BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code.	)	Case No. 13-651-EL-ORD
In the Matter of the Commission's Review of its Rules for the Alternative Energy Portfolio Standard Contained in Chapter 4901:1-40 of the Ohio Administrative Code.	)	Case No. 13-652-EL-ORD
In the Matter of the Amendment of Ohio Administrative Code Chapter 4901:1-40, regarding the Alternative Energy Portfolio Standard, to Implement Am. Sub. S.B. 315.	)	Case No. 12-2156-EL-ORD

COMMENTS OF INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

In an Entry filed on January 29, 2014 ("Jan. 29 Entry") in the above captioned proceedings, the Public Utilities Commission of Ohio Staff ("Staff") proposed a number of modifications to Ohio's energy efficiency ("EE") programs and alternative energy portfolio standards ("AEPS") rules. Staff also proposed rules that were designed to implement the changes that were made to Ohio law with the enactment of Amended Substitute Senate Bill 315 ("SB 315"). Pursuant to the procedural schedule set forth in the Jan. 29 Entry, Interstate Gas Supply, Inc. ("IGS Energy") submits the following comments to Ohio's EE and AEPS rules and the modifications to those rules proposed by Staff.

II. COMMENTS

A. Ohio Administrative Code ("OAC") 4901:1-39-04 should be modified to ensure that funds available from the electric distribution utilities ("EDU") energy efficiency and demand reduction programs are administered on an equal and non-discriminatory basis.

As drafted, the rules that govern the EDU's EE and demand reduction ("DR") programs do not ensure that the technologies and contractors included in the EDU's portfolio plan are available on an equal and non-discriminatory basis. For cost effective and innovative products to develop over the long run, it is important that the regulatory paradigm that governs a marketplace does not intentionally, or unintentionally, pick winners and losers. Unfortunately the rules established under OAC 4901:1-39-04 allows for de facto winners and losers to be established in the EDU EE and DR program plans.

Under OAC 4901:1-39-04, the EDU must submit a plan that identifies certain technologies that are able to receive EE and DR funding. Technologies that do not make it into the plan (even if they are able to achieve EE and DR) are not able to receive EE and DR funding, and thus are disadvantaged in the marketplace. The fact that parties have an opportunity to comment on the EDU's plan also does not offer sufficient protection. Not all businesses in the EE and DR marketplace have the resources or knowledge to engage in a regulatory proceeding at the PUCO. Thus, regulatory construct is such that favored technologies and insiders receive subsidies in the marketplace, while those that have equally innovative technologies are left out simply because they are not as connected to the regulatory process.

IGS understands that this insider bias is, in-part, due to the statutory framework set forth in SB 221 and the policy decisions of the Ohio legislature. That said, the

Commission does have some ability to ensure that the Commission rules and policy do not pick winners and losers in the EE and DR marketplace.

One way to help protect against picking winners and losers is to require that the EDU include in its portfolio plan a description of the process by which EE and DR funding will be made available to all parties on an equal and non-discriminatory basis. As such, the Commission should modify OAC 4901:1-39-04(C) to include the following additional element the EDU must include in its portfolio plan:

> 4901:1-39-04(C)(6): The portfolio plan must be transparent and non-discriminatory with respect to project and developer selection and thus each portfolio plan shall contain a description of how all parties can receive efficiency and demand reduction funding for all technologies and projects that are statutorily eligible for such funding. The plan shall set forth a funding mechanism for project funding that contains a transparent formula described in the plan that can be utilized to calculate the funding to third parties for energy efficiency or peak demand reduction projects committed to meeting the energy efficiency and peak demand reduction requirements. Such a formula shall be designed to assign energy efficiency and peak demand reduction funding uniformly for all project types regardless of whether the project was performed by the electric distribution utility or a third party;

B. The EE and DR rules Should Clarify How Combined Heat and Power ("CHP") Systems are Part of the EDU EE and DR Plan.

Ohio Revised Code ("R.C.") 4928.66 allows for CHP systems to be included in the EDU EE programs. CHP was included in the EDU EE programs with the adoption SB 315, thus with the enactment of SB 315 the Ohio legislature indicated its intent to include CHP projects into the EDU program plans. This rule making proceeding is, in part, designed to implement the statutory changes made in SB 315 into the Commission rules; however, the rules proposed by Staff do not sufficiently clarify the means by which utilities will offer EE and DR funding for CHP projects.

As already noted, the EE and DR rules give great discretion to the EDU to select favored technologies to include in the EE and DR portfolio plans. Accordingly, the EE and DR rules, as drafted, will allow the EDU to ignore the intent of the Ohio legislature and leave CHP out for project funding; or even if CHP is included in the portfolio plan, the type of CHP funding is left widely to the discretion of the EDU. The Commission should not enable the EDUs to ignore the intent of the legislature, particularly since CHP was identified in statute as a technology that is eligible for EE and DR funding. As such, the Commission should modify the rules in 4901:1-39-04(C) to ensure that CHP receives EE and DR funding under the EDU portfolio plan. Further, and consistent with IGS comments above, the Commission should modify the rules to ensure that all CHP projects get equal access to funding opportunity. Accordingly, IGS suggests the following addition to 4901:1-39-04(C):

> (7) A description of how combined heat and power systems will be integrated into the electric utility portfolio plan. Such a description shall also include a transparent formula that allows all combined heat and power system projects that are willing to commit their energy efficiency to the electric utility energy efficiency and demand reduction programs, to receive energy efficiency and demand reduction funding on an equal and non-discriminatory basis.

C. O.A.C. 4901:1-40-05 Should be Modified to Protect the Confidentiality of Competitive Retail Electric Service Providers Competitive Information.

Proposed rule 4901:1-40-05(4) would require competitive retail electric service ("CRES") providers to make publicly available, among other things, the costs per megawatt hour a CRES provider incurs for meeting all applicable AEPS requirements. As drafted this rule also appears to require a CRES provider to publicly disclose a breakdown of costs the CRES incurs for meeting each of the AEPS requirements including the cost of purchasing solar electricity, in-state renewable electricity, and

electricity from all other alternative energy resources. Requiring CRES suppliers to disclose their electric supply costs is a bad public policy and should not be adopted by the Commission.

First, there is no compelling policy reason why CRES suppliers should make publicly available certain electric pricing cost components. Unlike the EDU, CRES suppliers do not receive full cost recovery for the electricity they sell to customers. Further, CRES suppliers do not have a monopoly on customers, thus no customer must purchase electricity from any given CRES supplier. Even if a CRES supplier did disclose its renewable electric costs, it is not clear how a customer, or the public at large, would benefit from a CRES supplier's renewable energy cost information.

Second, disclosing pricing information for certain cost components in a competitive industry raises serious antitrust concerns. Generally, antitrust laws do not allow competitors to share non-publically available cost information with each other, as it could enable competitors in the marketplace to price certain products in a discriminatory manner. The Commission should not risk running afoul of antitrust laws for a non-compelling public policy reason.

Finally, electric cost components are proprietary and can be utilized by CRES competitors to the detriment of CRES providers in the market. The ability of a CRES provider to procure renewable electricity is a means by which a CRES provider can differentiate itself in the marketplace. If a CRES supplier is required to publicly disclose electric pricing cost components, it may be possible for competitors to ascertain (given other publically available information) the following: (1) whether the CRES is utilizing renewable energy credits to meet AEPS requirements or if the CRES is generating the

renewable electricity directly, (2) if the CRES is generating its renewable energy directly, then the costs of generating that electricity, and (3) if the CRES is not generating its own electricity, then where that CRES may be purchasing RECs or other sources of alternative energy. This information should not be made available to competitors as it is likely to lead to a less competitive market.

If the Commission believes it is necessary to have CRES renewable electricity information, it could simply allow CRES suppliers to file the information at the Commission under seal. Further, if a CRES is seeking a waiver at the Commission for having to meet its AEPS requirements under R.C. 4928.66(C)(3), it may be reasonable to require the CRES to publicly disclose its renewable cost information. However, it is not reasonable to require a CRES to disclose to the public electric cost components in its routine annual filings, as there is a great risk that public disclosure of this information will harm the competitive market and violate antitrust laws, for little, if any, benefit.

For the reasons stated herein, the Commission should either strike proposed rule 4901:1-40-05(4)(b), or add a provision in OAC 4901:1-40-05 that allows CRES providers to file their alternative energy portfolio status reports under seal.

III. **CONCLUSION**

IGS would like to thank the Commission for giving it the opportunity to Comment on the important topic of Ohio's EE and AEPS requirements. It is IGS' belief that competitive markets are the most efficient and effective means to encourage the development of products and services that customers value. This principal also holds true for EE, DR, and advanced energy markets. The Commission should adopt a regulatory framework for EE, DR, and advanced energy that allows all products and

services to compete on a level playing field and does not pick winners and losers. Further, the Commission should design EDU EE and DR plans that reward product innovation and achieving EE and DR rather than rewarding the ability to participate in a regulatory proceeding or collaborative. As such, IGS respectfully requests that the Commission adopt the recommendations made in these comments.

Respectfully Submitted,

/s/ Matthew White
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was served by electronic mail on all parties who have or will be filing initial comments in Case Nos. 13-651-EL-ORD, 13-652-EL-ORD, and 12-2156-EL-ORD this 27th day of February 2014, or shortly thereafter when the identity of such commenter is known.

/s/ Gretchen L. Petrucci
Gretchen L. Petrucci

Case No(s). 13-0651-EL-ORD, 13-0652-EL-ORD, 12-2156-EL-ORD

Summary: Comments of Interstate Gas Supply, Inc. electronically filed by Mrs. Gretchen L. Petrucci on behalf of Interstate Gas Supply Inc.