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

REPLY COMMENTS OF THE DAYTON POWER AND LIGHT COMPANY REGARDING THE COMMISSION'S REVIEW OF ITS RULES FOR ENERGY EFFICIENCY PROGRAMS AND THE ALTERNATIVE ENERGY PORTFOLIO STANDARD CONTAINED IN CHAPTERS 4901:1-39 AND 4901:1-40 OF THE OHIO ADMINISTRATIVE CODE

The Dayton Power and Light Company ("DP&L" or "Company") submits the following comments in reply to comments previously filed by interested participants in this proceeding. DP&L's comments are generally directed to issues related to technical matters and are grouped within subject categories and not by party. The lack of a reply comment with respect to some or any aspect of another participant's comments should not be construed as agreement with the comments.

§4901:1-39-01 Definitions.

Various interested parties that filed initial comments in this rulemaking case support the updated "Cost-effective" definition in §4901:1-39-01, which adds the utility cost test ("UCT") as an appropriate measure for energy efficiency program cost effectiveness. Ohio Partners for

Affordable Energy ("OPAE") supports more strongly the use of the UCT as the cost-effectiveness test for program approval and cost recovery because it adds flexibility to program offerings by utilities: "Using the UCT will also expand the ability of utilities to capture savings from a broader range of technologies and services...The UCT allows a utility to cast a wider net in search for savings." DP&L agrees with these parties that the UCT addition to the "Cost-effective" definition is warranted and welcomed. In light of this addition, DP&L agrees with the Ohio Hospital Association ("OHA") and other interested parties that a definition of UCT should be added to §4901:1-39-01. Furthermore, DP&L supports Ohio Advanced Energy Economy's ("OAEE") notion that the Commission should define UCT 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.

In its initial comments, DP&L disagreed with the addition of §4901:1-39-01(O)(4) under the definition of "Independent program evaluator" authorizing the statewide evaluator to evaluate and report on the appropriateness and reasonableness of costs included in the EDU's energy efficiency cost recovery mechanisms. DP&L reiterates this comment and agrees with Duke Energy Ohio's ("Duke") comment that, "the new provisions included in the rule as (O)(4) have the potential to delay a utility's recovery of its costs [and] will make utility program planning extremely difficult." DP&L also agrees with Duke's comment, "While utility spending on DSM programs must be evaluated for prudency...Duke Energy Ohio suggests that this continues to be a process conducted by Commission Staff and not the Independent Evaluator." Furthermore, DP&L strongly supports AEP-Ohio's solution to delete §4901:1-39-01(O)(4) under the definition of "Independent program evaluator."

§4901:1-39-04 Program portfolio plan and filing requirements.

Most, if not all parties whom filed comments in this case are concerned by the proposed language in §4901:1-39-04(A) that requires EDUs to file an updated energy efficiency program portfolio plan annually. DP&L, among other interested parties, agree with the Commission's goal of minimizing the expense for all stakeholders in the portfolio planning process; however, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy") states correctly in its initial comments: "This change is administratively burdensome and will create implementation difficulties that will increase the cost of the plans for the EDU and its customers." As pointed out by many stakeholders, annual filings will create significant issues for program implementers, evaluators, and vendors. For instance, OPAE expresses this robustly in its initial comments on this matter:

> ...a failure to approve new portfolios in a timely manner...[with] extensions do not resolve the problems caused by delays in program approval...Short-term extensions disrupt the momentum and effectiveness of programs...Implementation contractors need certainty, as do utilities.

DP&L agrees with these comments made by OPAE. In addition, OAEE states in its initial comments: "One year plans inevitably result in poor performance...Further, one-year plans risk causing customer confusion in the marketplace." Customer involvement in energy efficiency programs should be at the heart of the issues discussed in this case. For many of these same reasons, among others, Duke, AEP-Ohio, Ohio Manufacturer's Association ("OMA"), and OAEE all support and/or recommend longer approved portfolio plans. DP&L also recommends longer portfolio plans and agrees with Duke and AEP-Ohio that the rules should afford for more flexibility in regard to plan periods, more specifically the flexibility to file a three or five year portfolio plan. This adds flexibility for EDU planning purposes, while creating needed certainty for program implementers, customers, evaluators, and vendors. In addition, DP&L agrees with comments made by Duke in which they advocate for additional flexibility for EDUs to add or remove programs on an annual basis as necessary "to address new technological developments and changing market conditions." Finally, DP&L agrees with OMA's recommendation that the deadline for filing an updated program portfolio be no later than July 15 in the year prior to the new plan going into effect. This is appropriate given past experience in negotiation and plan approval timing.

Along the same lines, Commission Staff is advocating in its proposed rules a "post-approval" process instead of the traditional pre-approval of program portfolios. Most, if not every interested party that filed initial comments in this case, voiced concerns over the proposed approval process. Nucor and OMA, among other stakeholders, prefer pre-approval of portfolio plans. FirstEnergy goes even further and argues that if Staff's move from a pre-approved to post-approved plan is accepted by the Commission, then there is no need for filings by the EDUs regarding energy efficiency portfolio plans:

> If the plans are not going to be pre-approved by the Commission, then there should be no need for an EDU to make any filings with the Commission prior to implementing their programs. Further...If the Commission is not to render an opinion on the plans, then what is the purpose of submitting comments and reply comments? If, indeed, the assumption is that there will be no pre-approval process, then there is no need for this rule...the rule must be left with a pre-approval process, similar to that set forth in the current rule.

DP&L believes it is a bit extreme to not have any filings for an EDU's energy efficiency portfolio plan, but strongly agrees with FirstEnergy's last point that there must be a pre-approval process provided for in §4901:1-39-04, similar to current processes. A pre-approved plan gives all stakeholders the certainty they seek in regard to energy efficiency plans, whether it be certainty for customers currently taking advantage of programs, contract certainty or certainty of cost recovery of approved programs.

Lastly, OPAE recommends an addition to §4901:1-39-04 that would require EDUs to bid in 100% of its energy efficiency resources required to meet the statutory benchmarks and be "responsible for any shortfall which shall act as a penalty for non-compliance with the benchmarks." DP&L would like to note that compliance with the statutory benchmarks is cumulative; therefore, there may be zero energy efficiency resources to bid into the PJM BRA in certain years of an approved portfolio plan, if the EDU has exceeded its benchmark in previous years.

§4901:1-39-05 Annual performance verification.

In regard to §4901:1-39-05(B)(3), DP&L defers to its above reply comments to §4901:1-39-01(O)(4). This section, which essentially parallels §4901:1-39-01(O)(4), warrants deletion as other parties have stated in their initial comments.

In regard to §4901:1-39-05(B)(4), DP&L strongly agrees with AEP-Ohio that updates to the TRM be addressed in its own docket. AEP-Ohio, in its initial comments makes the following changes to §4901:1-39-05(B)(4), which DP&L supports:

> The independent evaluator's recommended revisions **SUBJECT TO EDU AND OTHER STAKEHOLDER COMMENT AND HEARING** to be made to the technical reference manual **IN ITS EVERY THREE TO FIVE YEAR UPDATE PROCESS** should be addressed in a separate docket rather than as part of the review of verified savings.

Not only do updates to the TRM need to be addressed in a separate docket, but if the Commission retains the rules pertaining to TRM revisions under §4901:1-39-05, any updates to the TRM must be finalized with enough time to be included in an EDU's portfolio plan with no penalties for non-compliance.

§4901:1-39-06 Recovery mechanism.

In its comments, the Office of the Ohio Consumers' Counsel ("OCC") argues that "The PUCO should modify the PUCO Staff's proposed rule 39-06 to eliminate the charging of customers for so-called lost distribution revenues." Furthermore, the OCC argues that:

> ...any shared savings mechanism should only be made available for actual utility performance that is demonstrated to have exceeded the statutory benchmarks... Additionally, an electric utility should not be allowed to collect a shared savings incentive if it is receiving lost distribution revenues.

DP&L does not support the OCC's views on cost recovery. Utilities should be able to recover all program costs, lost revenues through either a lost revenue mechanism or decoupling, and have the opportunity to earn shared savings. Shared savings provide utilities with an incentive to control costs, implement cost-effective measures, and exceed statutory benchmarks and should be paid on all savings realized for a given year.

§4901:1-39-07 Historical mercantile customer programs, combined heat and power, or waste energy recovery systems.

DP&L agrees with initial comments from multiple parties that combined heat and power systems' incentive mechanism needs to be further defined, both in the appropriate way to effectively calculate energy efficiency savings, incentive and the timing in which the incentive should be paid.

Ohio Coalition for Combined Heat & Power states that "a universal methodology for calculating savings and structure of how incentives are earned is absolutely essential to meaningful market development." DP&L agrees that not only is more clarity and standardization essential to developers, but the EDUs need certainty around what savings can be counted toward their compliance targets and what incentive levels need to be budgeted, in order to cost-effectively incorporate Combined Heat & Power ("CHP") into their energy efficiency portfolio plans.

FirstEnergy points out that "both the CHP and [waste energy recovery] technology primarily displace other energy...rather than actually reduce customer energy consumption." To ensure EDUs are incentivized to support CHP, DP&L would like clarity on consideration of CHP in lost revenue recovery and shared savings.

§4901:1-40-05 Annual status reports and compliance reviews.

The Environmental and Consumer Advocates recommend that "If a utility enters into affiliate transactions to meet its alternative energy portfolio standard compliance requirements, the utility should fully report the details of these transactions in its annual status report." Environmental and Consumer Advocates at 47. According to the Environmental and Consumer Advocates, this will enable the Commission and stakeholders to determine whether the terms of the transactions were reasonable, as well as provide information for any corporate separation audit.

The process of determining the reasonableness of affiliate transactions are and should be handled in the review of the utility's cost recovery mechanism, not within an ACP docket filing used to demonstrate alternative energy compliance. This process is already in place for determining whether a utility acted prudently in meeting the alternative energy portfolio standard compliance requirement and charged customers appropriately through its alternative energy rider. It is inappropriate and unnecessary to require utilities to fully report the details of affiliate transactions in annual status reports as it relates to meeting the alternative energy portfolio standard compliance requirements.

Respectfully submitted,

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