) A resource that improves the relationship between real and reactive power.
- (b) A mercantile customer-owned or controlled resource that makes efficient use of waste heat or other thermal capabilities.
- (c) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics.
- (d) Electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource.
- (e) Any advanced energy resource of the mercantile customer that can be utilized effectively as part of an advanced energy resource plan of an electric utility and would otherwise qualify as an advanced energy resource if it were utilized directly by an electric utility.

(D) An electric utility or electric services company may use renewable energy credits (REC) to satisfy all or part of a renewable energy resource benchmark, including a solar energy resource benchmark.

- (1) To be eligible for use towards satisfying a benchmark, a REC must originate from a facility that meets the definition of a renewable energy resource, including solar energy resources, and be measured by a utility-grade meter in compliance with paragraph B of rule 4901:1-10-05 of the Administrative Code, for facilities with generating capacity of more than six kilowatts. Such facilities could include a mercantile customer-sited resource that is not committed for integration into an electric utility's demand-response, energy efficiency, or peak-demand reduction program pursuant to rule 4901:1-39-08 of the Administrative Code but that otherwise qualifies under the terms of paragraph (A) of this rule.
- (2) To use RECs as a means of achieving partial or complete compliance, an electric utility or electric services company must be a registered member in good standing of at least one of the following:
 - (a) The PJM's generation attributes tracking system.
 - (b) The MISO's renewable energy tracking system.
 - (c) Another credible tracking system approved for use by the commission.
- (3) A REC may be used for compliance any time in the five calendar years following the date of its initial purchase or acquisition.

(4) Double counting is prohibited.

(5) The RECs must be associated with electricity that was generated no earlier than July 31, 2008.

(E) For a generating facility of seventy-five megawatts or greater that is situated within this state and has committed by December 31, 2009, to modify or retrofit its generating unit or units to enable the facility to generate principally from biomass energy by June 30, 2013, the number of RECs produced by each megawatt-hour of electricity generated principally from biomass energy shall equal the actual percentage of biomass feedstock heat input used to generate such megawatt-hour multiplied by the quotient obtained by dividing the then existing unit dollar amount used to determine a renewable energy compliance payment as provided under division (C)(2)(b) of section 4928.64 of the Revised Code, by the then existing market value of one REC, but such megawatt-hour shall not equal less than one credit.

(F) An entity seeking resource qualification shall file an application for certification of its resources or technologies, upon such forms as may be prescribed by the commission. The application shall include a determination of deliverability to the state in accordance with paragraph (I) of rule 4901:1-40-01 of the Administrative Code.

(1) Any interested person may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

(2) The commission may approve, suspend, or deny an application within sixty days of it being filed. If the commission does not act within sixty days, the application is deemed automatically approved on the sixty-first day after the date filed.

(3) If the commission suspends the application, the applicant shall be notified of the reasons for such suspension and may be directed to furnish additional information. The commission may act to approve or deny a suspended application within ninety days of the date that the application was suspended.

(4) Upon commission approval, the applicant shall receive notification of approval and a numbered certificate where applicable. The commission shall provide this certificate number to the appropriate attribute tracking system.

(5) Representatives of certified facilities must notify the commission within thirty days of any material changes in information previously submitted to the commission during the certification process. Failure to do so may result in revocation of certification status.

(6) Certification of a resource or technology shall not predetermine compliance with annual benchmarks, and does not constitute any commission position regarding cost recovery.

(G) At its discretion, the commission may classify any new technology or additional resource as an advanced- or renewable-energy resource. Any interested person may request a hearing on such classification.

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under:	111.15
Statutory Authority:	4901.13, 4905.04, 4905.06, 4928.02, 4928.64, 4928.65
Rule Amplifies:	4928.01, 4928.64, 4928.65