



Green Strategies Bulletin



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Public Utilities Commission of Ohio Finalizes Alternative Energy Portfolio Standard Rules

The Public Utilities Commission of Ohio (the “Commission”) has issued revised rules governing Ohio’s alternative energy portfolio standard created in Senate Bill 221 (“SB 221”). After nearly 10 months of debate, the Commission issued an Entry on Rehearing (the “Entry”) adopting the alternative energy portfolio standard rules on June 17, 2009. (The Commission had released an initial version of the rules on August 20, 2008 and subsequently revised the rules on April 15, 2009.) The Commission’s Entry recommends that the rules should be filed with the Joint Committee on Agency Rule Review (JCARR) immediately. Once filed with JCARR, the rules could take effect as early as 60 to 90 days later.

For more information on the rules, see our previous Green Strategies Bulletin from May 2009: [Implementing Ohio Senate Bill 221: Public Utilities Commission of Ohio Releases Alternative Energy Portfolio Standard Rules](#), or a full copy of the SB 221 Implementation Rules at: <http://www.puco.ohio.gov/PUCO/Rules/Rule.cfm?id=8724>.

I. Changes Required By House Bill 2

On April 1, 2009, Governor Strickland signed Amended Substitute House Bill 2 (“HB 2”), which: 1) expanded the definition of alternative energy resources; and 2) changed the method for calculating RECs in limited circumstances to accommodate the conversion of a coal plant on the Ohio River into a biomass facility.

OAC 4901:1-40-04(A)(10) – Qualifying Renewable Energy Resources: HB 2 expanded the definition of “alternative energy resource” to

include any renewable energy resource created on or after January 1, 1998 by the modification or retrofit of a generating facility placed in service before January 1, 1998. The Commission modified Rule 4901:1-40-04(A)(10) to reflect this change.

OAC 4901:1-40-01(CC) and OAC 4901:1-40-04(E): Calculating RECs: Renewable energy credits, or “RECs,” are the currency of the alternative energy portfolio standard. As set forth in SB 221, and consistent with the national standard, one renewable energy credit equals one megawatt hour of electricity. However, HB 2 changes the value of certain RECs. Under the new law, and in limited circumstances, certain RECs are more heavily weighted if they are produced by an Ohio generating facility that operates at a capacity of at least 75 MW, and, by December 31, 2009, its owner has committed to modify or retrofit that facility to allow for electricity generation primarily from biomass energy. The Commission modified Rules 4901:1-40-01(CC) and 4901:1-40-04 to reflect this change.

NOTE: FirstEnergy is the only Ohio utility that has announced plans for such a retrofitted biomass facility. FirstEnergy’s proposed retrofit will reportedly convert the existing coal-fired generating units at its R.E. Burger plant in Shady-side, Ohio into a facility utilizing biomass as its primary feedstock. This facility will be entitled to enhanced RECs.

II. Green Pricing Programs

In applications for rehearing, some utilities contended that RECs purchased under voluntary green pricing program should count toward the utility’s compliance with SB 221’s alternative

energy portfolio standard. Just as it had in its prior entry, the Commission rejected this argument. The Commission's Entry states that the "use of RECs purchased and consumed under an electric utility's separate green pricing program for that utility's AEPS compliance would constitute double-counting of these RECs in violation of Rule 40-04(D)(4). Thus, RECs obtained by utilities under voluntary green pricing programs may not satisfy the renewable energy benchmarks.

III. Rule 4901:1-40-01 – Definitions

Deliverable into this state: Multiple parties addressed the definition of deliverability in their applications for rehearing. The focus of the comments were that: 1) all facilities located within PJM and/or MISO should satisfy the deliverability requirement; and 2) the load flow and/or deliverability studies necessary to demonstrate deliverability were "unnecessary, burdensome, costly, and of little to no value." In its Entry, however, the Commission concluded it was "inappropriate to offer a blanket presumption of deliverability for any and all facilities within PJM or MISO." Additionally, the required load flow and/or deliverability study is part of a "one-time review" and only has to demonstrate that some portion of the facility's generation is capable of being physically delivered into the state."

The only modification to the definition itself clarified that the utility itself need not conduct the load flow and/or deliverability study. Instead, the rule allows a third-party (i.e. a developer) to do so.

Distributed Generation: SB 221 recognizes distributed generation as both qualifying advanced and renewable energy resources. This means that certain non-utility owned distribution generation systems can be used to satisfy SB 221's portfolio standards.

The Commission revised the definition of "distributed generation" in Rule 4901:1-40-01(L) so it now includes "electricity production that is on-site **and is connected to the electricity grid.**" This modification to the definition allows systems "that are attached to the electric grid but perhaps not capable of supplying electricity to the system based solely on on-site generation versus usage (i.e. no excess)" to qualify.

The Commission's entry also reaffirmed that on-site production owned by a customer or third-party may qualify as distributed generation.

Double Counting: In addition to creating an alternative energy portfolio requirement, SB 221 contains a similar energy efficiency mandate. Though "energy efficiency" qualifies as an "advanced" energy resource under SB 221, the rule prevents a utility from counting the same energy efficiency measure toward both the energy efficiency benchmarks in O.R.C. 4928.66 and advanced energy benchmarks

in O.R.C. 4928.64(B). Because no new arguments were raised on rehearing, the Commission affirmed its prohibition on the double counting of energy efficiency measures.

IV. Rule 4901:1-40-03 – Requirements

In-State requirements -- Rule 4901:1-40-03(A)(2) (a): Under SB 221, one-half of the renewable energy resources generated by a utility must be derived from facilities located within Ohio. Some parties had argued that this in-state requirement should not apply on an annual basis, but rather only to the total renewable energy requirement. Similarly, some parties argued the in-state requirement does not apply to the solar carve-out. The Commission rejected these arguments on rehearing, concluding that the "annual in-state provision, both for solar and non-solar renewable energy resources, is consistent with the statutory benchmark design and objectives."

Portfolio standard baseline: Rule 4901:1-40-03(B): Under SB 221, the Commission is required to derive a baseline from the average of the total kilowatt hours sold during the past three years to determine a utility's required level of renewable production or acquisition. The Commission's Entry on Rehearing clarified that "sales under special contract or reasonable arrangements" (i.e. those approved under R.C. 4905.31) must be taken into account when calculating the baseline. This should increase a utility's baseline and therefore increase the amount of renewable energy needed to meet the benchmarks.

V. Rule 4901:1-40-04 – Qualified Resources

Storage Facilities – Rule 4901:1-40-04(A): SB 221 categorized certain energy storage facilities as renewable energy resources. Under the rule, a storage facility qualifies as a renewable energy resource only if the electricity used to pump the resource into the storage reservoir itself qualifies as a renewable energy resource. In its application for rehearing, a utility had argued that this qualifying language was unreasonably narrow and inconsistent with SB 221. The Commission, however, declined to modify the definition, concluding that "electricity storage does not automatically constitute a renewable energy resource unless the electricity storage is achieved by the use of renewable electricity generation."

Qualifying Tracking Systems: Rule 4901:1-40-04(D): The rules permit utilities to satisfy all or part of their renewable energy benchmarks through the use of RECs. However, a utility must be a registered member of an approved REC tracking system to do so. The rules pre-approve the tracking systems already in place in PJM, the Generation Attribute Tracking System ("GATS"); and MISO, the Midwest-Renewable Energy Tracking System

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(“M-RETS”). Additionally, the Commission contemplates the use of other tracking systems upon request by a utility and Commission approval.

REC eligibility – Rule 4901:1-40-04(D): In several applications for rehearing, arguments were made that the deliverability requirement and placed-in-service date applied only to energy generation but not RECs, Under this theory, a utility complying with the renewable energy benchmark through RECs could ignore those requirements. The Commission disagreed. In rejecting this argument, the Commission noted that “[a]ccepting RECs without any consideration of deliverability or placed-in-service, as argued by these parties, would essentially nullify much of Section 4928.64, Revised Code.”

Lifespan of a REC – Rule 4901:1-40-04(D)(3): Consistent with SB 221, the rule establishes the lifespan of a REC as five years from the date of initial purchase or acquisition. In its Entry, the Commission rejected the argument of a utility that the lifespan of a REC should be 5 years from the time the electricity is generated, not purchased or acquired.

Earliest Date of a REC: The earliest date for a REC to qualify toward a utility’s compliance with SB 221’s alternative energy portfolio standard is July 31, 2008, the effective date of SB 221. The Commission stated in its Entry that it is “unreasonable to give credit for RECs generated prior to the effective date of SB 221, given that the statute does not expressly permit the use of RECs associated with electricity generated prior to the effective date of the law.” But, the Commission limits the use of RECs to a facility that either was a “participant in an existing attribute tracking system” as of July 31, 2008 or “had a meter in place which can accurately demonstrate generation levels from July 31, 2008, forward.” RECs will not count if they previously “have been sold or otherwise consumed.”

VI. Rule 4901:1-40-04(F) – Certification of Resources

Renumbered Rule OAC 4901:1-40-04(F), which was referred to as Paragraph (E) in the prior iteration of the rules, creates a mandatory procedure by which alternative energy providers apply to the Commission for certification of a particular project/facility as an advanced or renewable energy resource. The primary purpose of the certification process is to demonstrate that the project or facility involves an advanced or renewable resource that is deliverable into the state (if the RECs were generated outside of Ohio and not in a state contiguous to Ohio). It is only after the project/facility is certified that the relevant advanced or renewable energy products count toward satisfying SB 221’s alternative energy portfolio standards.

The certification process is initiated by the e-filing of an application (and corresponding affidavit) through the Commission’s Docketing Information System website at <http://dis.puc.state.oh.us/>. E-filing requires the creation of a user profile, which can be accomplished directly through the Commission’s website. The instructions for filing a certification application, and the certification application form, can be accessed at <http://www.puco.ohio.gov/puco/forms>.

The certification process established by the Commission does not establish mandatory notice or hearing requirements, but does allow an interested party to intervene and file comments and/or objections within 20 days of the filing date of the application.

Upon Commission approval of an application, a project/facility will qualify for purposes of Ohio’s alternative energy portfolio standards. The Commission will then provide the facility with a state-specific certification number, which allows an approved tracking system (i.e. GATS or M-RETS) to process and track generation and RECs.

VII. Rule 4901:1-40-07 – Cost Cap

Two Independent 3 percent Cost Caps: The rule recognizes two separate, independent, 3 percent cost caps within the alternative energy portfolio standard: one for renewable energy and one for advanced energy. The Commission again affirmed this interpretation in its Entry on Rehearing.

3 percent Cost Cap Calculation: The rule establishes that the 3 percent cost caps are calculated by “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.” Again rejecting an argument that the calculation be based on marginal or incremental costs, the Commission’s Entry confirms that the calculation is based on a utility’s overall generation rates.

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