

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF THE RULES IN OHIO
ADM.CODE CHAPTER 4901:1-40.

CASE NO. 22-871-EL-ORD

FINDING AND ORDER

Entered in the Journal on November 30, 2022

I. SUMMARY

{¶ 1} The Commission adopts the proposed amendments to the rules in Ohio Adm.Code Chapter 4901:1-40, as determined in and attached to this Finding and Order.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} R.C. 121.951(A)(1), effective June 8, 2022, requires the Commission to amend or rescind rules identified in its base inventory – using the criteria listed in R.C. 106.03(A) – as necessary to reduce the total number of regulatory restrictions by thirty percent over the course of three years. The Commission opened this docket to review the alternative energy portfolio standard rules in Ohio Adm.Code Chapter 4901:1-40.

{¶ 3} In performing the above review, R.C. 106.03(A) requires the Commission to determine, among other things, whether the rule should be amended or rescinded (including for the purpose of accomplishing the requirements of R.C. 121.951) because it exceeds or conflicts with the purpose, scope, or intent of the statute(s) under which the rule was adopted; creates a compliance or oversight burden that is greater than the burden that would be created if the agency accomplished the intended purpose of the restriction by other means; is no longer useful or beneficial; or duplicates, overlaps with, or conflicts with a federal or state law or rule.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis

(BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 5} Pursuant to R.C. 121.95(F), a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. In accordance with R.C. 121.95, and prior to January 1, 2020, the Commission identified rules having one or more regulatory restrictions that require or prohibit an action, prepared a base inventory of these restrictions in the existing rules, and submitted this base inventory to JCARR, as well as posted this inventory on the Commission's website at <https://puco.ohio.gov/wps/portal/gov/puco/documents-and-rules/resources/restrictions>. With regard to the rule recissions discussed in this Finding and Order with respect to Ohio Adm.Code Chapter 4901:1-40, the Commission has both considered and satisfied the requirements in R.C. 121.95(F).

B. Procedural History

{¶ 6} The Commission and Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-40. As a result of its review, based on the requirement under R.C. 121.951(A)(1), Staff proposed non-substantive changes to the rules to meet the requirement for state agencies to reduce their total number of regulatory restrictions. Additionally, Staff proposed several changes throughout these chapters that were intended to improve clarity, eliminate redundancy with related state and federal laws, and better align language with that used in the related statutory provisions, and correct typographical errors.

{¶ 7} By Entry issued on October 19, 2022, the Commission requested comments on Staff's proposed amendments to the rules contained in Ohio Adm.Code Chapter 4901:1-40, and ordered that comments should be filed by November 9, 2022.

{¶ 8} The Commission received no written comments on the proposed changes to the rules contained in Ohio Adm.Code Chapter 4901:1-40.

III. CONCLUSION

{¶ 9} In making its rules, an agency is required by R.C. 106.03(A) to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any relevant factors that have changed in the subject matter area affected by the rules. Further, R.C. 121.951(A)(1) requires state agencies to reduce their total number of regulatory restrictions. The Commission has evaluated Ohio Adm.Code Chapter 4901:1-40 and recommends amending the rules, as demonstrated in the attachment to this Finding and Order. Apart from those suggested by Staff in the October 19, 2022 Entry, the Commission also notes that we have eliminated various references to the specific solar requirement from the state's renewable portfolio standard, including the separate alternative compliance payment for the solar component in Ohio Adm.Code 4901:1-40-08, as Am.Sub. House Bill 6, which became effective in October 2019, eliminated the solar requirement from the state's renewable portfolio standard.

{¶ 10} An agency must also demonstrate that it has evaluated the impact of the rule on businesses, pursuant to R.C. 106.03(A)(6) and 121.82(A). Moreover, pursuant to R.C. 121.95(F), the agency must remove two or more existing regulatory restrictions for every new regulatory restriction added. The Commission has included stakeholders in the development of these rules, has considered the impact of the rules on businesses, and has adhered to the requirement regarding the removal of regulatory restrictions.

{¶ 11} Accordingly, at this time, the Commission finds that the amendments throughout Ohio Adm.Code Chapter 4901:1-40 as described in the attachment to this Finding and Order, should be adopted and filed with JCARR, the Secretary of State, and the Legislative Service Commission (LSC).

{¶ 12} The rules are posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Finding and Order only. All interested persons are directed to input case number 22-871 into the Case Lookup box to view this Finding and Order, as well as the rules, or to contact the Commission's Docketing Division to request a paper copy.

IV. ORDER

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That amended Ohio Adm.Code 4901:1-40-01; -02; -03; -04; -05; -06; -07; -08; and -09 be adopted. It is, further,

{¶ 15} ORDERED, That the adopted rules be filed with JCARR, the Secretary of State, and LSC, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 16} ORDERED, That the adopted rules be effective on the earliest date permitted by law. It is, further,

{¶ 17} ORDERED, That a copy of this Finding and Order, with the attached rules, be served upon the Common Sense Initiative at CSIPublicComments@governor.ohio.gov. It is, further,

{¶ 18} ORDERED, That a copy of this Finding and Order be served upon all investor-owned electric utilities and certified competitive retail electric service providers in the state of Ohio, the electric list-serve as well as all commenters and interested persons of record in Case Nos. 12-2156-EL-ORD, 13-651-EL-ORD, and 13-652-EL-ORD.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JMD/dmh

*****DRAFT - NOT FOR FILING*****

AMENDED

4901:1-40-01 Definitions.

- (A) "Advanced energy fund" has the meaning set forth in section 4928.61 of the Revised Code.
- (B) "Biologically derived methane gas" means landfill methane gas; or gas from the anaerobic digestion of organic materials, including animal waste, municipal wastewater, institutional and industrial organic waste, food waste, yard waste, and agricultural crops and residues.
- (C) "Biomass energy" means energy produced from organic material derived from plants or animals and available on a renewable basis, including but not limited to: agricultural crops, tree crops, crop by-products and residues; wood and paper manufacturing waste, including nontreated by-products of the wood manufacturing or pulping process, such as bark, wood chips, sawdust, and lignin in spent pulping liquors; forestry waste and residues; other vegetation waste, including landscape or right-of-way trimmings; algae; food waste; animal wastes and by-products (including fats, oils, greases and manure); biodegradable solid waste; and biologically derived methane gas.
- (D) "Co-firing" means simultaneously using multiple fuels in the generation of electricity. In the event of co-firing, the proportion of energy input comprised of a renewable energy resource ~~shall~~ dictates the proportion of electricity output from the facility that can be considered a renewable energy resource.
- (E) "Commission" means the public utilities commission of Ohio.
- (F) "Deliverable into this state" means that the electricity or qualifying biologically derived methane gas originates from a facility within a state contiguous to Ohio. It may also include electricity originating from other locations, pending a demonstration that the electricity is physically deliverable to the state.
- (G) "Demand response" has the meaning set forth in rule 4901:1-39-01 of the Administrative Code.
- (H) "Distributed generation" means electricity production that is on-site and is connected to the electricity grid.
- (I) "Double-counting" means utilizing renewable energy or, renewable energy credits, or energy efficiency savings to do any of the following:
 - (1) Satisfy multiple Ohio state renewable energy requirements or such requirements for more than one state.

*****DRAFT - NOT FOR FILING*****

- (2) Support multiple voluntary product offerings.
- (3) Substantiate multiple marketing or public relations claims.
- (4) Some combination of these.
- (J) "Electric generating facility" means a power plant or other facility where electricity is produced.
- (K) "Electric services company" has the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- (L) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (M) "Energy storage" means a facility or technology that permits the storage of energy for future use as electricity.
- (N) "Fuel cell" means a device that uses an electrochemical energy conversion process to produce electricity.
- (O) "Geothermal energy" means hot water or steam extracted from geothermal reservoirs in the earth's crust and used for electricity generation.
- (P) "Hydroelectric energy" means electricity generated by a hydroelectric facility as defined in division (A)(37) of section 4928.01 of the Revised Code.
- (Q) "Hydroelectric facility" has the meaning set forth in division (A)(37) of section 4928.01 of the Revised Code.
- (R) "Mercantile customer" has the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (S) "Ohio run-of-the-river hydroelectric facility" means a run-of-the-river hydroelectric facility placed in service on or after January 1, 1980, that is located within this state, relies upon the Ohio river, and operates, or is rated to operate, at an aggregate capacity of forty or more megawatts.
- (T) "Person" ~~shall have~~ has the meaning set forth in section 1.59 of the Revised Code.
- (U) "PJM" means "PJM Interconnection, LLC" or any successor regional transmission organization.
- (V) "Placed-in-service" means when a facility or technology becomes operational.

*****DRAFT - NOT FOR FILING*****

- (W) "Renewable energy credit" or "REC" means the environmental attributes associated with one megawatt-hour of electricity generated by a non-solar renewable energy resource or its non-electric equivalent.
- (X) "Renewable energy resource" has the meaning set forth in division (A)(37) of section 4928.01 of the Revised Code.
- (Y) "Small hydroelectric facility" means a hydroelectric facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts.
- (Z) "Solar energy resources" means solar photovoltaic and/or solar thermal resources.
- (AA) "Solar photovoltaic" means energy from devices which generate electricity directly from sunlight through the movement of electrons.
- (BB) "Solar renewable energy credit" or "S-REC" means the environmental attributes associated with one megawatt-hour of electricity generated by a solar energy resource.
- (CC) "Solar thermal" means the concentration of the sun's energy, typically through the use of lenses or mirrors, to drive a generator or engine to produce electricity.
- (DD) "Solid wastes" has the meaning set forth in section 3734.01 of the Revised Code.
- (EE) "Staff" means the commission staff or its authorized representative.
- (FF) "Standard service offer" means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.
- (GG) "Waste energy recovery system" has the meaning set forth in division (A)(38) of section 4928.01 of the Revised Code.
- (HH) "Wind energy" means electricity generated from wind turbines, windmills, or other technology that converts wind into electricity.

AMENDED

4901:1-40-02 Purpose and scope.

- (A) This chapter addresses the implementation of the renewable portfolio standard, including the

*****DRAFT - NOT FOR FILING*****

incorporation of renewable energy credits, as detailed in sections 4928.64 and 4928.645 of the Revised Code respectively. Parties affected by these renewable portfolio standard rules include all Ohio electric utilities and all electric services companies serving retail electric customers in Ohio. ~~With the exception of the filing requirements set forth in rule 4901:1-40-05 of the Administrative Code, any entities that do not serve Ohio retail electric customers during a given calendar year shall not be required to comply with the terms of the renewable portfolio standard during that calendar year.~~

- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

AMENDED

4901:1-40-03 Requirements.

- (A) All electric utilities and affected electric services companies ~~shall~~ will ensure ~~that, by the end of the year 2027 and each year thereafter, electricity from qualifying renewable energy resources equals~~ the benchmarks set forth in division (B)(2) of section 4928.64 of the Revised Code are met. Non-electric sources as permitted by law and certified by the commission may be used to satisfy ~~the~~ renewable energy resource requirements.

- ~~(1) The qualifying renewable energy resources implemented by the utility or company shall be met either through facilities located in this state or with resources that can be shown to be deliverable into this state.~~
- ~~(2) The qualifying electricity or non-electric source supplied from renewable energy resources, including solar energy resources, shall be provided in accordance with the annual benchmarks detailed in division (B)(2) of section 4928.64 of the Revised Code.~~
- ~~(3) All costs incurred by an electric utility in complying with the requirements of section 4928.64 of the Revised Code shall be avoidable by any consumer that has exercised choice of electricity supplier during such time that a customer is served by an electric services company.~~

- (B) The baseline for compliance with the qualified renewable energy resource requirements of section 4928.64 of the Revised Code shall be determined as follows:

- (1) For electric utilities, the baseline shall be computed using one of the following

*****DRAFT - NOT FOR FILING*****

methodologies:

- (a) The average of total kilowatt hours sold by the utility in the preceding three calendar years to any and all retail electric customers whose electric load centers are served by that electric utility and are located within the electric utility's certified territory.
 - (b) The total kilowatt hours sold to any and all retail electric consumers whose electric load centers are served by that utility and are located within the utility's certified territory in the applicable compliance year. An electric utility that opts to use this methodology may in subsequent compliance years switch to the methodology described in paragraph (B)(1)(a) of this rule, but in so doing, the electric utility shall be required to use the methodology described in paragraph (B)(1)(a) of this rule for at least three consecutive compliance years.
 - (c) The annual sales used to compute the baseline under methodologies listed in paragraph (B)(1)(a) or (B)(1)(b) of this rule shall be based upon the annual sales as reported in the electric utility's forecast reports or reporting forms.
- (2) For electric services companies, the baseline shall be computed using one of the following methodologies:
- (a) The average of total kilowatt hours sold annually by the company in the preceding three calendar years to any and all retail electric consumers served by the company in the state. If an electric services company has not been continuously supplying Ohio retail electric customers during the preceding three calendar years, the baseline shall be computed as an average of annual sales data for all calendar years during the preceding three years in which the electric services company was serving retail customers.
 - (b) The total number of kilowatt hours sold to any and all retail electric customers who are served by the company and are located within this state during the compliance year. An electric services company that opts to use this methodology may in subsequent compliance years switch to the methodology described in paragraph (B)(2)(a) of this rule, but in so doing, the electric services company shall be required to use the methodology described in paragraph (B)(2)(a) of this rule for at least three consecutive compliance years.
 - (c) The annual sales used to compute the baseline under methodologies in paragraphs (B)(2)(a) and (B)(2)(b) of this rule shall be based upon the annual sales as reported in the electric services company's "Annual Reports for Fiscal Assessment" or as otherwise directed by the commission.

*****DRAFT - NOT FOR FILING*****

- (3) An electric utility or electric services company may request a reduced baseline to reflect new economic growth in its service territory or service area. A company requesting a reduced baseline shall file an application with the commission seeking approval for such reduction.

AMENDED

4901:1-40-04 Qualified resources.

- (A) The following resources or technologies, if they have a placed-in-service date of January 1, 1998, or after, are qualified resources for meeting the qualified renewable energy resource benchmarks:
- (1) Solar photovoltaic or solar thermal energy.
 - (2) Wind energy.
 - (3) Hydroelectric energy.
 - (4) Geothermal energy.
 - (5) Solid waste energy derived from fractionalization, biological decomposition, or other process that does not principally involve combustion.
 - (6) Biomass energy.
 - (7) Energy from a fuel cell.
 - (8) A storage facility, if it promotes the better utilization of a renewable energy resource. The amount of energy that may qualify from a storage facility is the amount of electricity discharged from the storage facility.
 - (9) Abandoned coal mine methane energy.
 - (10) Waste energy recovery system placed into service or retrofitted on or after September 10, 2012, as defined in division (A)(38)(a) of section 4928.01 of the Revised Code. The portion of the electricity production that is generated from recovered waste energy shall be recognized as renewable.
 - (11) A waste energy recovery system defined in division (A)(38)(b) of section 4928.01 of the Revised Code, provided that it was placed into service between January 1, 2002, and

*****DRAFT - NOT FOR FILING*****

December 31, 2004.

- (12) A renewable energy resource created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998.
- (13) Ohio run-of-the-river hydroelectric facility.
- (14) Small hydroelectric facility, regardless of placed in-service date.
- (15) Biologically-derived methane gas resources, including biologically derived methane gas resources that are not converted to electricity, excluding biologically-derived methane gas resources used solely for the purpose of flaring. This includes heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas; and compressed natural gas produced from biologically derived methane gas.
 - (a) The producer of the biologically derived methane gas must adequately demonstrate measurement, verification, and quantity of biologically derived methane gas produced on a continuing basis. The method used for measuring and calculating the biologically derived methane gas produced must be approved in advance by the commission as part of the facility certification process.
 - ~~(b) Biologically derived methane gas that has been certified and tracked is not eligible again for certification and may not be double-counted.~~
 - ~~(c)~~ (b) The energy derived from biologically derived methane gas shall be measured and verified in accordance with applicable tracking system requirements. For the purposes of converting the quantity of energy derived from biologically derived methane gas to an electricity equivalent, one megawatt hour equals 3,412,142 British thermal units. The producer must demonstrate adequate energy content, in British thermal units, and metering accuracy. Biologically derived methane gas shall be reported in megawatt hours.
- (16) Distributed generation system used by a customer to generate electricity from one of the resources or technologies listed in paragraphs (A)(1) to (A)(15) of this rule.
- (B) The following new or existing mercantile customer-sited resources may be qualified resources for meeting electric utilities' annual renewable energy resource benchmarks, as applicable, provided that it uses a renewable energy resource and that the mercantile customer commits the resource for integration into the electric utility's demand-response, energy efficiency, or peak-demand reduction programs pursuant to rule 4901:1-39-07 of the Administrative Code and division (A)(2)(c) of section 4928.66 of the Revised Code:

*****DRAFT - NOT FOR FILING*****

- (1) Electric generation equipment that uses a renewable energy resource and is owned or controlled by a mercantile customer.
 - (2) A resource that improves the relationship between real and reactive power.
 - (3) A mercantile customer-owned or controlled resource that makes efficient use of waste heat or other thermal capabilities.
 - (4) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics.
 - (5) Electric generation equipment owned or controlled by a mercantile customer that uses a renewable energy resource.
- (C) An electric utility or electric services company may use RECs and S-RECs, as applicable, to satisfy all or part its qualifying renewable energy resource benchmarks, ~~including a solar energy resource benchmark.~~
- (1) To be eligible for use towards satisfying a benchmark, a REC or S-REC must originate from a facility that has been certified by the commission under paragraph (D) of this rule.
 - (2) To become certified under paragraph (D) of this rule, an electric generating facility or a qualifying non-electric source, must demonstrate that it satisfies the following:
 - (a) The definition of a renewable energy resource, including solar energy resources;
 - (b) The applicable placed in-service date;
 - (c) The deliverability requirement;
 - (d) It is registered with, or commits to become registered with, an attribute tracking system recognized by the commission;
 - (e) The facility's electrical output is measured by a utility-grade meter in compliance with paragraph (B) of rule 4901:1-10-05 of the Administrative Code, for facilities with generating capacity of more than six kilowatts. Gas meters for measuring qualifying gas resources shall comply with the accuracy requirements in section 4933.09 of the Revised Code; and
 - (f) All other requirements as delineated in the certification application.
 - (3) To demonstrate compliance with a renewable energy resource benchmark, an electric utility

*****DRAFT - NOT FOR FILING*****

or electric services company must retire the RECs and S-RECs with any of the following attribute tracking systems:

- (a) The PJM EIS generation attributes tracking system (GATS);
 - (b) The midwest renewable energy tracking system (M-RETS); or
 - (c) Another credible tracking system approved for use by the commission.
- (4) A REC or S-REC may be used for compliance any time in the five calendar years following the date of its initial purchase or acquisition.
- (5) Double counting is prohibited.
- (6) The RECs and S-RECs must be associated with electricity that was generated no earlier than July 31, 2008 for resources or technologies included in the definition of “renewable energy resources” by Amended Substitute Senate Bill 221 (127th General Assembly). For resources or technologies added to the definition of “renewable energy resources” by Amended Substitute Senate Bill 315 (129th General Assembly), the RECs must be associated with electricity that was generated no earlier than September 10, 2012. For resources or technologies added to the definition of “renewable energy resources” by Substitute Senate Bill 310 (130th General Assembly), the RECs must be associated with electricity that was generated, or a qualifying non-electric source that was produced, no earlier than September 12, 2014.
- (7) The RECs and S-RECs must be associated with electricity, or a qualifying non-electric source, that was generated no later than the end of the compliance year.
- (D) An entity seeking facility qualification shall file an application for certification of its electric generating facility, or qualifying non-electric source, upon such forms as may be prescribed by the commission. The application shall include a determination of deliverability to the state in accordance with paragraph (F) of rule 4901:1-40-01 of the Administrative Code.
- (1) Any interested person may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.
 - (2) An application is deemed automatically approved within thirty days after the application is filed, unless suspended by order of the commission.
 - (3) If the commission suspends the application, the applicant ~~shall~~will be notified of the reasons for such suspension and may be directed to furnish additional information.

*****DRAFT - NOT FOR FILING*****

- (4) Upon commission approval, the applicant ~~shall~~will receive notification of approval and a numbered certificate where applicable. The commission ~~shall~~will provide this certificate number to the appropriate attribute tracking system.
- (5) If an applicant withdraws an application prior to commission approval, then the case ~~shall~~will be closed without further action from the commission.
- (6) Representatives of certified facilities must notify the commission within thirty days of any material changes in information previously submitted to the commission during the certification process. Failure to do so may result in revocation of certification status.
- (7) The commission may revoke a certificate due to changes that negate the facility's certification eligibility. In the event a certificate is revoked, the commission may recognize as viable compliance resources the RECs or S-RECs generated during the time of certification unless specifically stated otherwise by the commission.
- (8) Certification of a resource or technology ~~shall~~does not predetermine compliance with annual benchmarks, and does not constitute any commission position regarding cost recovery.
- (E) At its discretion, the commission may classify any new technology as a qualifying renewable energy resource. Any interested person may request a hearing on such classification.

AMENDED

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

- (A) Unless otherwise ordered by the commission, each electric utility and electric services company shall file by April fifteenth of each year, on such forms as may be published by the commission, an annual renewable energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable renewable energy portfolio benchmarks have been met. ~~Staff shall conduct annual compliance reviews with regard to the benchmarks under the renewable energy portfolio standard.~~
- (1) The annual review will include compliance with the most recent applicable renewable ~~and solar~~ energy-resource benchmark.

*****DRAFT - NOT FOR FILING*****

- (2) The annual compliance reviews shall consider any under-compliance an electric utility or electric services company asserts is outside its control, ~~including but not limited to, the following:~~ pursuant to section 4928.64(C)(1) of the Revised Code.
- ~~(a) Weather-related causes.~~
- ~~(b) Equipment shortages for renewable energy resources.~~
- ~~(c) Resource shortages for renewable energy resources.~~
- (3) The renewable energy portfolio status reports filed by each electric utility and electric services company for the applicable compliance year shall include at least the following content that, with the exception of paragraph (A)(3)(d) of this rule, shall be made publicly available:
- (a) The actual annual sales volumes used to compute the compliance baseline, including identification of the source of the sale volume figures.
- (b) A quantification in megawatt-hours of all applicable renewable energy portfolio standard compliance requirements.
- (c) An indication of the compliance status relative to each of the applicable renewable energy portfolio standard compliance requirements.
- (d) Demonstration of status relative to the statutory three percent cost provision, for the compliance year addressed in the annual status report, pursuant to the calculation methodology described in rule 4901:1-40-07 of the Administrative Code.
- (e) Identification of the attribute tracking system(s) used to demonstrate compliance.
- (f) A discussion of any perceived impediments to achieving compliance with required benchmarks, as well as suggestions for addressing any such impediments.
- (g) An electric services company may omit the contents required in paragraph (A)(3)(d) of this rule if the company affirms in its compliance status report that it will not seek compliance relief under division (C)(3) of section 4928.64 of the Revised Code for that year.
- (B) Any person may file comments regarding an electric utility's or electric services company's renewable energy portfolio status report within thirty days of the filing of such report.
- (C) Staff ~~shall~~ will review each electric utility's or electric services company's renewable energy

*****DRAFT - NOT FOR FILING*****

portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.

- (D) An annual compliance status report is deemed automatically approved unless suspended by the commission within sixty days of the filing date of staff's findings and recommendations. The commission may schedule a hearing on the renewable energy portfolio status report.

AMENDED

4901:1-40-06 Force majeure.

An electric utility or electric services company may seek a force majeure determination from the commission for all or part of a minimum renewable ~~or solar~~-energy benchmark.

- (A) A decision on a request for a force majeure determination will be rendered within ninety days of an electric utility or electric services company filing a request for such determination. ~~The process and timeframes for such a determination shall be set by entry of the commission, the legal director, deputy legal director, or attorney examiner.~~
- (1) At the time of requesting such a determination from the commission, an electric utility or electric services company shall demonstrate that it pursued all reasonable compliance options including, but not limited to, renewable energy credit (REC) solicitations, REC banking, and long-term contracts.
- (2) The request shall include an assessment of the availability of qualified resources within the service territories of any regional transmission organizations that manage transmission systems located in Ohio.
- (B) If the commission determines that force majeure conditions exist, it may modify that compliance obligation of the electric utility or electric services company, as it considers appropriate to accommodate the finding.
- (1) Such modification does not automatically reduce future-year obligations.
- (2) The commission retains the right to increase a future year's compliance obligation by the amount of any under compliance in a previous year that is attributed to a force majeure determination.

*****DRAFT - NOT FOR FILING*****

AMENDED

4901:1-40-07 Cost cap.

- (A) By no later than April fifteenth of each compliance year, electric utilities and electric services companies shall calculate their status relative to the statutory three per cent cost provision during the most recent compliance year. ~~Electric services companies may be excused from this requirement pursuant to paragraph (A)(3)(g) of rule 4901:1-40-05 of the Administrative Code.~~ Alternatively, an electric utility or electric services company may file an application with the commission for review of its cost cap calculation prior to the date required in rule 4901:1-40-05 of the Administrative Code.
- (1) A discretionary three per cent cost cap is applicable to the renewable energy benchmarks specified in division (B)(2) of section 4928.64 of the Revised Code.
 - (2) An electric utility or electric services company shall pursue all reasonable compliance options prior to requesting relief from compliance with the renewable energy resource requirements based on the three per cent cost cap.
 - (3) In the case that the commission makes such a determination that an electric utility's or electric services company's compliance costs exceed the applicable three per cent cost cap, the electric utility or electric services company may not be required to fully comply with the renewable energy benchmarks specified in division (B)(2) of section 4928.64 of the Revised Code.
- (B) The calculation of the company's status relative to the statutory three per cent cost provision shall follow the multi-step process as detailed in this rule. If full compliance with the applicable benchmark would prompt a company to exceed the three per cent cost provision, the company may seek relief from the commission for that incremental portion of its compliance obligation.
- (1) Determine the compliance baseline in megawatt-hours for the compliance year consistent with the applicable section of paragraph (B) of rule 4901:1-40-03 of the Administrative Code.
 - (2) Calculate a reasonably expected dollar per megawatt-hour figure for the compliance year.
 - (a) For an electric utility, the dollar per megawatt-hour figure should be a weighted average of the reasonably expected cost of the SSO supply for delivery during the compliance

*****DRAFT - NOT FOR FILING*****

year, net of distribution losses.

- (b) For electric service companies, this dollar per megawatt-hour figure should be a weighted average of the reasonably expected cost of supply for delivery during the compliance year, net of distribution system losses.
- (3) Calculate the total cost by multiplying the dollar per megawatt-hour figure in paragraph (B)(2) of this rule by the compliance baseline calculated in paragraph (B)(1) of this rule.
- (4) Multiply the total cost in paragraph (B)(3) of this rule by three per cent.

AMENDED

4901:1-40-08 Compliance payments.

- (A) Any electric utility or electric services company that does not achieve an annual renewable energy resource benchmark, ~~including a solar benchmark~~, shall remit a compliance payment based on the amount of noncompliance rounded up to the next megawatt hour (MWh), unless the commission has identified the existence of force majeure conditions or the commission has granted relief under the three per cent cost-cap provision.

~~(1) The required payment for noncompliance with any solar energy resource benchmark shall be calculated by quantifying the level of noncompliance, rounded to the next MWh, and multiplying this figure by the per MWh amount in the following table:~~

~~Solar energy resources—compliance payment~~

Year	Payment per MWh
2017 and 2018	\$250
2019 and 2020	\$200
2021 and 2022	\$150
2023 and 2024	\$100
2025 and beyond	\$50

- ~~(2)~~ (1) The ~~required~~ payment for noncompliance with any renewable energy resource benchmark, ~~excluding solar~~, shall be calculated by quantifying the level of

*****DRAFT - NOT FOR FILING*****

noncompliance, rounded to the next MWh, and multiplying this figure by an amount determined by the commission.

(a) The per MWh payment for renewable energy resources for the year 2009 is forty-five dollars.

(b) Beginning in the year 2010, the per MWh payment for renewable energy resources will be adjusted annually to reflect the annual change to the consumer price index as defined in section 101.27 of the Revised Code. Such adjustment ~~shall~~ will be performed by staff no later than June first of each calendar year, and, ~~This annual adjustment shall be~~ calculated using the following formula:

$$= ((\text{CPIYR2}/\text{CPIYR1}) * \text{current per MWh payment})$$

~~(c) In no event shall the compliance payment for renewable energy resources be less than forty-five dollars per MWh.~~

~~(3) At least annually, the staff shall conduct a review of the renewable energy resource market, including solar, both within this state and within the regional transmission systems active in the state. The results of this review shall be used to determine if changes to the solar or renewable energy compliance payments are warranted, as follows:~~

~~(a) The commission may increase compliance payments if needed to ensure that electric utilities and electric services companies are not using the payments in lieu of acquiring or producing energy or RECs from qualified renewable resources, including solar.~~

~~(b) Any recommendation to reduce the compliance payments shall be presented to the general assembly.~~

~~(B) Any compliance payment shall be submitted to the commission for deposit to the credit of the advanced energy fund. All compliance payments shall be delivered to the commission within thirty days of the imposition of any compliance payment requirement by the commission.~~

~~(C) Compliance payments shall be subject to such collection and enforcement procedures as apply to the collection of a forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code.~~

~~(D)~~ (B) Any electric utility or electric services company found to be liable for a compliance payment is prohibited from passing compliance payments on to consumers. In the event that a compliance payment is required, an electric utility or electric services company shall file an attestation, signed by a company officer or designee, indicating that it will not seek to recover

*****DRAFT - NOT FOR FILING*****

the specific compliance payment from consumers. Such attestation shall be filed within thirty days of the imposition of any compliance payment requirement.

AMENDED

4901:1-40-09 Annual report.

- (A) Pursuant to division (D)(1) of section 4928.64 of the Revised Code, staff will conduct an annual review of the renewable energy resource market and submit its findings in a report to the general assembly.~~an annual report shall be submitted to the general assembly addressing at least the following topics:~~
- ~~(1) The compliance status of electric utilities and electric services companies with respect to the qualified renewable energy resource benchmarks.~~
 - ~~(2) Suggested strategies for electric utility and electric services company compliance.~~
 - ~~(3) Suggested strategies for encouraging the use of renewable energy resources in supplying this state's electricity needs in a manner that considers:~~
 - ~~(a) Available technology.~~
 - ~~(b) Costs.~~
 - ~~(c) Job creation.~~
 - ~~(d) Economic impacts.~~
 - ~~(4) Average annual REC and S-REC costs for the compliance year(s) covered by the report.~~
- ~~(B) The report shall be submitted in accordance with section 101.68 of the Revised Code.~~
- ~~(C)~~ (B) Prior to its submission to the general assembly, the report will be issued for public comment by interested persons for thirty days, unless otherwise ordered by the commission. ~~The process and timeframes for soliciting public comment shall be set by entry of the commission, the legal director, deputy director, or attorney examiner.~~

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

11/30/2022 3:59:51 PM

in

Case No(s). 22-0871-EL-ORD

Summary: Finding & Order adopting the proposed amendments to the rules in Ohio
Adm.Code Chapter 4901:1-40, as determined in and attached to this Finding and
Order electronically filed by Heather A. Chilcote on behalf of Public Utilities
Commission of Ohio