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Public Utilities Commission of Ohio  
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180 E. Broad Street, 10th Floor  
Columbus, Ohio 43215

**In re: Case No. 08-888-EL-ORD**

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of the COMMENTS OF THE OHIO ENERGY GROUP filed in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



David F. Boehm, Esq.

Michael L. Kurtz, Esq.

**BOEHM, KURTZ & LOWRY**

MLKkew

Encl.

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### **CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 9<sup>th</sup> day of September, 2008 to the following:

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**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for Alternative and	:	
Renewable Energy-Technologies and Resources/ and	:	
Emission Control Reporting Requirements, and Amendment	:	<b>Case No. 08-888-EL-ORD</b>
of Chapters 4901:5-1,4901:5-3,4901:5-5, and 4901:5-7 of	:	
the Ohio Administrative Code, pursuant to Chapter 4928,	:	
Revised Code, to Implement Senate Bill No. 221.	:	
	:	
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**COMMENTS OF THE OHIO ENERGY GROUP**

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Pursuant to the Commission's August 20, 2008 Entry, the Ohio Energy Group (OEG)<sup>1</sup> submits the following comments to Staff's proposed rules.

**1. 4901:1-39-04 (B)(4).**

This section of the proposed rules authorizes the Commission to modify the benchmarks for energy efficiency and peak demand reduction set forth in 4928.66. However, the proposed rule creates a more restrictive standard for modifying the benchmarks than the standard set forth in the statute. The Legislature determined that that Commission could modify the benchmarks if they could not be reasonably achieved. Here is the statutory language: "*(b) The commission may amend the benchmarks set forth in division (A)(1)(a) or (b) of this section if, after application by the electric distribution utility, the commission determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control.*" By contrast, the proposed rule allows for modification only if the utility has exhausted all compliance options, without regard to whether such options are reasonable. The proposed rule reads: "*4. An electric utility may apply to amend the benchmarks due to regulatory economic, or technological*

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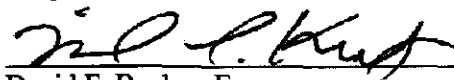
<sup>1</sup> The members of OEG are: Air Products and Chemicals, Inc., AK Steel Corporation, Alcoa Inc., ArcelorMittal USA, Brush Wellman, Inc., BP-Husky Refining, LLC., Charter Steel, Chrysler LLC, E.I. DuPont de Nemours & Company, Ford Motor Company, GE Aviation, Griffin Wheel, Johns Manville, North Star BlueScope Steel, LLC, The Procter & Gamble Co., PPG Industries, Inc., Republic Engineered Products, Inc., Severstal Warren, Inc. (formerly WCI Steel, Inc.), Sunoco, Inc., The Linde Group, Wheeling-Pittsburgh Steel Corp., and Worthington Industries.

*reasons beyond the electric utility's reasonable control. In any such proposal, the electric utility shall demonstrate that it has exhausted all compliance options."* The proposed rule improperly turns a reasonableness test into a physical impossibility test. We suggest a simple fix. Add the word reasonable to the last sentence of the proposed rule. It would read: *"In any such proposal, the electric utility shall demonstrate that it has exhausted all reasonable compliance options."*

**2. 4901:1-40-07(F).**

This proposed rule authorizes the Commission to order a "catch up" if the 3% cost cap on advanced energy benchmarks results in under compliance in a previous year. There is no statutory basis for such a "catch up". The statute simply provides: *"(3) An electric distribution utility or an electric services company need not comply with a benchmark under division (B)(1) or (2) of this section to the extent that its reasonably expected cost of that compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by three per cent or more."* This is in contrast to the force majeure section where a "catch up" is specifically authorized by statute. Accordingly, 4901:1-40-07(F) should be deleted.

Respectfully submitted,



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September 9, 2008