

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

Pursuant to the Public Utilities Commission of Ohio's ("Commission") July 11, 2014 Entry ("Entry") in the above-captioned matter, Industrial Energy Users-Ohio ("IEU-Ohio") hereby files its Comments addressing the questions posed in the Entry. IEU-Ohio recommends that the Commission amend Rule 4901:1-40-03, Ohio Administrative Code ("O.A.C."), to eliminate the in-state requirement entirely for 2014 and thereafter. Subsequently, it is not necessary for the Commission to pro-rate the in-state requirement for 2014 based upon the effective date of Substitute Senate Bill 310 ("SB 310").

I. BACKGROUND

Current law as implemented under Amended Substitute Senate Bill 221 ("SB 221") of the 127th General Assembly requires electric distribution utilities ("EDUs") and competitive retail electric service ("CRES") providers to provide 12.5% of their electricity supply from renewable energy resources, including 0.5% from solar energy resources by the end of 2024.¹ At least one-half of the total renewable energy

¹ Section 4928.64, Revised Code. This obligation can also be satisfied by purchasing or acquiring renewable energy credits ("RECs") and solar renewable energy credits ("SRECs"). Section 4928.65, Revised Code.

resources implemented by the EDUs or CRES providers to comply with this requirement must be met through facilities located in Ohio (“the in-state requirement”); the remainder may be met with resources that can be shown to be deliverable into Ohio.² Under SB 221, the required quantity of in-state compliance was specified relative to the total 2024 compliance quantity; it did and does not attach to the compliance quantity in any specific year. In other words, the cumulative compliance quantity for 2014 is an installment relative to the total compliance quantity and SB 310 eliminates the in-state requirement relative to the total quantity of compliance ultimately required.

On June 13, 2014, the General Assembly enacted SB 310. SB 310 will become effective on September 12, 2014. SB 310 removes entirely the requirement that half of the renewable energy compliance resources implemented to meet the total compliance quantity must be generated from facilities located in Ohio. SB 310 instead provides that, “The qualifying renewable energy resources implemented by the utility or company shall be met either:

- (a) Through facilities located in this state; or
- (b) With resources that can be shown to be deliverable into this state”.³

II. IEU-OHIO’S ANSWER TO THE COMMISSION’S QUESTIONS

In its July 11, 2014 Entry, the Commission posed two questions relating to the in-state requirement. The Commission’s questions requested guidance on whether SB 310 requires the Commission to modify its current rules to eliminate the in-state

² Section 4928.64(B)(3), Revised Code.

³ SB 310 modified Section 4928.64(B)(3) to provide: At least one-half of the The qualifying renewable energy resources implemented by the utility or company shall be met ~~through either:~~

- (a) Through facilities located in this state; ~~the remainder shall be met with or~~
- (b) With resources that can be shown to be deliverable into this state.

requirement for all of 2014, or if SB 310 requires the Commission to pro-rate the 2014 in-state requirement.⁴ For the reasons discussed below, it is IEU-Ohio's position that the in-state requirement should be, for purposes of measuring and counting compliance, eliminated in its entirety.

The Commission's question on whether to modify its rules to require a pro-rated in-state compliance benchmark for 2014 relies upon an incorrect starting point. Notwithstanding the clear language in SB 221, Rule 4901:1-40-03(A)(2)(a), O.A.C., imposes an annual in-state compliance requirement where none exists in the law itself. The questions set forth in the Entry arise only if the Commission continues to maintain a rule with an **annual** in-state compliance requirement, a requirement that was and is inconsistent with SB 221.

Under current law and the Commission's rules, there is also no partial year compliance requirement with the in-state (or overall) renewable energy resource requirement. With compliance reviewed on an annual basis, an EDU or CRES provider could secure all of the required renewable energy resources or RECs (to reach the cumulative benchmark associated with any specific year) at any point during the year. For instance, an EDU or CRES provider could wait until the last quarter of any specific year to perform in accordance with the cumulative benchmark for that year.

Any annual compliance quantity is an installment towards the total compliance quantity required for the entire compliance period. Over-compliance in any particular year is bankable for use in future years. The SB 221 required mix between in-state and out-of-state compliance resources did not and does not apply to any specific year in the overall compliance period but to the total compliance required by 2025 (now 2027 under

⁴ Entry at 2 (July 11, 2014).

SB 310). Thus, the Commission should not rewrite SB 221 or SB 310 to impose an annual or partial year in-state renewable energy resource requirement by modifying its rules to require pro-rated compliance when no such annual or partial year compliance requirement exists in current law.

While it is unnecessary, in this instance, to attempt to identify the General Assembly's intent to answer the questions in the Entry, it is clear that the elimination of the in-state requirement is designed to avoid the extra costs that the in-state mandate is imposing on Ohio electric consumers.⁵ This goal is best served by a rule modification that eliminates the in-state mandate for purposes of measuring and counting compliance for the entirety of the 2014 compliance year and the total compliance period. This approach will not impose any compliance disability on EDUs or CRES providers since any compliance quantity secured from in-state renewable resources prior to the effective date of SB 310 can continue to be counted for purposes of measuring performance relative to the 2014 benchmark. To the extent that EDUs or CRES providers have over-complied relative to the cumulative benchmark for 2014, such over-compliance can be counted towards the total compliance required by 2025 (now 2027 as a result of SB 310).

⁵ Section 3 of SB 310 states: "It is the intent of the General Assembly to ensure that customers in Ohio have access to affordable energy. It is the intent of the General Assembly to incorporate as many forms of inexpensive, reliable energy sources in the state of Ohio as possible. It is also the intent of the General Assembly to get a better understanding of how energy mandates impact jobs and the economy in Ohio and to minimize government mandates. Because the energy mandates in current law may be unrealistic and unattainable, it is the intent of the General Assembly to review all energy resources as part of its efforts to address energy pricing issues."

Therefore, IEU-Ohio recommends that the Commission modify Rule 4901:1-40-03, O.A.C., to eliminate the in-state requirement entirely (with no pro-ration) for any annual compliance review period.⁶

III. CONCLUSION

For the foregoing reasons, IEU-Ohio recommends that the Commission modify Rule 4901:1-40-03, O.A.C., to remove any references to an in-state renewable energy resource requirement for EDUs or CRES providers.

Respectfully submitted,

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⁶ Rule 4901:1-40-03(A)(2)(a), O.A.C., states:

At least half of the annual renewable energy resources, including solar energy resources, shall be met through electricity generated by facilities located in this state. Facilities located in the state shall include a hydroelectric generating facility that is located on a river that is within or bordering this state, and wind turbines located in the state's territorial waters of Lake Erie.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Comments of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for Movants to the following parties of record this 31st day of July 2014, via electronic transmission, except those specifically designated as being served via U.S. mail.

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