

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of )  
Chapter 4901:1-41 of the Ohio Administrative ) Case No. 18-1192-EL-ORD  
Code, Regarding Greenhouse Gas Reporting and )  
Carbon Dioxide Control Planning. )

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**FIRSTENERGY GENERATION, LLC'S  
INITIAL COMMENTS ON THE PROPOSED RULES**

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**I. INTRODUCTION**

FirstEnergy Generation, LLC ("FE Gen") submits its Initial Comments pursuant to the November 28, 2018, Entry in the above-captioned proceeding, which concerns proposed modifications to Ohio Administrative Code ("O.A.C.") Chapter 4901:1-41. Specifically, the Commission has opened this docket to review administrative rules that concern reporting of greenhouse gas emissions and carbon dioxide control planning for electric generating facilities within Ohio pursuant to R.C. 4928.68. Though the rules are not applicable to FE Gen, the Commission should reject any proposed modification that would unlawfully expand the scope and meaning of R.C. 4928.68 by requiring the implementation of plans or measures to reduce greenhouse gas emissions. Further, the Commission should clarify that the requirement to file the carbon dioxide control plan (as defined in the proposed rule) with a long-term forecast report only applies to those electric transmission owners and electric utilities described in O.A.C. 4901:5-3-01.

FE Gen respectfully requests modification of the proposed rules in the manner and for the reasons set forth below.

## II. COMMENTS

### A. Proposed Rule 4901:1-41-01(A) Unlawfully Expands the Scope and Meaning of R.C. 4928.68.

In proposed Rule 4901:1-41-01(A), the Commission seeks to amend the definition of “carbon dioxide control plan” to clarify that Chapter 4901:1-41 applies only to specific, not system-wide, electric generating facilities.<sup>1</sup> To do so, the Commission proposed the following modifications to Rule 4901:1-41-01(A):

Carbon dioxide control planning plan” means the establishment and implementation of a structured, verifiable process including goals, policies, and procedures, a process to measure carbon dioxide emissions and evaluate and implement carbon dioxide control options on both a facility and a system-wide scale over five, ten and twenty year periods for an electric generating facility that emits greenhouse gases.

However, in making these proposed modifications, the Commission (perhaps unintentionally) unlawfully expanded the scope and meaning of R.C. 4928.68, which is the “state legislative mandate” that Chapter 4901:1-41 is intended to fulfill.<sup>2</sup>

R.C. 4928.68 authorizes the Commission to “adopt rules establishing greenhouse gas emission reporting requirements, including participation in the climate registry, and carbon dioxide control planning requirements . . . .” Critically, however, R.C. 4928.68 does *not* authorize the Commission to adopt rules ordering utilities to “implement” plans (or take active measures of any kind) to reduce greenhouse gas emissions. Rather, R.C. 4928.68 merely allows the Commission to adopt rules for 1) reporting greenhouse gas emissions, and 2) establishing *plans* to control those emissions. Obviously, *planning* to control carbon dioxide emissions is not the same as *implementing* plans to control emissions. Accordingly, the proposed modification to Rule 4901:1-41-01(A) unlawfully expands the scope and meaning of R.C. 4928.68.

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<sup>1</sup> Entry (Nov. 28, 2018), at ¶ 7.

<sup>2</sup> *Id.*, at Attachment B, ¶ 3.

In addition, it is noteworthy that Rule 4901:1-41-01(A) in its current form is consistent with the scope and meaning of R.C. 4928.68:

“Carbon dioxide control planning” means the establishment and implementation of a structured, verifiable process including goals, policies, and procedures, to measure carbon dioxide emissions and control options on both a facility and a system-wide scale over five-, ten- and twenty-year periods.

As illustrated above, the Commission defined “carbon dioxide control planning” as a “process . . . to measure carbon dioxide emissions and control options” – not as a process to *implement* plans to control carbon dioxide emissions. Thus, the Commission’s proposed modification to Rule 4901:1-41-01(A) not only substantively alters the meaning of the current rule (seemingly in a manner unintended by the Commission), it also clearly exceeds the bounds of the legislative mandate set forth in R.C. 4928.69.

In sum, at a minimum, to stay consistent with the meaning and scope of R.C. 4928.68, the Commission must strike the words “and implement” from the proposed Rule 4901:1-41-01(A).

**B. The Commission Must Clarify that Filing the Carbon Dioxide Control Plan with the Long-Term Forecast Pursuant to Rule 4901:1-41-03(B) Is Only Applicable to Electric Transmission Owners and Electric Utilities as Described in O.A.C 4901:5-3-01.**

The Commission has proposed amending Rule 4901:1-41-03 by deleting language referring to an “environmental control plan” and inserting language referring to a “carbon dioxide control plan.”<sup>3</sup> The Commission justifies this proposed modification to clarify that the “carbon dioxide control plan” addresses electric generating facilities in Ohio that emit greenhouse gases.<sup>4</sup> Specifically, the proposed modification to Rule 4901:1-41-03 reads as follows:

4901:1-41-03 Greenhouse gas reporting and carbon dioxide control planning.

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<sup>3</sup> *Id.*, at Attachment B, ¶ 1.

<sup>4</sup> *Id.*

- (A) Unless otherwise directed by the commission, any public utility owning or operating an electric generating facility within Ohio that emits greenhouse gases shall become a participating member in the climate registry and shall report greenhouse gas emissions according to the protocols approved by the climate registry.
- (B) Any public utility that owns or operates an electric generating facility within Ohio that emits greenhouse gases shall file with the commission by April fifteenth of each calendar year ~~an environmental~~ a carbon dioxide control plan, ~~including carbon dioxide control planning~~ by including such plan with the public utility's long-term forecast pursuant to rule 4901:5-3-01 of the Administrative Code, or as otherwise directed by the commission. A copy of such plan shall also be provided to the director of the Ohio environmental protection agency, or his designee.
- (C) The ~~environmental~~ carbon dioxide control plan shall include all relevant technical information on the current conditions, goals, and potential actions for resource planning or environmental compliance for each electric generating facility within Ohio that emits greenhouse gases. Any technology included in this plan, including clean coal, shall be based upon the most current scientific and engineering design capability of any facility or that has been designed to have the capability to control the emissions of ~~criteria pollutants and~~ carbon dioxide within the parameters of economically feasible best technology.

The Commission must clarify that the requirement to file a long-term forecast report ("LTFR"), as set forth in Rule 4901:1-41-03(B), is only applicable to those public utilities that qualify as electric transmission owners and electric utilities under O.A.C. 4901:5-3-01. Importantly, some public utilities obligated to develop an environmental (or carbon dioxide) control plan per Rule 4901:1-41-03(B) are *not* obligated to file a LTFR (such as some "electric light companies" under R.C. 4928.01(A)(7)). As such, Rule 4901:1-41-03(B), in its current form and as proposed, must be narrowed and clarified, so that the requirement to file the environmental (or carbon dioxide) control plan with a LTFR is only applicable to those specific entities required to file a LTFR under O.A.C. 4901:5-3-01.

To that end, FE Gen suggests the following modification to the proposed Rule 4901:1-41-03(B):

Any public utility that owns or operates an electric generating facility within Ohio that emits greenhouse gases and that must submit a long-term forecast report pursuant to rule 4901:5-3-01 of the Ohio Administrative Code shall file with the commission by April fifteenth of each calendar year a carbon dioxide control plan by including such plan with the public utility's long-term forecast ~~pursuant to rule 4901:5-3-01 of the Administrative Code~~, or as otherwise directed by the commission. A copy of such plan shall also be provided to the director of the Ohio environmental protection agency, or his designee.

The proposed modification above clarifies that the requirement to file an environmental (or carbon dioxide) control plan with a LTFR is only applicable to those entities required to file a LTFR under O.A.C. 4901:5-3-01.

### III. CONCLUSION

FE Gen respectfully requests that the Commission modify the proposed rules as set forth in these Initial Comments.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 7th day of December, 2018. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander

Attorney for FirstEnergy Generation, LLC

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Summary: Comments FirstEnergy Generation, LLC's Initial Comments on the Proposed Rules electronically filed by Mr. Trevor Alexander on behalf of FirstEnergy Generation, LLC.