

REQUEST FOR PROPOSAL

Issued by
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

Energy Efficiency and Peak Demand Reduction (EE/PDR)

**RFP Number 2011-03
Issued July 7, 2010**

**REQUEST FOR PROPOSAL
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PART ONE: EXECUTIVE SUMMARY

Purpose. This is a Request for Proposal ("RFP") issued by the Office of the Ohio Consumers' Counsel ("OCC") to solicit proposals from Independent Contractors provide timely and continuing technical assistance, as needed, to effectively participate in future Public Utilities Commission of Ohio (PUCO) cases stemming from the Energy Efficiency and Peak Demand Reduction (EE/PDR) provisions of SB 221. (see part three: Scope of Work and Deliverables for details on this proceeding) and any related activities and proceedings.

Background. The OCC plays an integral part in Ohio's government and economy by fulfilling its role as the advocate agency for residential utility consumers. Established in 1976, the OCC participates in major rate, fuel, rule-making and federal cases affecting the utility service of Ohio's residential consumers.

The law governing the agency's activities is contained in Chapter 4911 of the Ohio Revised Code.

The Consumers' Counsel is appointed by and remains responsible to a nine-member Governing Board. The representative role of the Governing Board can be viewed as incorporating three broad functions: accountability to the Public, the General Assembly and the Attorney General; policy-making in directing the Consumers' Counsel; and oversight of the Consumers' Counsel Office.

PART TWO: GENERAL INSTRUCTIONS

Calendar of Events. The schedule for this RFP and the work is given below. The OCC reserves the right to change this schedule as needed.

Firm Dates

RFP Issued: July 7, 2010
Proposal Due Date/Time: July 21, 2010 at 5:00 p.m.

Estimated Dates

Contract Award: July 26, 2010
Work Begins: If Controlling Board approval is not needed July 26, 2010
If Controlling Board approval is needed August 23, 2010
Contract End Date June 30, 2011

Estimated Budget UP TO \$45,000*

***Per contract. Multiple contracts may be awarded. Respondents (Independent Contractor) may bid on portions of the RFP requirements based on their areas of expertise. If multiple contracts are awarded, it is OCC's expectation that Independent Contractors will coordinate their work with each other under the direction of OCC.**

If the contractor awarded a contract under this RFP has total contracts or anticipated expenditures during the current state fiscal year totaling \$50,000 or more, the OCC will seek approval from the State of Ohio Controlling Board for the use of funds for the contract under this RFP. The timing of that approval is dependent on the dates for submission to the Board and the scheduled meeting of the Board. The "work begins" dates above reflect OCC's current estimate of the timing of that approval process.

Contacts. The following individual will represent the OCC as the primary contact for matters relating to the non-technical aspects of the RFP and during the contract negotiation/award process and subsequent invoicing.

Robin Tedrick

Records Management Coordinator
Office of the Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, Ohio 43215
614-466-9591
E-mail: tedrick@occ.state.oh.us

The following individual will represent the OCC as the primary contact for matters relating to technical aspects of the RFP and throughout the performance of the work upon the awarding of the contract.

Wilson Gonzalez

Senior Energy Policy Advisor
Office of the Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus Ohio 43215

614-466-9541

Email: Gonzalez@occ.state.oh.us

Proposal Submission. Proposals are to be mailed or delivered to: Robin Tedrick, Office of the Ohio Consumers' Counsel, 10 W. Broad Street, Suite 1800, Columbus, Ohio 43215-3485. Proposals may also be faxed to (614) 466-9475 or submitted via e-mail to tedrick@occ.state.oh.us. The deadline to submit proposals for this RFP is **5:00 p.m. on July 21, 2010**.

The OCC may reject any proposals or unsolicited proposal amendments that are received after the deadline. A prospective contractor that mails its proposal must allow for adequate mailing time to ensure its timely receipt.

Each prospective contractor must carefully review the requirements of this RFP and the contents of its proposal. All prospective contractors are on notice that the OCC will not be liable for any costs incurred by any prospective contractor in responding to this RFP, regardless of whether the OCC awards the contract through this process, decides not to go forward with the work, cancels this RFP for any reason, or contracts for the work through some other process or by issuing another RFP.

By submitting a proposal, the prospective contractor acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements. The prospective contractor also agrees that the contract will be the complete and exclusive statement of the agreement between the OCC and the contractor and will supersede all communications between the parties regarding the contract's subject matter.

The OCC may reject any proposal if the prospective contractor takes exception to the terms and conditions of this RFP, fails to comply with the procedure for participating in the RFP process, or the prospective contractor's proposal fails to meet any requirement of this RFP. The OCC may reject any proposal that is not in the best interest of the OCC to accept. Further, the OCC may decide not to do business with any of the prospective contractors responding to this RFP.

All proposals and other material submitted will become the property of the OCC and may be returned only at the option of the OCC. Proprietary information should not be included in a proposal or supporting materials because the OCC will have the right to use any materials or ideas submitted in any proposal without compensation to the prospective contractor.

The OCC will retain all proposals, or a copy of them, as part of the contract file for at least five (5) years. After the retention period, the OCC may return, destroy, or otherwise dispose of the proposals or the copies.

Waiver of Defects. The OCC has the right to waive any defects in any proposal or in the submission process followed by a prospective contractor. However, the OCC will only do so if it is in the best interest of the OCC and will not cause any material unfairness to other prospective contractors.

Amendments to Proposals. Amendments or withdrawals of proposals will be allowed if the amendment or withdrawal is received before the proposal due date. No amendment or withdrawals will be permitted after the due date, except as expressly authorized by the OCC.

Amendments to the RFP. If the OCC decides to revise this RFP, amendments will be made available to all prospective contractors. When the OCC makes amendments to the RFP after proposals have been submitted, the OCC will permit prospective contractors to withdraw or modify their proposals.

Contract. If this RFP results in a contract award/awards, the contract will include by reference this RFP, written amendments to this RFP, the prospective contractor's proposal, and written, authorized amendments to the Contractor's proposal. It will also include any purchase orders and change orders issued under the Contract.

In addition, the prospective contractor will agree to abide by all laws, rules and directives of the State of Ohio, as they pertain to vendors doing business with the State of Ohio.

PART THREE: SCOPE OF WORK AND DELIVERABLES

This section describes the scope of work and what the selected Independent Contractor must deliver as part of the completed work (the "Deliverables") to meet the terms and conditions of a subsequent contract.

Scope of Work. The Independent Contractor will be fully responsible for providing timely technical assistance, as needed, in future Public Utilities Commission of Ohio (PUCO) cases stemming from the Energy Efficiency and Peak Demand Reduction (EE/PDR) provisions of Ohio's SB 221 (See Attachment A for a copy of legislation and corresponding rules). The legislation and rules require Ohio electric utilities and electric service providers to comply with EE/PDR benchmarks and to report on their annual progress towards meeting those goals. Plans for the long term attainment of Energy Efficiency compliance are also required and electric utilities are required to report on EE/PDR as part of Resource Planning filings. Finally, the OCC has negotiated residential and small commercial EE programs with Ohio's four investor owned electric distribution utilities (FirstEnergy Companies, American Electric Power Company, Duke Energy and Dayton power & Light).

Work Requirements and Deliverables. The Independent Contractor shall undertake the following work and activities as requested and approved by OCC for the identification, analysis and development of issues related to the Alternative Energy and Renewable Energy:

As part of this RFP, OCC is requesting that interested consultants provide information demonstrating their knowledge and experience in one or more of the following areas:

1. **Energy Efficiency Reporting:** The PUCO must docket an annual report verifying the energy usage and peak demand reductions achieved by each utility. The requirements contain annual benchmarks and overall, call for a 22% cumulative reduction in energy use by 2025 and a 7.75% peak demand reduction by 2018. The baseline for determining energy savings is the average of kilowatt hours sold during the preceding three years. The Independent Contractor shall be responsible for providing consulting services and timely technical assistance on all aspects of reporting energy efficiency. Key area's of topics to address may include but not limited to:
 - Adjusting the baseline to account for new economic growth
 - Conditions necessitating normalizing the baseline to account for changes in numbers of customers, sales, weather, peak demand, and other appropriate factors outside the utilities' control to make sure they do not unduly influence compliance.
 - How to account for energy efficiency savings emanating from transmission and distribution infrastructure improvements that reduce line loss.
 - How to capture the impacts of mercantile customer-sited efficiency and peak demand programs that obtain a PUCO "reasonable arrangement" exemption and are committed to a utility's DSM program.
 - Development of guidelines to inform the process of exempting mercantile customer DSM.

2. **Revenue Decoupling:** The PUCO may establish rules regarding the content of an application for approval of a "revenue decoupling mechanism." The Independent Contractor shall be responsible

for providing consulting services and timely technical assistance on all aspects of revenue decoupling mechanisms. Key area's of topics to address may include but not limited to:

- An appropriate revenue decoupling mechanism for Ohio's electric utilities
- The development of consumer safeguards against utility over earnings

3. Energy Efficiency and Peak Demand Reduction

- Ohio's Energy Efficiency Resource Standard
- Energy Efficiency Potential Studies
 - i. Technical Potential Study
 - ii. Economic Potential Study
 - iii. Market Potential Study
- Program Design
 - i. Target Market
 - ii. Administrative Costs
 - iii. Marketing/Education
 - iv. Incentives
 - v. Non-participant considerations
- Benefit-Cost Analysis
 - i. California Standard Practice
 - ii. Primacy of Total Resource Cost Test
 - iii. Program Costs
 - iv. Avoided Costs
 - v. Capacity
 - vi. Energy
 - vii. Transmission & Distribution
 - viii. Incorporating Climate Change
- Monitoring and Verification
 - i. Process Evaluation
 - ii. International Performance Measurement and Verification Protocol(IPMVP)
 - iii. Deemed Savings
 - iv. Establishing a baseline
 - v. Net versus Gross Savings
 - vi. Technical Reference Manual
- Program Cost Recovery
 - i. Program Cost
 - ii. Lost Revenues & Decoupling Mechanisms
 - iii. Shared Savings and other Incentive Mechanisms
 - iv. Public Benefit Charge

- **Integrated Resource Planning**
 - i. Demand Side Resources
 - ii. Supply Side Resources – Generation Expansion Plan
 - iii. Integration
 - iv. Financial Analysis
 - v. Scenario Analysis
 - vi. Uncertainty Analysis
- **Integrating Demand Response into Wholesale Markets**
 - i. Demand Response Pricing
 - ii. Development of a Baseline
 - iii. Testing Interruptible Loads
 - iv. Role of Curtailable Service Providers

4. AMI/Smart Grid

- **Rate Design & Dynamic Pricing**
 - i. Time of Use Pricing
 - ii. Critical Peak Pricing
 - iii. Peak Time Rebate
 - iv. Real Time Pricing
 - v. Consumer Protections

The lists above are not exhaustive but represents key areas of inquiry.

Preparation of Testimony

Upon request by OCC the independent contractor may be asked to prepare written expert testimony and perform a number of duties on behalf of OCC based on the work completed in any of the work requirements and deliverables as discussed below:

- Review and prepare analysis and critique of the company's filings and of materials filed by other parties in the cases, including any reports or materials filed by the Staff of the PUCO.
- Prepare and review and provide technical support on areas identified above for discovery process in the proceeding including:
 - Prepare discovery;
 - Review responses to OCC's discovery; such review may require travel
 - Attend any depositions scheduled as required by OCC's Lead Attorney;
 - Attend any depositions of Independent Contractor conducted by the Company or other parties as required by OCC; and
 - Review all discovery requests served upon the OCC by other parties and assist in preparing OCC's responses to such discovery.
- Provide support and assistance for any pre-hearing or settlement conferences.
- Prepare written, direct and if needed, rebuttal testimony and presentation of that testimony at a hearing.

- Provide Support for Lead Attorney, for the legal preparation involved in any proceeding including an analysis of written and oral testimony of other witnesses (for the utilities, PUCO Staff and other parties) to assist with cross-examination.
- Review information developed by and the testimony of OCC staff and of any co-consultants retained by OCC in order to coordinate the OCC's development of issues in the proceedings inasmuch as the subject matters addressed are related.
- Review the Commission's order and provide post-hearing assistance including preparation of post-hearing briefs and evaluation of issues for possible rehearing and/or appeals (including, but not limited to evaluation of those and related issues in the PUCO's Opinion and Order and, if requested, by OCC's Lead Attorney).

PART FOUR: PROPOSAL REQUIREMENTS

Proposal Format. Each proposal must include sufficient data to allow the OCC to verify the total cost for the work and all of the prospective contractor's claims of meeting the RFP's requirements. These instructions describe the required format for a responsive proposal. The prospective contractor may include any additional information it believes is relevant.

1. **Contractor Profile.** Each proposal must include a general profile of the prospective contractor's relevant experience working on projects similar to this work. In the **Contractor Profile**, or in **Personnel Profile Summaries** (see below), details on prior and current similar and/or relevant work projects should be provided, including the scope of such work, clients, utility names and case numbers. While detail is generally preferred on a contractor's most recent work, contractors are encouraged to provide detail on all relevant work in Ohio.

The profile must also include the prospective contractor's legal name, address, and telephone number; home office location; date established; ownership (such as public firm, partnership, or subsidiary); firm leadership (such as corporate officers or partners); total number of employees nationwide and in Ohio; the percentage of women employees nationwide and in Ohio; the percentage of minorities nationwide and in Ohio; number of employees to be engaged in tasks directly related to the work; and any other background information the prospective contractor believes would be useful during the proposal evaluation process. For any subcontractors included in your proposal, indicate whether they operate as an individual, partnership or corporation; if as a corporation, include the state in which they are incorporated. State whether they are licensed to operate in the State of Ohio. State the same employee information as noted above for the primary contractor.

2. **Work Plan.** The prospective contractor must fully describe its approach, methods, and specific work steps for doing the work and producing the **Work Requirements and Deliverables** set forth in Part Three of this RFP. The OCC encourages responses that demonstrate a thorough understanding of the nature of the work and what the Contractor must do to get the work done well. The prospective contractor must also provide a complete and detailed description of the way it will do the work that addresses the areas of concern identified below. The OCC seeks insightful responses that describe proven, state-of-the-art methods. Recommended solutions should demonstrate the prospective contractor's ability to quickly undertake and successfully complete the required tasks.

The prospective contractor's work plan must clearly and specifically identify key personnel assignments by individual as to who would be addressing the potential issues set forth in Part Three of this RFP.

3. **Personnel Profile Summaries.** Each prospective contractor must identify a project team that demonstrates a thorough understanding of the project and possesses the education and experience to support the successful completion of the project. Each proposal must include a profile and/or resume for each key member of the proposed work team to demonstrate the competency of the project team personnel and include the following information:

- **Team Member Names**
 - **Experience and Qualifications.** For each team member identify experience and qualifications relevant to this project.
 - **Dates of Employment.** The length of time the team member performed relevant work requiring the necessary technical expertise.
 - **Project Experience.** The work of the team member on projects of similar or greater size and scope.
4. **References.** The prospective contractor must include three references for which the prospective contractor has successfully provided services on projects that were similar in their nature, size, and scope of work. These references must relate to work that was completed within the past five (5) years.
- Note: Each reference must be willing to discuss the prospective contractor's performance with an OCC representative.
5. **Cost Summary.** Each prospective contractor must provide a cost summary table showing: (1) project team members, and (2) their hourly rates.
- a) Executive Order 2009-07S, Implementing Additional Spending Control Strategies. This executive order states in part "...in this time when the state is struggling to maintain services critical to the health, safety and welfare of Ohio's citizens, the willingness of a vendor to negotiate a 15% or greater reduction in a contract's financial terms, while maintaining substantial equivalency of other terms, will be considered in the contract renewal decisions..."
- A documented fifteen percent reduction in an Independent Contractor's cost proposal, from their normal rates, will be looked at favorably.
- b) The OCC requires the inclusion of ALL expenses associated with this project within the hourly rates and hours used to determine the costs for the deliverables, thereby eliminating the need for expense billings. Items to be taken into consideration in determining the cost of each deliverable should include supplies and materials, transportation and per diems, copying and overnight mail charges, etc. The successful bidder will be responsible for direct payment to vendors for any requirements for overnight mail (including OCC to Contractor) and any "on-site" photocopying charges.
- c). **Contractor may invoice only for actual work performed and documented.**
6. **Subcontractors.** Acceptance by the Consumers' Counsel of a primary bidder's proposal does not necessarily require the Consumers' Counsel to accept the subcontractor(s) proposal proposed by the bidder. The Consumers' Counsel reserves the right to evaluate the qualifications of all sub-contractors proposed by the primary bidder.

7. Submit a list of all Ohio public utilities for which you or your staff performed work in a professional capacity during the past three years.
8. Submit an original W9 form along with your response to this RFP so that, if a contract is awarded, the OCC can process any invoices submitted by your company. The Internet link to the form is: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. The form must be signed and dated.
9. Submit a statement as part of your response to this RFP, affirming that you or members of your staff do not currently owe any money to the state of Ohio or have an unresolved finding for recovery from the Auditor of State.
10. **Declaration of Material Assistance/Non-Assistance.** If you will receive or have received in the aggregate an amount greater than \$100,000 from the state of Ohio, you must complete this certification. You can complete the pre-certification process electronically by going to <http://www.obg.ohio.gov>.
11. **Campaign Contribution.** House Bill 694 requires that every contract for goods or services of more than \$500 must contain a certification signed by the contract recipient certifying that the recipient is in compliance with Ohio Revised Code 3517.13. If awarded a contract, contractor will certify the following:

"Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of Ohio Revised Code Section 3517.13."
12. **Sweatshop Free.** By the signature affixed to this RFP, Independent Contractor certifies that all facilities used for the production of the supplies or performance of services offered in the bid/RFP are in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by the Independent Contractor in furnishing the supplies or services described in the bid/RFP and awarded to the Independent Contractor. If DAS receives a complaint alleging non-compliance with sweatshop free requirements, DAS may enlist the services of an independent monitor to investigate allegations of such non-compliance on the part of the Contractor, and sub-contractors or suppliers used by the Independent Contractor in performance on the Contract. If allegations are proven to be accurate, the Contractor will be advised by DAS of the next course of action to resolve the complaint and the Contractor will be responsible for any costs associated with the investigation. Items that will be considered in an investigation include, but are not limited to, standards for wages, Occupational safety and work hours.

For more information please refer to <http://www.obm.ohio.gov>.

PART FIVE: EVALUATION OF PROPOSALS

Evaluation of Proposals. Generally, the evaluation process may consist of up to four distinct phases:

1. The Initial Review of all proposals for defects
2. The Evaluation of the proposals by the Evaluation Committee
3. Request for More Information (Interviews, Presentations, and Demonstrations)
4. Negotiations

It is within the purview of the OCC Evaluation Committee ("Committee") to decide whether phases three and four are necessary.

Rejection of Proposals. The OCC may reject any proposal that is not in the required format, does not address all the requirements of this RFP, or that the OCC believes is excessive in price or otherwise not in the best interest of the OCC to consider or to accept. In addition, the OCC may cancel this RFP, reject all the proposals, and seek to do the work through a new RFP or other means.

Clarifications: During the evaluation process, clarifications may be requested from any prospective contractor under active consideration and the clarification may give any prospective contractor the opportunity to correct defects in its proposal. This may be done in cases where doing so would not result in an unfair advantage to the prospective contractor and the clarification is in the best interest of the OCC.

1. **Initial Review:** The proposals will be reviewed for their timeliness, format, and completeness. Any late, incomplete, or incorrectly formatted proposals may be rejected. Likewise, any defects may be waived or a prospective contractor may be allowed to submit a correction.

If a late proposal is received, it will not be opened unless the prospective contractor has received prior OCC approval for a late proposal for good cause shown.

All timely, complete, and properly formatted proposals will be forwarded to the Evaluation Committee.

2. **Committee Evaluation of the Proposals:** The Committee will evaluate each proposal forwarded to it. The Committee may also have the proposals or portions of them reviewed and evaluated by independent third parties or other OCC personnel with technical or professional experience that relates to the work or to the criteria used in the evaluation process. The Committee may adopt or reject any recommendations it receives from such reviews and evaluations. At any time during this phase, the Committee may ask a prospective contractor to correct, revise, or clarify any portions of its proposal.

Contract Award. The OCC plans to tentatively award the Contract for the work on **July 26, 2010**. The OCC reserves the right to change the contract award date if it becomes necessary. The contract will be awarded to the contractor that demonstrates a clear understanding of OCC's expectations; can complete the scope of work and deliverables within the designated timeframe, and at the lowest or competitive cost.



Public Utilities Commission

Chapter 4901:1-40 Alternative Energy Portfolio Standard.

4901:1-40-01	Definitions
4901:1-40-02	Purpose and Scope
4901:1-40-03	Requirements
4901:1-40-04	Qualified Resources
4901:1-40-05	Annual Status Reports and Compliance Reviews
4901:1-40-06	Force Majeure
4901:1-40-07	Cost Cap
4901:1-40-08	Compliance Payments
4901:1-40-09	Annual Report

4901:1-40-01 Definitions Effective: 12/10/2009

- (A) "Advanced energy fund" has the meaning set forth in section 4928.61 of the Revised Code.
- (B) "Advanced energy resource" has the meaning set forth in division (A)(34) of section 4928.01 of the Revised Code.
- (C) "Alternative energy resource" has the meaning set forth in division (A)(1) of section 4928.64 of the Revised Code.
- (D) "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.
- (E) "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.
- (F) "Clean coal technology" means any technology that removes or has the design capability to remove criteria pollutants and carbon dioxide from an electric generating facility that uses coal as a fuel or feedstock as identified in the control plan requirements in paragraph (C) of rule [4901:1-41-03](#) of the Administrative Code.
- (G) "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 dictate the proportion of electricity output from the facility that can be considered a renewable energy resource.
- (H) "Commission" means the public utilities commission of Ohio.
- (I) "Deliverable into this state" means that the electricity 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 could be physically delivered to the state.
- (J) "Demand response" has the meaning set forth in rule [4901:1-39-01](#) of the Administrative Code.
- (K) "Demand-side management" has the meaning set forth in paragraph (F) of rule [4901:5-5-01](#) of the Administrative Code.
- (L) "Distributed generation" means electricity production that is on-site and is connected to the electricity grid.

- (M) "Double-counting" means utilizing renewable energy, 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.
 - (2) Comply with both the energy efficiency and advanced energy statutory benchmarks.
 - (3) Support multiple voluntary product offerings
 - (4) Substantiate multiple marketing claims.
 - (5) Some combination of these.
- (N) "Electric generating facility" means a power plant or other facility where electricity is produced.
- (O) "Electric services company" has the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- (P) "Electric utility" has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (Q) "Energy efficiency" has the meaning set forth in rule [4901:1-39-01](#) of the Administrative Code.
- (R) "Energy storage" means a facility or technology that permits the storage of energy for future use as electricity.
- (S) "Fuel cell" means a device that uses an electrochemical energy conversion process to produce electricity.
- (T) "Geothermal energy" means hot water or steam extracted from geothermal reservoirs in the earth's crust and used for electricity generation..
- (U) "Hydroelectric energy" means electricity generated by a hydroelectric facility as defined in division (A)(35) of section 4928.01 of the Revised Code.
- (V) "Hydroelectric facility" has the meaning set forth in division (A)(35) of section 4928.01 of the Revised Code.
- (W) "Mercantile customer" has the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (X) "MISO" means "Midwest Independent Transmission System Operator, Inc." or any successor regional transmission organization.
- (Y) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (Z) "PJM" means "PJM Interconnection, LLC" or any successor regional transmission organization.
- (AA) "Placed-in-service" means when a facility or technology becomes operational.
- (BB) "Renewable energy credit" means the environmental attributes associated with one megawatt-hour of electricity generated by a renewable energy resource, except for electricity generated by facilities as described in paragraph (E) of rule [4901:1-40-04](#) of the Administrative Code.
- (CC) "Renewable energy resource" has the meaning set forth in division (A)(35) of section 4928.01 of the Revised Code.
- (DD) "Solar energy resources" means solar photovoltaic and/or solar thermal resources.
- (EE) "Solar photovoltaic" means energy from devices which generate electricity directly from sunlight through the movement of electrons.
- (FF) "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.
- (GG) "Solid wastes" has the meaning set forth in section 3734.01 of the Revised Code.

- (HH) "Staff" means the commission staff or its authorized representative.
- (II) "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.
- (JJ) "Wind energy" means electricity generated from wind turbines, windmills, or other technology that converts wind into electricity.

Effective: 12/10/2009
R.C. 119.032 Review Date(s): 9/30/2013
Promulgated Under: R.C. 111.15
Statutory Authority: R.C. 4905.04, 4905.06, 4928.01, 4928.02, 4928.64, 4928.65
Rule Amplifies: R.C. 4928.01, 4928.64, 4928.65

4901:1-40-02 Purpose and Scope Effective: 12/10/2009

- (A) This chapter addresses the implementation of the alternative energy portfolio standard, including the incorporation of renewable energy credits, as detailed in sections 4928.64 and 4928.65 of the Revised Code respectively. Parties affected by these alternative energy portfolio standard rules include all Ohio electric utilities and all electric services companies serving retail electric customers in Ohio. Any entities that do not serve Ohio retail electric customers shall not be required to comply with the terms of the alternative energy portfolio standard.
- (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.

Effective: 12/10/2009
R.C. 119.032 Review Date(s): 9/30/2013
Promulgated Under: R.C. 111.15
Statutory Authority: R.C. 4905.04, 4905.06, 4928.01, 4928.02, 4928.64, 4928.65
Rule Amplifies: R.C. 4928.01, 4928.02, 4928.64, 4928.65

4901:1-40-03 Requirements Effective: 12/10/2009

- (A) All electric utilities and affected electric services companies shall ensure that, by the end of the year 2024 and each year thereafter, electricity from alternative energy resources equals at least twenty-five per cent of their retail electric sales in the state.
- (1) Up to half of the electricity supplied from alternative energy resources may be generated from advanced energy resources.
- (2) At least half of the electricity supplied from alternative energy resources shall be generated from renewable energy resources, including solar energy resources, in accordance with the following annual benchmarks:

Annual benchmarks for alternative energy resources generated from renewable and solar energy resources

By end of year:	Renewable energy resources	Solar energy resources
2009	0.25%	0.004%
2010	0.50%	0.01%
2011	1.0%	0.03%
2012	1.5%	0.06%
2013	2.0%	0.09%

By end of year:	Renewable energy resources	Solar energy resources
2014	2.5%	0.12%
2015	3.5%	0.15%
2016	4.5%	0.18%
2017	5.5%	0.22%
2018	6.5%	0.26%
2019	7.5%	0.30%
2020	8.5%	0.34%
2021	9.5%	0.38%
2022	10.5%	0.42%
2023	11.5%	0.46%
2024 and each year thereafter	12.5%	0.50%

- (a) 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.
- (b) To qualify towards a benchmark, any electricity from renewable energy resources, including solar energy resources, that originates from outside of the state must be shown to be deliverable into this state.
- (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 alternative energy resource requirements shall be determined using the following methodologies:
 - (1) For electric utilities, the baseline shall be computed as an average of the three preceding calendar years of the total annual number of kilowatt-hours of electricity sold under its standard service offer 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. The calculation of the baseline shall be based upon the average, annual, kilowatt-hour sales reported in that electric utility's three most recent forecast reports or reporting forms.
 - (2) For electric services companies, the baseline shall be computed as an average of the three preceding calendar years of the total annual number of kilowatt-hours of electricity sold to any and all retail electric consumers served by the company in the state, based upon the kilowatt-hour sales in the electric services company's most recent quarterly market-monitoring reports or reporting forms.
 - (a) 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) For an electric services company with no retail electric sales in the state during the preceding three calendar years, its initial baseline shall consist of a reasonable projection of its retail electric sales in the state for a full calendar year. Subsequent baselines shall consist of actual sales data, computed in a manner consistent with paragraph (B)(2)(a) of this rule.
 - (3) An electric utility or electric services company may file an application requesting a reduced baseline to reflect new economic growth in its service territory or service area. Any such

application shall include a justification indicating why timely compliance based on the unadjusted baseline is not feasible, a schedule for achieving compliance based on its unadjusted baseline, quantification of a new change in the rate of economic growth, and a methodology for measuring economic activity, including objective measurement parameters and quantification methodologies.

- (C) Beginning in the year 2010, each electric utility and electric services company annually shall file a plan for compliance with future annual advanced- and renewable-energy benchmarks, including solar, utilizing at least a ten-year planning horizon. This plan, to be filed by April fifteenth of each year, shall include at least the following items:
- (1) Baseline for the current and future calendar years.
 - (2) Supply portfolio projection, including both generation fleet and power purchases.
 - (3) A description of the methodology used by the company to evaluate its compliance options.
 - (4) A discussion of any perceived impediments to achieving compliance with required benchmarks, as well as suggestions for addressing any such impediments.

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4901:1-40-04

Qualified Resources

Effective: 12/10/2009

- (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 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 complies with the following requirements:
 - (a) The electricity used to pump the resource into a storage reservoir must qualify as a renewable energy resource, or the equivalent renewable energy credits are obtained.
 - (b) The amount of energy that may qualify from a storage facility is the amount of electricity dispatched from the storage facility.
 - (9) Distributed generation system used by a customer to generate electricity from one of the resources or technologies listed in paragraphs (A)(1) to (A)(8) of this rule.
 - (10) 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.

- (B) 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 advanced energy resource benchmarks:
- (1) Any modification to an electric generating facility that increases its generation output without increasing the facility's carbon dioxide emissions (tons per year) in comparison to its actual annual carbon dioxide emissions preceding the modification. In such an instance, it is the incremental increase in generation output that may be quantified and applied toward an advanced energy requirement.
 - (2) Any distributed generation system, designed primarily to meet the energy needs of the customer's facility that utilizes co-generation of electricity and thermal output simultaneously.
 - (3) Clean coal technology.
 - (4) Advanced nuclear energy technology, from:
 - (a) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission or other later technology.
 - (b) Significant improvements to existing facilities. In such an instance, it is the incremental increase in generation attributable to the improvement that may be quantified and applied toward an advanced energy requirement. Extension of the life of existing nuclear generation capacity shall not qualify as advanced nuclear energy technology.
 - (5) Energy from a fuel cell.
 - (6) Advanced solid waste or construction and demolition debris conversion technology that results in measurable greenhouse gas emission reductions.
 - (7) Demand-side management and energy efficiency, above and beyond that used to comply with any other regulatory standard or programs.
- (C) The following new or existing mercantile customer-sited resources may be qualified resources for meeting electric utilities' annual, renewable- or advanced-energy resource benchmarks, as applicable, provided that it does not constitute double-counting for any other regulatory requirement and that the mercantile customer has committed the resource for integration into the electric utility's demand-response, energy efficiency, or peak-demand reduction programs pursuant to rule 4901:1-39-08 of the Administrative Code.
- (1) Renewable energy resources from mercantile customers include the following:
 - (a) Electric generation equipment that uses a renewable energy resource and is owned or controlled by a mercantile customer.
 - (b) Any renewable energy resource of the mercantile customer that can be utilized effectively as part of an alternative energy resource plan of an electric utility and would otherwise qualify as a renewable energy resource if it were utilized directly by an electric utility.
 - (2) Advanced energy resources from mercantile customers include the following:
 - (a) A resource that improves the relationship between real and reactive power.
 - (b) A mercantile customer-owned or controlled resource that makes efficient use of waste heat or other thermal capabilities.
 - (c) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics.
 - (d) Electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource.

- (e) Any advanced energy resource of the mercantile customer that can be utilized effectively as part of an advanced energy resource plan of an electric utility and would otherwise qualify as an advanced energy resource if it were utilized directly by an electric utility.
- (D) An electric utility or electric services company may use renewable energy credits (REC) to satisfy all or part of a renewable energy resource benchmark, including a solar energy resource benchmark.
- (1) To be eligible for use towards satisfying a benchmark, a REC must originate from a facility that meets the definition of a renewable energy resource, including solar energy resources, and be 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. Such facilities could include a mercantile customer-sited resource that is not committed for integration into an electric utility's demand-response, energy efficiency, or peak-demand reduction program pursuant to rule [4901:1-39-08](#) of the Administrative Code but that otherwise qualifies under the terms of paragraph (A) of this rule.
 - (2) To use RECs as a means of achieving partial or complete compliance, an electric utility or electric services company must be a registered member in good standing of at least one of the following:
 - (a) The PJM's generation attributes tracking system.
 - (b) The MISO's renewable energy tracking system.
 - (c) Another credible tracking system approved for use by the commission.
 - (3) A REC may be used for compliance any time in the five calendar years following the date of its initial purchase or acquisition.
 - (4) Double counting is prohibited.
 - (5) The RECs must be associated with electricity that was generated no earlier than July 31, 2008.
- (E) For a generating facility of seventy-five megawatts or greater that is situated within this state and has committed by December 31, 2009, to modify or retrofit its generating unit or units to enable the facility to generate principally from biomass energy by June 30, 2013, the number of RECs produced by each megawatt-hour of electricity generated principally from biomass energy shall equal the actual percentage of biomass feedstock heat input used to generate such megawatt-hour multiplied by the quotient obtained by dividing the then existing unit dollar amount used to determine a renewable energy compliance payment as provided under division (C)(2)(b) of section 4928.64 of the Revised Code, by the then existing market value of one REC, but such megawatt-hour shall not equal less than one credit.
- (F) An entity seeking resource qualification shall file an application for certification of its resources or technologies, 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 (l) 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) The commission may approve, suspend, or deny an application within sixty days of it being filed. If the commission does not act within sixty days, the application is deemed automatically approved on the sixty-first day after the date filed.
 - (3) If the commission suspends the application, the applicant shall be notified of the reasons for such suspension and may be directed to furnish additional information. The commission may act to approve or deny a suspended application within ninety days of the date that the application was suspended.

- (4) Upon commission approval, the applicant shall receive notification of approval and a numbered certificate where applicable. The commission shall provide this certificate number to the appropriate attribute tracking system.
 - (5) 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.
 - (6) Certification of a resource or technology shall not predetermine compliance with annual benchmarks, and does not constitute any commission position regarding cost recovery.
- (G) At its discretion, the commission may classify any new technology or additional resource as an advanced- or renewable-energy resource. Any interested person may request a hearing on such classification.

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4901:1-40-05 Annual Status Reports and Compliance Reviews Effective: 12/10/2009

- (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 alternative energy portfolio status report analyzing all activities undertaken in the previous calendar year to demonstrate how the applicable alternative energy portfolio benchmarks and planning requirements have or will be met. Staff shall conduct annual compliance reviews with regard to the benchmarks under the alternative energy portfolio standard.
- (1) Beginning in the year 2010, the annual review will include compliance with the most recent applicable renewable- and solar-energy resource benchmark.
 - (2) Beginning in the year 2025, the annual review will include compliance with the most recent applicable advanced energy resource benchmark.
 - (3) 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:
 - (a) Weather-related causes.
 - (b) Equipment shortages for renewable or advanced energy resources.
 - (c) Resource shortages for renewable or advanced energy resources.
 - (B) Any person may file comments regarding the electric utility's or electric services company's alternative energy portfolio status report within thirty days of the filing of such report.
 - (C) Staff shall review each electric utility's or electric services company's alternative energy portfolio status report and any timely filed comments, and file its findings and recommendations and any proposed modifications thereto.
 - (D) The commission may schedule a hearing on the alternative energy portfolio status report.

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Rule Amplifies: R.C. 4928.64, 4928.65

4901:1-40-06 Force Majeure Effective: 12/10/2009

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 in-state resources, as well as qualified resources within the territories of PJM and the MISO.
- (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.

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4901:1-40-07 Cost Cap Effective: 12/10/2009

- (A) An electric utility or electric services company may file an application requesting a determination from the commission that its reasonably expected cost of compliance with an advanced energy resource benchmark would exceed its reasonably expected cost of generation to customers by three per cent or more. 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) The burden of proof for substantiating such a claim shall remain with the electric utility or electric services company.
 - (2) An electric utility or electric services company shall pursue all reasonable compliance options prior to requesting such a determination from the commission.
 - (3) In the case that the commission makes such a determination, the electric utility or electric services company may not be required to fully comply with that specific benchmark.
- (B) An electric utility or electric services company may file an application requesting a determination from the commission that its reasonably expected cost of compliance with a renewable energy resource benchmark, including a solar energy resource

benchmark, would exceed its reasonably expected cost of generation to customers by three per cent or more. 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) The burden of proof for substantiating such a claim shall remain with the electric utility or electric services company.
 - (2) An electric utility or electric services company shall pursue all reasonable compliance options prior to requesting such a determination from the commission.
 - (3) In the case that the commission makes such a determination, the electric utility or electric services company may not be required to fully comply with that specific benchmark.
- (C) Calculations involving a three per cent cost cap shall consist of comparing the total expected cost of generation to customers of an electric utility or electric services company, while satisfying an alternative energy portfolio standard requirement, to the total expected cost of generation to customers of the electric utility or electric services company without satisfying that alternative energy portfolio standard requirement.
- (D) Any costs included in a commission-approved unavoidable surcharge for construction or environmental expenditures of generation resources shall be excluded from consideration as a cost of compliance under the terms of the alternative energy portfolio standard and therefore, would not count against the applicable cost cap. Such costs should, however, be included in the calculation of the total expected cost of generation to customers described in paragraph (C) of this rule.
- (E) If the commission makes a determination that a three per cent provision is triggered, the electric utility or electric services company shall comply with each benchmark up to the point that the three per cent increment would be reached for each benchmark.

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4901:1-40-08 Compliance Payments Effective: 12/10/2009

- (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 determined that the three per cent cost-cap provision would be exceeded in the event of full compliance.
- (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 table below.

Solar energy resources - compliance payment

Year	Payment per MWh
2009	\$450
2010 and 2011	\$400
2012 and 2013	\$350
2014 and 2015	\$300
2016 and 2017	\$250

2018 and 2019	\$200
2020 and 2021	\$150
2022 and 2023	\$100
2024 and beyond	\$50

- (2) The required payment for noncompliance with any renewable energy resource benchmark, excluding solar, shall be calculated by quantifying the level of 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 be performed by staff no later than June first of each calendar year. This annual adjustment shall be calculated using the following formula:
- $$((CPIYR2/CPIYR1) * \text{current per MWh payment})$$
- (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.
- (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) 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 submit an attestation, signed by a company officer or designee, indicating that it will not seek to recover the specific compliance payment from consumers. Such attestation shall be submitted to staff within thirty days of the imposition of any compliance payment requirement.

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4901:1-40-09

Annual Report

Effective: 12/10/2009

- (A) Pursuant to division (D)(1) of section 4928.64 of the Revised Code, 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 advanced- and renewable-energy resource benchmarks.
 - (2) Suggested strategies for electric utility and electric services company compliance.
 - (3) Suggested strategies for encouraging the use of alternative 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.
- (B) The report shall be submitted in accordance with section 101.68 of the Revised Code.
- (C) 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.

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