

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of)	
Its Rules for Energy Efficiency Programs)	Case No. 13-651-EL-ORD
Contained in Chapter 4901:1-39 of the Ohio)	
Administrative Code.)	

In the Matter of the Commission's Review of)	
Its Rules for the Alternative Energy Portfolio)	Case No. 13-652-EL-ORD
Standard Contained in Chapter 4901:1-40 of)	
the Ohio Administrative Code.)	

In the Matter of the Amendment of Ohio)	
Administrative Code Chapter 4901:1-40)	Case No. 12-2156-EL-ORD
regarding the Alternative Energy Portfolio)	
Standard, to Implement Am. Sub. S.B. 315.)	

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") files Reply Comments in this proceeding involving important rules that should provide Ohioans with the benefit of energy efficiency. The Public Utilities Commission of Ohio ("PUCO") should ensure that Ohioans benefit from efficient energy programs at affordable rates. Ohioans already are paying more on average for electricity than residential consumers in 32 other states.¹ In order to help limit the amount customers pay for energy efficiency programs, the PUCO should maintain its control over the energy efficiency programs of electric distribution utilities ("EDUs").

¹ See U.S. Energy Information Administration, EIA Electric Power Monthly with Data for August 2013 (October 2013) at 119, Table 5.6B (http://www.eia.gov/electricity/monthly/current_year/october2013.pdf).

Currently, the PUCO approves EDUs' energy efficiency programs before they are put into place. The PUCO Staff has proposed changing the process to one in which the EDUs pick the programs they want to offer, without prior PUCO review or approval of the programs. The PUCO's review would occur only in the year after the programs took place. As OCC discussed in its Comments, the PUCO Staff's proposal would transfer decision-making authority over energy efficiency programs from the PUCO to the electric utilities. The EDUs would determine which programs would be included in their portfolio plans. Mechanisms to collect costs from customers would be implemented without PUCO oversight. The public would pay for energy efficiency programs without the opportunity to provide meaningful input regarding the programs to be included in the portfolio plans.

A total of 19 comments were filed in this proceeding.² Nearly all other commenters also oppose the PUCO Staff's proposed process. The process is plagued with flaws that adversely affect customers and create uncertainty for EDUs. The PUCO should reject the PUCO Staff's proposal.

In these Reply Comments, OCC addresses many of the issues raised by other commenters. The PUCO should ensure that stakeholders have opportunities for regular meetings with EDUs regarding their energy efficiency plans, and should expand the role

² In addition to OCC's comments, comments were filed by: Ohio Partners for Affordable Energy ("OPAE"); Ohio Environmental Council, Environmental Law & Policy Center, Sierra Club, Natural Resources Defense Council, Environmental Defense Fund and Citizens Coalition (collectively, "Environmental and Consumer Advocates"); Industrial Energy Users-Ohio ("IEU"); Ohio Advanced Energy Economy ("OAE"); The OMA Energy Group ("OMAEG"); Dayton Power & Light Company ("DP&L"); Ohio Power Company ("AEP Ohio"); Duke Energy Ohio, Inc. ("Duke"); Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "FirstEnergy"); FirstEnergy Solutions Corp. ("FES"); Interstate Gas Supply; the Ohio Hospital Association ("OHA"); Nucor Steel Marion, Inc. ("Nucor"); Energy Resources Center; the Ohio Coalition for Combined Heat & Power; the Heat Is Power Association; Alliance for Industrial Efficiency; and the Midwest Cogeneration Association.

of the independent evaluators. The PUCO should reject Nucor's proposal to include energy efficiency programs as part of EDUs' standard service offer programs, but should make renewable energy credit pricing data public, as some commenters suggested. And the PUCO should not bestow customer-funded shared savings upon electric utilities when the utilities merely meet the benchmarks they are required to meet by law. Shared savings should be allowed for only the energy efficiencies that exceed the benchmarks.³

II. DISCUSSION

A. **There Is Little Support Among the Commenters for the PUCO Staff's Proposed Change to Allow Utilities (and Not the PUCO) to Decide What Energy Efficiency Programs Will Comprise the Program Portfolio Plan that Is Implemented for Ohioans.**

Current Ohio Adm. Code 4901-39-04 provides a balanced approach to the PUCO's review of program portfolio plans. The current rule requires the electric utility to show that the portfolio as a whole is cost-effective, and that each program within the portfolio is cost-effective or provides substantial non-energy benefits.⁴

Any person may file objections to the plan within 60 days after the plan is filed.⁵ The objections must be specific, and must include any proposed additional or alternative programs or proposed modifications to the plan.⁶ The PUCO then sets the plan for hearing, at which the electric utility has the burden to prove that its proposed plan is consistent with the State policy as set forth in R.C. 4928.02 and meets the requirements

³ If OCC does not address a particular issue raised by other commenters, that fact should not be construed to mean that OCC acquiesces to the commenter's position.

⁴ Ohio Adm. Code 4901-39-04(B).

⁵ Ohio Adm. Code 4901-39-04(D).

⁶ Id.

of R.C. 4928.66.⁷ Parties have the opportunity to conduct discovery, and present evidence and testimony.

The PUCO Staff has proposed to change rule 39-04 so that the electric utility – not the PUCO – makes the final determination regarding the energy efficiency programs that will comprise the utility’s program portfolio. The PUCO Staff has proposed that interested persons would have a mere 30 days after the plan is filed to submit detailed comments on the plan.⁸ The comments must “specify the basis for all recommendations made, including any proposed additional or alternative programs or measures, or modifications that are suggested to be made to the electric utility’s proposed program portfolio plan.”⁹

Under the PUCO Staff’s proposed rule 39-04(E), “[w]ithin thirty days after the deadline for filing comments pursuant to paragraph (D) of this rule, **the electric utility shall file its response, in which it shall indicate which recommendations it has accepted for inclusion into its program portfolio plan.**”¹⁰ This proposed rule would make the electric utility, rather than the PUCO, the ultimate judge of which energy efficiency programs the utility would implement. This is unlawful.

In its Comments, OCC urged the PUCO to reject the proposed rule. OCC noted that the proposed rule is an abrogation of the PUCO’s responsibility to oversee energy efficiency programs and to render its own decisions under R.C. 4903.09.¹¹ Portfolio plans would be based on electric utilities’ profit motives instead of the PUCO’s judgment

⁷ Ohio Adm. Code 4901-39-04(E).

⁸ Entry (January 29, 2014), Attachment A, page 15 of 30 (proposed rule 39-04(D)).

⁹ Id.

¹⁰ Id. (emphasis added).

¹¹ OCC Comments at 5.

that should be based on outcomes that are best for Ohioans.¹² Also, the proposed rule is detrimental to customers and would effectively reduce or negate stakeholders' ability to participate in energy efficiency portfolio proceedings for purposes including protecting Ohioans' electric bills.¹³ OCC noted that the EDUs' control contained in the proposed rule is similar to that regarding electric standard service offers, where EDUs would have "the singular authority to reject not only any and all modifications proffered by the other parties but the Commission's independent judgment as to what is just and reasonable."¹⁴

The vast majority of other commenters also objected to the proposed rule. For example, the Environmental and Consumer Advocates noted that "[t]he utilities would be afforded sole discretion to accept or reject stakeholder comments, which would diminish the emphasis on collaborative input."¹⁵ Although supporting the PUCO Staff's desire for a clear procedure in portfolio plan cases, the Environmental and Consumer Advocates stated that "the corresponding proposal to remove portfolio preapproval threatens the integrity of the collaborative model."¹⁶ Further, the Environmental and Consumer Advocates noted that the proposed rule would burden interested parties because they would "render all four utility portfolio plans due on the same day of each year – with all comments due 30 days later."¹⁷

¹² See *id.*

¹³ See *id.* at 6-8.

¹⁴ *Id.* at 24, citing Case No. 08-935-EL-SSO, Opinion and Order (March 25, 2009), Concurring and Dissenting Opinion of Commissioner Roberto at 2.

¹⁵ Environmental and Consumer Advocates Comments at 6.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 9.

OMAEG recommended that the PUCO retain current Ohio Adm. Code 4901-39-04(E).¹⁸ This rule requires a hearing on the plan where the EDU would have the burden of showing that the plan is consistent with state policy of R.C. 4928.02 and that the plan meets the requirements of R.C. 4928.66. OMAEG says retaining the rule is necessary to resolve any disputed issues after comments are filed and to ensure that the EDU has met its burden of proof.¹⁹

Two EDUs also opposed the PUCO Staff's proposed rule.²⁰ AEP Ohio opposes the PUCO Staff's proposal because it "does not appear to affirmatively approve Plan spending in advance, so the utilities would have no assurance of cost recovery before spending actually occurs."²¹ FirstEnergy stated that if the rule is retained at all,²² it should include a pre-approval process.²³

The PUCO should not adopt a process that gives EDUs the final authority as to the elements of their portfolio plans. The PUCO Staff's proposal to eliminate PUCO review and approval of portfolio plans before they go into effect abrogates PUCO authority and effectively eliminates public input on EDUs' portfolio plans. The PUCO Staff's proposal would diminish the role of interested stakeholders in the planning stages of energy efficiency programs, and render the collaborative process less effective or

¹⁸ OMAEG Comments at 5. See also OAEE Comments at 8.

¹⁹ OMAEG Comments at 5.

²⁰ Neither DP&L nor Duke expressed any particular support for the new process. See DP&L Comments at 2-13; Duke Comments at 5-6.

²¹ AEP Ohio Comments at 5.

²² FirstEnergy states that if the post-approval process is adopted, there would be no need for any rules. FirstEnergy Comments at 7.

²³ Id.

ineffective of stakeholders (other than the utilities).²⁴ In addition, the PUCO Staff's proposal would severely limit the ability of the public – who would pay for EDUs' energy efficiency programs – to provide meaningful input regarding portfolio plans *before* they go into effect.

The proposed rule is not in the public interest. The PUCO should reject the PUCO Staff's proposal and retain the process provided in the current rules.

B. The Regular Stakeholder Meetings that Have Specific Requirements, as the PUCO Staff Proposes, Are an Important Means for Providing Public Input into Electric Utilities' Energy Efficiency Programs for Consumers.

The PUCO's current rules do not require electric utilities to hold meetings with stakeholders as part of the utilities' program portfolio plans. Ohio Adm. Code 4901:1-39-04(C)(2) only requires electric utilities to include “[a] description of stakeholder participation in program planning efforts and program portfolio development” in their portfolio filings.

The PUCO Staff has proposed to make stakeholder meetings a requirement of electric utilities' portfolio plans. Proposed rule 39-04(C)(2) would require each electric utility, at a minimum, to “conduct quarterly stakeholder meetings at which it shall provide updates on the energy efficiency and peak demand reductions achieved by its programs, all costs incurred in implementation of its programs, new programs or measures that it is considering, and solicit input from stakeholders on existing and potential new programs.”²⁵ The PUCO should adopt this rule.

²⁴ OCC Comments at 2.

²⁵ Entry, Attachment A, page 14 of 30.

Several commenters noted some of the benefits of the collaboratives. The Environmental and Consumer Advocates pointed out that:

The collaboratives allow stakeholders significant interaction with utilities and an opportunity to provide valuable feedback on existing and planned programs. An important motivator in the continuing constructive relationship between collaborative members and the utilities is the knowledge that the three-year portfolio will eventually be filed in a robust, fully litigated case process. This provides important procedural protections for all parties. But, importantly, it also strikes a balance between the interests of utilities and the interests of collaborative participants such that each is motivated to work together in good faith to refine the elements of the portfolio and resolve disputed issues even before the portfolio is presented to the Commission.²⁶

OPAE stated that “the collaborative works with the utility in good faith to develop a program that all parties agree will meet the benchmarks, and on incentive and cost recovery.”²⁷ The PUCO should encourage collaborative efforts between electric utilities and stakeholders.

Some of the EDUs object to the stakeholder process being made mandatory. DP&L asserts that “[r]equiring these meetings by rule is unnecessary, and will impose a rigid, mandatory structure to what is currently well-functioning, voluntary, collaborative process.”²⁸ FirstEnergy contends that the proposed rule “exceeds the Commission’s authority and interferes with the daily management of the EDU.”²⁹ FirstEnergy claims that the statutes do not require an EDU to host stakeholder meetings or to divulge

²⁶ Environmental and Consumer Advocates Comments at 7.

²⁷ OPAE Comments at 7.

²⁸ DP&L Comments at 3.

²⁹ FirstEnergy Comments at 11-12.

operational and cost information to stakeholders at those meetings.³⁰ Neither argument is convincing.

First, the effectiveness of the collaboratives varies among the EDUs. As the Environmental and Consumer Advocates noted:

Some utilities lead effective collaboratives where stakeholders work hand in hand with administrators to review programs, improve them, and address challenges in a responsive and effective way that leads to strong results and satisfied customers. Ideally, this is how all collaboratives should function. Unfortunately, they do not.³¹

While some of the collaboratives are well-run, the PUCO should ensure that *all* the collaboratives meet at least minimum standards. The effectiveness of energy efficiency programs should not be dependent on the willingness of the EDU to provide stakeholders meaningful participation in its collaborative. All customers should be assured that their electric company conducts an effective energy efficiency program.

Second, although the statutes may not specify that the PUCO may require stakeholder meetings as part of EDUs' energy efficiency programs, the statutes do not prohibit it either. R.C. 4928.66 charges the PUCO with the task of ensuring that EDUs meet the energy efficiency benchmarks contained in the statute. The PUCO's authority in this area appears to be broad.

FirstEnergy also expressed its concern regarding divulging confidential information to stakeholders in a collaborative.³² FirstEnergy's concern can be easily

³⁰ Id. at 12.

³¹ Environmental and Consumer Advocates Comments at 37.

³² See FirstEnergy Comments at 12.

addressed by having the stakeholders sign confidentiality agreements, where information is truly confidential.³³

The PUCO should allow the individual collaboratives some flexibility in having quarterly stakeholder meetings. AEP Ohio noted that meetings might need to be rescheduled because of scheduling and operational issues.³⁴ The PUCO should nevertheless ensure that EDUs do not manipulate the scheduling of collaborative meetings.

Although OCC has serious concerns regarding the process proposed by the PUCO Staff, OCC supports requiring stakeholder meetings as part of electric utilities' program portfolio plans. Regular stakeholder meetings would encourage the meaningful exchange of ideas concerning energy efficiency programs. This should help make the EDUs' energy efficiency programs more effective. The PUCO should adopt the PUCO Staff's proposed rule 39-04(C)(2).

C. For Most Optimally Providing the Benefits of Energy Efficiency and Minimizing Costs to Ohio Consumers, the PUCO Should Retain Its Three-Year Program Cycle.

Ohio Adm. Code 4901:1-39-04(A) requires electric utilities to update their program portfolio plans every *three* years. Interested parties may file objections to the plan within 60 days after it is filed,³⁵ and the PUCO holds a hearing on the plan.³⁶ This is currently done on a staggered basis so that no more than two EDUs' plans are being

³³ Such agreements should allow stakeholders to challenge the alleged confidentiality of the information in PUCO and other proceedings.

³⁴ AEP Ohio Comments at 6.

³⁵ Ohio Adm. Code 4901:1-39-04(D).

³⁶ Ohio Adm. Code 4901:1-39-04(E).

considered at any one time.³⁷ In between the three-year updates, electric utilities file an annual status report that includes a demonstration of compliance with the statutory benchmarks and an assessment of each program, including recommendations as to whether to continue each program.³⁸

The PUCO Staff has proposed to have each EDU file an annual update (and not the three-year plans in the current process).³⁹ Except for the flawed process proposed by the PUCO Staff, the annual update filing would be similar to the update currently required every three years.⁴⁰

There is overwhelming opposition to this proposal among the commenters.⁴¹ The burden an annual update would place on EDUs and stakeholders alike, as described in the comments, demonstrates that an annual update of EDUs' portfolio plans is not in the public interest. The PUCO should not adopt the PUCO Staff's proposed rule 39-04(A). OCC urges the PUCO to retain the current three-year cycle.

Two EDUs suggest moving to a five-year cycle. Duke asserts that a five-year cycle should be accompanied by "flexibility for a utility to add new programs on an annual basis in order to address new technological developments and changing market conditions, as well as, the ability to remove measures or programs as needed."⁴² AEP

³⁷ See Environmental and Consumer Advocates Comments at 9.

³⁸ Ohio Adm. Code 4901:1-39-05(C).

³⁹ See Entry, Attachment A, pages 13 of 30 and 14 of 30 (proposed rule 39-04(A)).

⁴⁰ Compare *id.* at pages 14 of 30 and 15 of 30 (proposed rule 39-04(C)) and Ohio Adm. Code 4901:1-39-05(C).

⁴¹ See, e.g., Environmental and Consumer Advocates Comments at 9; AEP Ohio Comments at 5; OAEE Comments at 7; DP&L Comments at 2-3.

⁴² Duke Comments at 6.

Ohio claims that a five-year interval would allow “more efficient planning of resources including contractual commitments and competitive bids for services needed.”⁴³

OCC has concerns about lengthening the interval between program portfolio applications because of the amount of time between complete reviews of the programs. The three-year cycle for review works well. If the PUCO, however, determines that a five-year cycle would be better, it should require EDUs to file for approval in the third year of the cycle. This would give ample opportunity for review of the portfolio program. It would also negate any EDUs’ concerns about bidding into PJM beyond their approved program year, since the next five-year cycle would be approved when the PJM auction is held.

D. The PUCO Should Adopt the PUCO Staff’s Proposed Rule Regarding the Role of the Independent Evaluator.

The PUCO’s rules require that an independent evaluator determine whether EDUs are meeting the statutory benchmarks for energy efficiency. Current Ohio Adm. Code 4901:1-39-01(M) defines the independent program evaluator as:

the person(s) hired by one or more of the electric utilities, at the direction of the commission, to complete the following activities:

- (1) Monitor, verify, evaluate, and report on the electric energy savings and peak-demand reductions resulting from utility program and mercantile customer activities.
- (2) Determine program and portfolio cost-effectiveness.
- (3) Conduct program process evaluations.
- (4) Perform due-diligence reviews of evaluations or documentation provided by an electric utility or mercantile customer, as directed by the commission.

⁴³ AEP Ohio Comments at 5.

Importantly, the rule also specifies that the independent program evaluator will work at the PUCO's sole direction.

The PUCO Staff proposes to modify the definition of independent evaluator. In addition to the duties mentioned in Ohio Adm. Code 4901:1-39-01(M)(1), the PUCO Staff proposes that independent evaluators "will monitor, verify, evaluate and report on one or more of the following activities"⁴⁴:

(2) Electric utility energy efficiency portfolio plan design and implementation, including evaluation of the plan's programs, measures, and cost effectiveness, and make recommendations for improvement.

(3) Recommend [sic] updates to the technical reference manual, as necessary, pursuant to changes in regulations, equipment availability, and market conditions.

(4) Appropriateness and reasonableness of all costs included in any riders designed to recover the costs of energy efficiency portfolio plan implementation from ratepayers.

(5) Perform [sic] other due-diligence reviews of evaluations and/or documentation provided by an electric utility or mercantile customer, as directed by the commission or its staff.⁴⁵

And Ohio Adm. Code 4901:1-39-05(B) states:

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.

The PUCO Staff proposes that this rule (proposed Rule 39-05(B)) be amended as follows:

⁴⁴ Id., page 5 of 30.

⁴⁵ Entry, Attachment A, page 6 of 30.

The independent program evaluator may conduct its report related review activities on an ongoing basis, including during the implementation of the electric utility's program portfolio plan, subsequent to completion of the plan year, and subsequent to the filing of the electric utility's portfolio performance report. The electric utility shall cooperate with the independent program evaluator as it conducts its review activities. Subsequent to the filing of the electric utility's portfolio performance report, the independent program evaluator will prepare and file a report which shall include, but is not limited to, the following:

(1) A description of the independent program evaluator's activities, analyses, and conclusions in monitoring, verifying, and evaluating the energy savings and peak-demand reductions resulting from the electric utility programs and mercantile customer activities.

(2) The independent program evaluator's verification and evaluation, through the use of due-diligence techniques including project inspections, of the electric utility's evaluation, measurement, and verification report.

(3) An evaluation of the electric utility's energy efficiency portfolio plan's programs, measures, cost-effectiveness, and the appropriateness of all costs included in the electric utility's energy efficiency cost recovery riders.

(4) The independent evaluator's recommended revisions to be made to the technical reference manual, as an appendix to the report.⁴⁶

All the EDUs object to the PUCO Staff's proposed changes. They argue that independent evaluators should only be concerned with verifying results of energy efficiency programs, and not examine costs included in the EDUs' energy efficiency riders.⁴⁷ The EDUs are wrong.

⁴⁶ Id., page 23 of 30. The PUCO Staff also proposes to delete Ohio Adm. Code 4901:1-39-04(C)(5)(I), which provides: "The independent program evaluator will prepare an independent evaluation, measurement, and verification plan at the direction of the commission staff to monitor, verify, evaluate and report on the energy savings and peak-demand reductions resulting from utility programs and mercantile customer activities. The independent program evaluator's plan may rely on data collected and reported by the electric utility."

⁴⁷ See AEP Ohio Comments at 2-3; DP&L Comments at 1-2; FirstEnergy Comments at 15-16; Duke Comments at 2-4.

One of the tasks of the independent program evaluators is, and will continue to be, to determine program and portfolio cost-effectiveness.⁴⁸ The independent program evaluators must therefore examine the costs involved to determine the cost-effectiveness of the programs. Hand-in-hand with this examination is a determination regarding the appropriateness of the costs included in the programs, which are included in EDUs' riders. R.C. 4905.22 requires that "[a]ll charges made or demanded for *any service rendered, or to be rendered*, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission."⁴⁹ (Emphasis added.) It would be unreasonable to include inappropriate costs in a program, and thus such costs should not be charged through the rider.

Further, proposed rule 39-01(O) specifies that the independent evaluator works at the direction of the PUCO or the PUCO Staff. Thus, the EDUs' concerns that about the independent evaluator (rather than the PUCO Staff) being involved in determining costs to be included in the energy efficiency rider are unfounded.⁵⁰

AEP Ohio also wants proposed rule 39-05(B)(1) to specifically limit the independent evaluator's focus to verifying the "gross savings" and "gross peak demand reduction" of EDUs' programs.⁵¹ OCC opposes this recommendation. First, AEP Ohio would remove monitoring and evaluating the programs from the independent evaluator's

⁴⁸ Ohio Adm. Code 4901:1-39-01(M)(2).

⁴⁹ See also R.C. 4928.02(A) which states it is State policy to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."

⁵⁰ See DP&L Comments at 1-2.

⁵¹ See AEP Ohio Comments 10.

role. Monitoring and evaluating the programs are an integral part of the process for determining the effectiveness of program portfolios.

Second, AEP Ohio inappropriately limits the focus on gross savings and gross peak demand reduction. The basis for AEP Ohio's recommendation is that "[t]he Commissions' current position allows gross savings to count toward an EDU's benchmarks."⁵² The PUCO's position was stated in its decision in the case where the PUCO set the protocols for measuring and verifying EDUs' energy efficiency and peak demand reduction programs.⁵³ There, the PUCO left the door open for future use of net savings in measuring and verifying EDUs' programs:

Most commenters agree with the provisional recommendation to evaluate program performance on the basis of gross savings initially. Therefore, the Commission finds that the gross savings methodology will be employed to evaluate program success initially. There may, however, be some instances, in which the Commission may specify the use of net savings as a condition of program approval. For example, where an energy efficiency program is implemented by a utility, and customers have already taken the steps promoted by the program, the net savings methodology may be more appropriate. The use of the net savings approach in these situations will work to ensure that utilities are only recovering revenues for actual losses. For various reasons, a number of commenters take issue with the second part of the provisional recommendation, which recommends moving toward net energy savings calculations at some point in the future. While the added value of collecting and using the information necessary to calculate net savings may be outweighed by the added administrative burden and cost of doing so at this time it may not be in the future. Therefore, the Commission intends to address the issue of moving toward program evaluation on a net savings basis as experience with energy efficiency program implementation and evaluation is gained.⁵⁴

⁵² AEP Ohio Comments at 3.

⁵³ *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Finding and Order (October 15, 2009).

⁵⁴ *Id.* at 5-6.

If AEP Ohio's recommendations regarding gross savings are codified in the rules, the PUCO could not move to net savings for measuring and verifying EDUs' portfolio programs without changing these rules again. The PUCO should retain the flexibility to use net savings. The PUCO should reject AEP Ohio's recommendations to include gross savings in the rules.

E. Shared Savings if Retained at All, Should Be a Reward for Exemplary Performance, Not a Payment from Customers for Utilities Merely Comply with the Law.

In its Comments, OCC recommended that the PUCO eliminate shared savings from the EDUs' portfolio plans or limit them to the amount of shared savings that exceed the energy efficiency benchmarks.⁵⁵ OCC also recommended that an electric utility should not be allowed to collect a shared savings incentive if it bids less than 75% of its eligible energy efficiency (MW) into the PJM base residual auction.⁵⁶

IEU takes a view similar to OCC's position. IEU wants an end to shared savings in energy efficiency programs "because it is unreasonable to pay incentives to an EDU to comply with Ohio law where the incentives reduce the savings that customers would achieve."⁵⁷ OCC agrees that shared savings should not be given to EDUs simply because they complied with the law. A shared savings incentive mechanism is a tool used by regulators to reward utilities' exemplary performance in delivering energy efficiency and peak demand reduction programs to customers. Utilities should not be rewarded for merely complying with the law.

⁵⁵ OCC Comments at 13-15.

⁵⁶ Id. at 14.

⁵⁷ IEU Comments at 9.

OMAEG correctly points out that the PUCO Staff's proposed rule 39-06 "seems to provide guaranteed recovery of lost distribution revenue and shared savings incentives for electric utilities."⁵⁸ The degree of collection of these costs from customers has been historically litigated and/or negotiated during PUCO proceedings in the electric utilities' program portfolio cases.⁵⁹ OMAEG contends that guaranteeing collection of lost distribution revenues and shared savings will impede the ability of parties to negotiate and/or litigate energy efficiency portfolio proceedings.⁶⁰ OCC agrees.

OPAE recommends removing distribution costs from the shared savings list of costs. OPAE notes that it is inappropriate to include distribution costs in shared savings because distribution costs are not avoided and thus there are no savings associated with them.⁶¹ OCC agrees.

AEP Ohio wants to exclude programs that are not cost-effective from the shared savings definition.⁶² Such programs would count only toward the EDU's compliance with the energy efficiency benchmark.⁶³ OCC concurs with AEP Ohio's suggestion. Utilities should not collect incentives for programs that are not cost-effective.

AEP Ohio also argues that utility distribution energy efficiency programs "that directly reduce energy and demand usage and are clearly not loss reductions" should be included in shared savings and lost revenues.⁶⁴ The PUCO should reject this suggestion

⁵⁸ OMAEG Comments at 8.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ OPAE Comments at 2-3.

⁶² See AEP Ohio Comments at 4.

⁶³ Id. at 3.

⁶⁴ Id. at 8.

from AEP Ohio. Only savings arising from energy efficiency programs themselves should be included in energy efficiency shared savings.

Environmental and Consumer Advocates argue that counting savings from standards essentially extends the as-found method to every class/program/project.⁶⁵ (Under the as-found method, the savings are equal to the difference between the new equipment and the prior equipment being replaced, rather than the difference between the new equipment and the regulatory standards or current market practice.) Currently, the as-found method only applies to mercantile customer projects. OCC is also concerned with the consumer impact of changing how savings are defined. The as-found method is especially inappropriate for any incentive or lost revenue calculations. The as-found method would inflate the amounts EDUs receive from their customers by including savings that are not in any way attributable to their programs.

Both OPAE and the Environmental and Consumer Advocates noted that the PUCO Staff changed the language regarding savings from transmission projects. The current recovery mechanism rule limits the cost of transmission and distribution infrastructure investments that are found to reduce line losses to “the portion of those investments that are attributable to and undertaken primarily for energy efficiency or demand reduction purposes.”⁶⁶ The proposed rule (39-06) does not include such a limitation, which means that customers could pay for investments not related to for energy efficiency or peak demand reduction purposes. The PUCO should retain the language in the current rule.

⁶⁵ See Environmental and Consumer Advocates Comments at 38-39.

⁶⁶ Ohio Adm. Code 4901:1-39-07.

F. Mercantile Customers Who Retain Ownership of Energy Efficiency/Peak Demand Reduction Attributes Should Not Be Eligible to Participate in Interruptible Rate Programs.

The current rules provide for a mercantile customer exemption from the cost collection mechanism for energy efficiency programs set forth in Ohio Adm. Code 4901:1-39-07. To receive the exemption the mercantile customer must submit an annual report on the energy savings and electric utility peak-demand reductions achieved in the customer's facilities in the most recent year.⁶⁷ Ohio Adm. Code 4901:1-39-08 specifies eight items that must be included in the annual report.

The PUCO Staff has proposed some changes to streamline this process.⁶⁸ The PUCO Staff has proposed an automatic approval process for applications to commit a mercantile customer's demand reduction, demand response or energy efficiency programs for integration with the electric utility's programs. An application filed in accordance with the PUCO's automatic approval template will be automatically approved unless suspended by a PUCO or attorney examiner order within 60 days after the application is filed.

An exemption from an energy efficiency cost recovery rider that is granted through the automatic approval process cannot extend more than one year unless the applicant provides an annual update to the PUCO Staff in the form published by the PUCO. The length of rider exemption will be determined by the use of the benchmark comparison method.

IEU seeks further modifications to the opt-out rules. IEU argues that the rules should include provisions exempting a mercantile customer with reasonable

⁶⁷ Ohio Adm. Code 4901:1-39-08.

⁶⁸ Entry, Attachment A, pages 27 of 30 and 28 of 30.

arrangements from the EDU's rider.⁶⁹ IEU also urges the PUCO to adopt rules removing the customer's energy usage from the EDU's compliance baseline.⁷⁰ Further, IEU argues that a mercantile customer should not be required to turn over to its EDU any attributes of the mercantile customer's energy efficiency/peak demand reduction projects that are eligible to be bid into the PJM markets.⁷¹

The PUCO should deny IEU's proposed changes. In Ohio's competitive market-based system, mercantile customers have direct access to the PJM markets. Mercantile customers collect the revenue from bidding their energy efficiency/peak demand reduction savings into these markets. Mercantile customers should not be exempt from paying the electric utilities' energy efficiency riders while at the same time making money by bidding their energy efficiency savings into the PJM markets. Other customers could wind up paying twice for mercantile customers' savings if the mercantile customer has received economic development funding that has enabled the savings to be achieved.

Many mercantile customers have benefited from receiving discounted rates under reasonable arrangements. A number of these mercantile customers used economic development funds to achieve energy efficiencies. In such cases customers of the utility have funded the energy efficiencies once already, and may, under IEU's proposal, pay again for the same energy efficiencies.

⁶⁹ IEU Comments at 3.

⁷⁰ Id.

⁷¹ Id. at 18.

This was discussed in a case to establish a reasonable arrangement between Columbus Southern Power (“CSP”)⁷² and Eramet Marietta, Inc. (“Eramet”) in 2009.⁷³ There, AEP Ohio argued that the energy efficiency and demand response capabilities enabled by customer-funded investment in Eramet, through AEP Ohio’s Economic Development Rider, should be committed to CSP compliance portfolio. AEP Ohio’s witness testified that if Eramet’s energy efficiency and demand response capabilities were not committed to CSP’s compliance portfolio, “Eramet would be obtaining a discount from CSP (paid for by other ratepayers) that helps fund facility investments while also fully preserving the ability to extract an additional price from CSP (and ultimately other ratepayers) for the capabilities of that same facility investment.”⁷⁴

The PUCO ordered Eramet “to commit, to the fullest extent possible, its customer sited-capabilities to CSP for integration into CSP’s portfolio.”⁷⁵ The PUCO required Eramet and CSP to work in good faith to determine how and to what extent Eramet’s customer-sited energy efficiency and demand response capabilities could be committed to CSP.⁷⁶ The PUCO allowed Eramet to continue participating in PJM’s demand response programs for the 2009-2010 planning year. “Thereafter, however, Eramet must make its demand response capabilities available to CSP in order to reduce peak demand reduction compliance costs.”⁷⁷

⁷² At the time, AEP Ohio had two operating companies in Ohio: CSP and Ohio Power. The two have since merged and operate under the name “Ohio Power Company.”

⁷³ *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Eramet Marietta Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC.

⁷⁴ *Id.*, Direct Testimony of J. Craig Baker (July 31, 2009) at 13.

⁷⁵ *Id.*, Opinion and Order (October 15, 2009) at 10.

⁷⁶ *Id.*

⁷⁷ *Id.*

If the PUCO does adopt rules allowing mercantile customers to retain ownership of energy efficiency/peak demand reduction attributes, those customers should no longer be eligible to participate in any electric utility interruptible rate programs (where the mercantile customers receive a discount off their electric rates that is funded by other customers). Interruptible rate programs increase costs to Ohio residential customers, who pay for the rate discounts in these programs through energy efficiency and peak demand reduction riders.⁷⁸

Moreover, interruptible rate programs are vestiges of a vertically integrated utility past. As such, interruptible rates are out of place in a regulatory environment (such as in Ohio) where electric service is restructured and electric utilities are divesting their generation.

In addition, if mercantile customers opt out of the EDUs' customer-funded economic development riders, they should be required to refund the money they have received through these programs, plus carrying charges. The refunds should be passed along to consumers through the EDU's economic development riders.

In its most recent Electric Security Plan application, AEP Ohio has proposed to eliminate its interruptible service rider, Rider IRP-D.⁷⁹ AEP Ohio is doing so because the benefits of interruptible service are more related to the provision of generation service, not distribution service.⁸⁰ AEP Ohio noted that it will be procuring the generation service needs of Standard Service Offer customers through a full auction "and AEP Ohio, as a

⁷⁸ See OPAE Comments at 9-10.

⁷⁹ See *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to 4928.143, Revised Code in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Application (December 20, 2013) at 7.

⁸⁰ See *id.*, Testimony of Andrea E. Moore (December 20, 2013) at 9.

wires company, may not be the entity best able to provide an interruptible service product (although there may be some limited opportunities to receive payment for load curtailment from the Company in connection with its peak demand reduction mandates.)”⁸¹

To the extent that they still exist, the electric utilities’ interruptible rates should be eliminated as they move to divesting 100% of their generation. Mercantile customers should be migrated off the electric utilities’ interruptible tariffs – and customers paying for the discounts (that electric utilities provided to customers using interruptible service) should be protected from paying for interruptible discounts in the future.

G. The PUCO Should Not Allow Costs Associated with Energy Efficiency Programs to Be Collected Through Standard Service Offer Proceedings.

Nucor Steel wants EDUs to be able to include charging customers for energy efficiency programs in an SSO proceeding. Nucor contends that because “all of the utility’s rates, and the utility’s overall rate structure, often are at issue in SSO cases, It makes sense to allow the portfolio plan cost recovery mechanism to be addressed in an SSO proceeding as well.”⁸² Nucor’s suggestion is not in the public interest.

The statutes governing SSO proceedings do not include energy efficiency programs. Energy efficiency programs are governed under R.C. 4928.66. Including energy efficiency programs in SSO proceedings would unnecessarily add complexity to proceedings that are already complicated. The PUCO should reject Nucor’s suggestion.

⁸¹ Id.

⁸² Nucor Comments at 5.

H. The PUCO Should Ensure Transparency in Alternative Energy Transactions.

In addressing proposed rule 40-07, the Environmental and Consumer Advocates recommend that a utility entering into affiliate transactions to meet its alternative energy portfolio standard compliance requirements should fully report the details of these transactions in its annual status report.⁸³ The Environmental and Consumer Advocates argue that the PUCO and stakeholders will be able to determine whether the terms of the transactions were reasonable or whether the utility acted imprudently.⁸⁴ They note that this would be a simple matter for the utilities to report and it would provide additional protection for Ohio customers.⁸⁵

The PUCO should adopt this recommendation. Renewable energy credit (“REC”) costs are a pass-through to consumers. Suppliers purchase RECs on behalf of consumers who pay for them via the AER Rider, therefore consumers should have the right to know what they are paying for alternative energy.

Further, REC price data should not be generally considered a trade secret, as some electric companies have contended.⁸⁶ This determination should be made on a case-by-case basis. Utilities asserting that REC price data is a trade secret should file a motion for protective order under Ohio Adm. Code 4901-1-24, and should have the burden of proof that the REC price data constitutes a trade secret under Ohio law.⁸⁷

⁸³ Environmental and Consumer Advocates Comments at 47.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ See FirstEnergy Comments at 34-35; Duke Comments at 10.

⁸⁷ See R.C. 1333.61.

DP&L states that several companies refused to provide this information for the PUCO's 2012 report to the general assembly even though the PUCO must include REC price data in the report.⁸⁸ DP&L suggests that there should be a penalty for non-compliance with the reporting requirement.⁸⁹ The PUCO should adopt DP&L's suggestion.

The Environmental and Consumer Advocates want the REC price data to include a full list of affiliate transactions.⁹⁰ Such a list will enable the PUCO and stakeholders "to determine whether the terms of the transactions were reasonable or whether the utility acted imprudently."⁹¹ OCC agrees recommends that the PUCO adopt this suggestion.

III. CONCLUSION

The PUCO should ensure that energy efficiency programs benefit customers without requiring them to pay unreasonable rates. The vast majority of commenters agree with OCC that the process proposed by the PUCO Staff would eliminate public input and PUCO scrutiny from the adoption of EDUs' portfolio plans, and turn over decision-making authority to EDUs. This abrogation of the PUCO's authority is unlawful and would harm customers. The PUCO should reject the process presented by the PUCO Staff.

OCC's other recommended changes to the PUCO Staff's proposed rules discussed in OCC's Comments and these Reply Comments provide needed customer protections in the important PUCO rules concerning energy efficiency and alternative energy. Ohioans

⁸⁸ DP&L Comments at 6.

⁸⁹ Id. at 7.

⁹⁰ Environmental and Consumer Advocates Comments at 47.

⁹¹ Id.

already pay, on average, more than consumers pay in 32 other states for electricity. The PUCO should work to reduce Ohioans' electric bills. The PUCO should adopt OCC's recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Reply Comments were served upon the persons listed below via electronic service this 24th day of March 2014.

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