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

COMMENTS OF OHIO ADVANCED ENERGY ECONOMY

I. INTRODUCTION

In a January 29, 2014 Entry (the "Entry"), the Public Utilities Commission of Ohio ("PUCO" or the "Commission") requested comments on proposed revisions to the Commission's rules for energy efficiency programs in Chapter 4901:1-39 of the Ohio Administrative Code ("OAC"). The proposed revisions include, among other things, changes to reporting times and procedures "to minimize the expense for all stakeholders in the administrative review process" for each electric utility's energy efficiency and peak demand reduction ("EEDR") portfolios.[1] PUCO Staff is proposing "to move from a pre-approval process for portfolio plans to a post-approval scenario that would allow utilities the flexibility to make changes in accordance with technologies and market conditions."[2] PUCO Staff is also proposing a new process for updating the EEDR technical reference manual.[3]

Ohio Advanced Energy Economy ("OAEE") is a statewide association of businesses and institutions committed to building a robust advanced energy industry that can meet Ohio's growing energy needs and position Ohio as a global leader in advanced energy products and

[1] Entry at 3.

[2] *Id.*

[3] *Id.* at 3-4.

solutions. Many of OAEE's members are directly affected by the Commission's oversight of utilities' compliance with the letter and spirit of the energy efficiency statutory requirements at Ohio Revised Code ("ORC") §4928.66 and accompanying administrative rules at OAC Chapter 4901:1-39. OAEE is well-positioned to offer practical insights on the likely impact of the proposed rules on businesses and the development of Ohio's advanced energy economy as a whole.

While OAEE generally supports Staff's stated purpose of minimizing stakeholder expense in the administrative review process, OAEE recommends a number of changes to the proposed rules to address OAEE's concerns regarding: (1) the ability of utilities to count energy efficiency savings required by other law, regulation or applicable building code; (2) the definition of "cost-effective" used to evaluate a particular energy efficiency measure, program or portfolio; (3) Staff's proposed narrowing of the purpose and scope of the energy efficiency rules; and (4) stakeholder participation in the utility oversight process. OAEE respectfully submits these comments and recommendations for Commission review.

II. COMMENTS

A. Comments on Proposed Revisions to OAC 4901:1-39-01.

1. The definition of "cost-effective" at OAC 4901:1-39-01(H).

The definition of "cost-effective" at the proposed OAC 4901:1-39-01(H) has been revised to provide that the "measure, program, or portfolio being evaluated satisfies the total resource cost test <u>or utility cost test, as applicable</u>." (Emphasis added). The term "utility cost test" is not defined.

The method of cost-effectiveness screening has a major impact on Ohio's energy efficiency programs. Current methods in use across the United States, including Ohio, are likely to understate the full potential of energy efficiency resources and lead to significant underinvestment in energy efficiency and higher costs for consumers. However, a new consensus is developing around how to analyze the costs and benefits in a robust way and whether a state's energy efficiency programs are in the public interest.[4]

This approach, the Resource Value Framework ("RVF"), provides a framework for implementing cost-effectiveness tests more accurately. It recommends that efficiency screening practices incorporate the energy policy goals of the state, as articulated in legislation, commission orders, regulations, guidelines, and other policy directives. It also recommends that tests be applied symmetrically, so that both relevant costs and relevant benefits are included. Otherwise the test will be skewed against energy efficiency resources. Efficiency screening practices should not exclude relevant benefits on the grounds that they are difficult to quantify and monetize. Several methods are available to approximate the magnitude of relevant benefits.[5] Further, efficiency program administrators should use a standard template to explicitly identify their state's energy policy goals and to document their assumptions and methodologies.[6]

In practice, most states that use the total resource cost test (the "Total Resource Cost Test"), including Ohio, do not sufficiently account for relevant participant non-energy benefits, with the result that the test does not provide decision-makers with accurate information about

---

[4] *See generally* ENERGY EFFICIENCY SCREENING COALITION, "Recommendations for Reforming Energy Efficiency Cost-Effectiveness Screening in the United States" (Nov. 18, 2013), available at: http://www.nhpci.org/publications/NHPC_EE-Screening-Coalition-Position-Paper-final_20131118.pdf.

[5] *Id.* at 6. Options available to account for relevant energy efficiency benefits include: 1) "monetization," described as "estimating benefits in terms of dollar impacts, which can then be added to the other dollar costs and benefits in the analysis"; 2) "quantification," described as "developing quantified values of benefits, even if those values are not, should not, or cannot be put into monetary terms"; 3) "proxy adders," described as "adjustments (either in terms of a percent of benefits or in terms of $/MWh or $/therm) that are meant to approximate the value of the benefit as closely as possible"; 4) "alternative screening benchmarks," described as "developing screening standards that inherently account for the fact that some benefits are not accounted for"; and 5) "regulatory judgment," described as the "ability of regulators to account for hard-to-quantify benefits without using any of the options above."

[6] *Id.* at 15. A sample template is included in the Energy Efficiency Screening Coalition Report.

"total resource" costs and benefits. If it continues to use the Total Resource Cost Test, the Commission should ensure that participant costs and participant benefits are fully captured, using reasonable estimates of non-energy benefits.

The proposed OAC 4901:1-39-01(H) also allows for the use of the utility cost test ("Utility Cost Test"), but the revised rule does not define Utility Cost Test or provide guidance regarding when it should be applied. The Commission should define Utility Cost Test and require that it account for all relevant utility system costs avoided by efficiency resources, including: generation costs, transmission costs, distribution costs, environmental compliance costs, the price suppression effects in wholesale markets, and utility-perspective non-energy benefits. The Commission should also provide parameters regarding the use of the Utility Cost Test versus the Total Resource Cost Test.

More generally, the Commission's energy efficiency screening practices should also recognize the benefits that some programs offer regarding customer equity and market transformation. These should be considered benefits that accrue to the utility system, and should therefore be included in any cost-effectiveness test. The Commission should also account for risk mitigation benefits when screening energy efficiency. Risk benefits accrue to the utility system, and therefore should be included in any screening test. Risk benefits should be accounted for either in selecting a discount rate, in modeling avoided costs, or as an explicit benefit to be included in the cost-effectiveness analysis. The Commission should also consider screening energy efficiency resources at the program, sector or portfolio level; not at the measure level.[7] Finally, the Commission's efficiency screening analyses should use a study period that is

---

[7] *Id.* at 21-22. The Energy Efficiency Screening Coalition report concludes that efficiency resources should not be screened at the measure level for the following reasons:

long enough to include the full operating lives of all the measures included in the energy efficiency programs. Any shorter study period will tend to undervalue total energy savings.

2. The definition of "total resource cost test" at OAC 4901:1-39-01(AA).

At the end of the definition of "total resource cost test" at OAC 4901:1-39-01(AA), Staff is proposing to remove tax credits from the list of benefits to be netted out against the costs of a utility's demand-side measure or program.

If the Total Resource Cost Test is in use, it would be inconsistent with the nature of the test to exclude a tax credit to the participant. As discussed above, for the test to be symmetrical and logically consistent, all non-energy benefits must be included alongside participant costs. If including the tax credit is undesirable for public policy or other reasons, then the Utility Cost Test, which does not consider participant costs or benefits, should be applied. More generally, the Commission should also adopt the principles of the RVF, as discussed above, and provide more guidance regarding when and which screening measures should be applied.

B. Comments on Proposed Revisions to OAC 4901:1-39-02.

Staff is proposing to narrow the stated purpose and scope of the energy efficiency rules. In the proposed revisions to OAC 4901:1-39-02, Staff proposes the purpose to be "to establish rules for the implementation of electric utility energy efficiency and peak-demand reduction programs." Under the current version of this section, the purpose "is to establish rules for the implementation of electric utility programs that will <u>encourage innovation and market access</u> for

---

First, screening at the measure level prohibits the ability to account for the interrelationships between different measures, and the fact that some high-cost measures might help customers adopt lower-cost measures, resulting in greater overall net benefits. Second, experience has demonstrated that measure-level screening can exclude measures that are cost-effective from the participant perspective, increase the transaction costs of contractors and customers, create lost opportunities, and hinder the goal of achieving comprehensive, whole-house or whole-building efficiency savings. Third, measure-level screening prevents program administrators from taking advantage of economies of scale, either within measures or within a program, that might make measures and programs more cost-effective.

cost-effective energy efficiency and peak-demand reduction, achieve the statutory benchmark for peak-demand reduction, meet or exceed the statutory benchmark for energy efficiency, and provide for the participation of stakeholders in developing energy efficiency and peak-demand reduction programs for the benefit of the state of Ohio." (Emphasis added).

The language in the current version of OAC 4901:1-39-02 articulates broad policy objectives of the state, which presumably have not changed dramatically in the course of five years. These include participation of stakeholders, which is in keeping with any robust public process, and the encouragement of innovation and market access, which are commendable goals in a rich economic environment like Ohio's and in a growing energy efficiency sector spurred by the passage of the law. These are policy objectives worth preserving and promoting, and OAEE is opposed to their removal from the current version of the rule.

C. Comments on Proposed Revisions to OAC 4901:1-39-03.

The revised OAC 4901:1-39-03(A)(2) specifies that a utility's analysis of a measure's economic potential must include an assessment of cost-effectiveness using either the Total Resource Cost Test or the Utility Cost Test. The term "utility cost test" is not defined.

OAEE recognizes the value of measure-level analysis for program planning and design purposes. But we have learned from experience that comprehensive programs that include an array of energy efficiency measures—even those that are not considered as beneficial as other available measures—provide a better customer experience and yield deeper energy savings. As explained above, we strongly oppose measure-level application of cost-effectiveness analysis as part of a utility's program planning requirements. More fundamentally, the Commission also needs to clarify in OAC 4901:1-39-03 and elsewhere in the rules the meaning of the Utility Cost

Test and the proper application of different screening measures, which should include the RVF principles described above.

D. Comments on Proposed Revisions to OAC 4901:1-39-04.

1. Annual EEDR plan filing requirement at OAC 4901:1-39-04(A).

Under the revised OAC 4901:1-39-04(A) Staff is proposing to make the filing of EEDR plans an annual requirement. Under the current rule, utilities must file EEDR plans every three years.

Annual time horizons are not consistent with best practices in energy efficiency program delivery. Design, start-up, implementation and rigorous measurement and verification all require more than an annual timeframe. One-year plans inevitably result in poor performance, penalized as they are for start-up hiccups and necessary tweaking of new programs. Further, one-year plans risk causing customer confusion in the marketplace. No sooner does a utility get a program up and running, marketing it to customers and gaining participation, than the utility begins to wind down the program, only to start it up in a different form the next year. Ohio has been a leader in recognizing the need for a three-year program horizon. It would be a step backward to change this practice.

2. Quarterly stakeholder meetings at OAC 4901:1-39-04(C)(2).

Under the revised OAC 4901:1-39-04(C)(2), Staff is proposing to require quarterly stakeholder meetings to discuss plan implementation and new programs.

OAEE supports the quarterly meetings required by the new rule and commends Staff for encouraging increased stakeholder participation in this part of the administrative review process. As discussed in greater detail below, OAEE strongly encourages broad stakeholder involvement in program planning, and requiring quarterly meetings is a step in the right direction.

3. Comment period for EEDR plans at OAC 4901:1-39-04(D).

Staff is proposing to revise OAC 4901:1-39-04(D) to reduce the comment period for a utility's EEDR plan to thirty days from sixty days.

A robust stakeholder process is a tenet of good, transparent policies and programs. OAEE believes that a thirty-day comment period does not provide an adequate window for participation by a wide array of stakeholders. Further, the proposed change includes a retreat from the current plan review process, which includes docketed and fully adjudicated procedures. It is an important part of a robust stakeholder process to allow parties to present witnesses, testimony, best practices from other jurisdictions, and in general participate in the plan review in a fully docketed manner. A simple comment period, much less a foreshortened one, is insufficient for all those involved. OAEE recommends that the PUCO continue with current practice.

4. Commission hearings on EEDR plans.

Staff is proposing to eliminate the current requirement at OAC 4901:1-39-04(E) to conduct hearings on a utility's proposed EEDR plan. In the revised version of this rule, a utility must respond to public comments within thirty days and indicate "which recommendations it has accepted for inclusion into its program portfolio plan."

OAEE considers stakeholder participation and open and transparent proceedings to be a justifiable expenditure of resources in almost every case. In other words, there should be more hearings, not fewer hearings, whenever practicably possible. The Commission should continue its current practice of conducting hearings on proposed EEDR plans.

E. Comments on Proposed Revisions to OAC 4901:1-39-05.

1. Counting energy efficiency savings required by other law, regulation or applicable building code.

The new OAC 4901:1-39-05(A)(1)(b) addresses utilities' treatment of a customer's energy-saving measure required by other law, regulation or building code. The rule provides that a utility "shall not provide a financial or rider exemption incentive for, <u>but may count in meeting any statutory benchmark</u>, 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." (Emphasis added). This type of counting is currently prohibited under the current OAC 4901:1-39-05(H).

OAEE strongly opposes this revision. The new rule would significantly water down the energy efficiency benchmarks and represents a drastic reversal from previous Commission orders. The proposal would place Ohio far outside of the mainstream: no other state with energy efficiency benchmarks allows this kind of counting. In practice, the new rule would allow utilities to use "energy savings" from the least efficient refrigerators, air conditioners, computers and other equipment on the market today to crowd out real energy savings. That was not the intent of the statutory benchmarks. The new rule would be a harmful step backwards for the state's energy efficiency policy, and the Commission should reject it.

2. Utility recommendations regarding individual programs.

Staff is proposing to eliminate the current requirement at OAC 4901:1-39-05(C)(2)(c) that a utility provide a recommendation in its annual performance report regarding "whether each program should be continued, modified or eliminated."

OAEE supports this rule change because it moves evaluation and screening away from the program level and toward portfolio review, which is preferable. Portfolio-level scrutiny allows for the most flexibility within a utility's program and measure mix, which leads to optimal energy savings for customers.

3. Annual performance verification and updates to the technical reference manual.

The new OAC 4901:1-39-05(D) provides that based on the independent program evaluator report and public comments, the PUCO will either schedule a hearing regarding a utility's annual performance or issue its opinion and order without a hearing. The new OAC 4901:1-39-05(E) provides that based on the independent program evaluator report and public comments, PUCO Staff will direct the independent program evaluator to file an updated technical reference manual.

OAEE supports robust and transparent stakeholder involvement whenever practicably possible. A utility's performance is well within the public interest and should be given a public airing, including stakeholder testimony, beyond the evaluator's report and written comments in response to the report. With regard to the technical reference manual, it is particularly important to solicit a wide range of expertise and market knowledge so that Ohio is the beneficiary of state-of-the-art technology and technical prowess. This is best achieved through a robust stakeholder process, not just a filed report and public comment period. OAEE is concerned that in a good-faith effort to streamline the administrative review process, the Commission is cutting off valuable public participation.

III. CONCLUSION

OAEE appreciates Staff's efforts to improve the energy efficiency rules and streamline the administrative review process. OAEE wants to ensure, however, that as a result of those efforts, the Commission does not water down the energy efficiency benchmarks, unnecessarily narrow the aspirational scope and purpose of the current rules, reduce stakeholder participation, or forego a more thorough analysis of the costs and benefits of a particular energy efficiency measure, program or plan. OAEE appreciates the opportunity to comment on the proposed rules and looks forward to participating further in the Commission's rulemaking process. OAEE respectfully requests that the Commission consider these comments and adopt the recommendations presented here.

Respectfully Submitted,

Terrence N. O'Donnell
Christopher M. Montgomery
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, Ohio 43215
Phone: (614) 744-2583
Fax: (248) 433-7274
Email: todonnell@dickinsonwright.com
cmontgomery@dickinsonwright.com

Attorneys for Ohio Advanced Energy Economy