

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Protocols for the)
Measurement and Verification of Energy) Case No. 09-512-GE-UNC
Efficiency and Peak Demand Reduction)
Measures.)

ENTRY ON REHEARING

The Commission finds:

- (1) On June 24, 2009, the Commission issued an entry in this proceeding, establishing a procedure for the development of protocols for the measurement and verification (M&V) of energy efficiency and peak demand reduction measures. In Appendix A of the entry, the Commission identified five major issues where policy guidance was needed in order to proceed with the development of an Ohio Technical Reference Manual (TRM) and the determination of energy savings and demand reductions.
- (2) On July 24, 2009, the following entities filed comments on Appendix A: Industrial Energy Users-Ohio (IEU-Ohio); Toledo Edison Company, Ohio Edison Company, and The Cleveland Electric Illuminating Company (collectively, FirstEnergy); Ohio Power Company and Columbus Southern Power Company (collectively, AEP-Ohio); Ohio Manufacturers Association (OMA); Ohio Hospitals Association (OHA); Duke Energy of Ohio, Inc. (Duke); Dayton Power and Light Company (DP&L); Ohio Partners for Affordable Energy (OPAE); and the Office of the Ohio Consumers' Counsel, the Natural Resources Defense Council, Citizens Power, the Ohio Environmental Council, Environment Ohio, and Sierra Club (collectively, OCEA). Having taken these comments under advisement, the Commission issued an Opinion and Order on October 15, 2009 (October 15 Order), setting policies related to the development of the Ohio TRM and the determination of energy savings and demand reductions.

- (3) On November 13, 2009, FirstEnergy filed an application for rehearing, alleging that the October 15 Order was unreasonable and unlawful on the grounds that the Commission's prohibition against the development of incentives for projects with a payback of one year or less is contrary to Section 4928.66, Revised Code, inconsistent with other Commission findings, arbitrary and unsupported by any evidence, and unnecessarily costly.
- (4) Moreover, on November 16, 2009, IEU-Ohio filed an application for rehearing, asserting that the definitions of baseline efficiency and market penetration for determining energy savings and demand reductions, as set forth in the October 15 Order, are unlawful and unreasonable.
- (5) Further, on November 16, 2009, OCC filed an application for rehearing, alleging that the October 15 Order was unreasonable and unlawful because the Commission was unclear and erred when it stated that the baseline for measuring energy efficiency that involves situations other than the early retirement of existing equipment "should be set at the higher of federal or state minimum efficiency standards, or, if data is readily available for the measures at issue on the Department of Energy's Energy Information Administrator (DOE EIA) website, efficiency levels for current market practices for those measures." OCC contends that the Commission should modify its October 15 Order to clearly state that the baseline should be set at the highest standard provided by any of the three sources of information. On November 25, 2009, IEU-Ohio filed a memorandum contra OCC's application for rehearing.
- (6) Regarding Issue 1 of Appendix A. FirstEnergy contends that the Commission's prohibition on the development of incentives for projects with a payback period of one year or less is inconsistent with other decisions made in the same finding and order. FirstEnergy argues that the Commission's decision to initially evaluate the performance of electric utility programs on a gross savings basis, rather than a net savings basis, directly conflicts with

its decision to prohibit program designs that include incentives from projects with payback periods of one year or less. FirstEnergy contends that the assumption upon which such prohibition is founded, that the limitation would reduce free-ridership, is a net savings issue. As such, FirstEnergy argues, the prohibition is improper.

FirstEnergy further argues that the Commission's prohibition on the development of incentives for programs with a payback period of one year or less, which would likely be low cost programs, ultimately requires utilities to substitute more costly options for these programs. FirstEnergy argues that the Commission's action contravenes its duty to ensure reasonably priced electricity for Ohioans pursuant to Section 4928.02(A), Revised Code.

Moreover, FirstEnergy contends that the Commission's decision is contrary to Section 4928.66(A)(2)(c), Revised Code, which provides, in pertinent part:

Compliance with divisions (A)(1)(a) and (b) of this section shall be measured by including the effects of all demand-response programs for mercantile customers of the subject electric distribution utility and all such mercantile customer-sited energy efficiency and peak demand reduction programs[.]

FirstEnergy argues that nothing in Section 4928.66(A)(2)(c), Revised Code, limits the types of programs an electric utility can develop in order to comply with the energy efficiency and peak demand reduction benchmarks. Thus, it contends, it is unlawful for the Commission to impose a prohibition on the development of incentives for projects with a payback period of one year or less.

- (7) The Commission denies rehearing on this assignment of error and affirms its decision to prohibit electric utilities from developing incentive programs with a payback

period of one year or less. FirstEnergy has raised no arguments that were not already fully addressed in the October 15 Order. As we have indicated previously, although we urge the electric utilities to make the greatest use possible of low-cost programs for compliance purposes, the risk of free-ridership is too high in instances where the payback period for the project is one year or less. We do not believe incentives for such low-cost programs that provide economic benefits to the mercantile customer are necessary.

- (8) Regarding Issue 2 of Appendix A, IEU-Ohio contends that Section 4928.66(A)(2)(c), Revised Code, set forth above, requires the Commission to adopt the "as found" condition as the baseline for all mercantile customer-sited energy efficiency measures. IEU-Ohio argues that the limits the Commission has placed on the counting of customer-sited measures are contrary to the inclusive language of Section 4928.66(A)(2)(c), Revised Code, regarding measurement of the effects of all energy efficiency and peak demand reduction programs. IEU-Ohio additionally argues that the Commission's decision to use any method other than the "as found" condition for measuring the baseline for purposes of determining benchmark compliance increases the costs that will be passed on to customers at a precarious time for Ohio's economy.
- (9) While we recognize IEU-Ohio's concerns, the Commission believes that an "as found" standard is only appropriate in the event of the early retirement of functioning equipment. In such a case, savings are calculated from the "as found" level, which serves as the baseline, for the period of time from the replacement of the previous equipment, until the end of the previous equipment's useful life.
- (10) As explained in the October 15 Order, using the "as found" method of establishing the baseline for all energy efficiency calculations runs a high risk of overstating the energy savings effects of efficiency programs. Additionally, when equipment is replaced based upon the failure of existing

equipment or normal replacement schedules, or is installed due to new construction, using the "as found" method may allow electric utilities to claim savings for changes in energy use that are in no way related to efficiency programs. While IEU-Ohio claims that Section 4928.66(A)(2)(c) requires the Commission to count the effects of all mercantile demand response and energy efficiency programs, the changes in energy use related to the replacement of existing equipment with state or federally mandated equipment based upon the failure of equipment, normal replacement schedules, and new construction are not the effects of demand response or energy efficiency programs at all. They are simply replacements of existing equipment with new state or federally mandated standard equipment. Therefore, the use of the "as found" standard in those circumstances is inappropriate.

- (11) Additionally, OCC argues that the standard that is employed after the expiration of the useful life of functioning equipment that has been retired early, and for programs other than those targeting early retirement of functioning equipment should be set at the highest standard provided by federal regulations, state regulations, or market practices, as reflected on the Department of Energy's Energy Information Administrator website.
- (12) We reaffirm that after the expiration of the useful life of functioning equipment that has been retired early, and for programs other than those targeting the early retirement of functioning equipment, the baseline should be set at the highest of state or federal standards, or current market practices.¹
- (13) While reaffirming our original guidance, we believe that there is potential for misunderstanding of how the policy guidance in our original order is to be applied. It has

¹ Through the development of the TRM in this docket, we continue to provide guidance on the application of current market practices.

always been our intention that our policy be followed in a common sense manner. Under Ohio law, the energy savings which may be counted toward an electric utility's compliance must be the result of an energy efficiency program. In certain cases, energy savings may be derived from activities that can only be categorized as "business as usual" practices; these activities do not constitute energy efficiency programs. Section 4928.66(A)(1)(a) and (c), Revised Code, underscores the efficacy of programs that encourage the adoption of cost-effective efficiency measures beyond the simple replacement of worn-out equipment. The law encourages the adoption of additional cost-effective efficiency measures, avoids the need for more costly resources, and reduces costs for Ohio consumers.

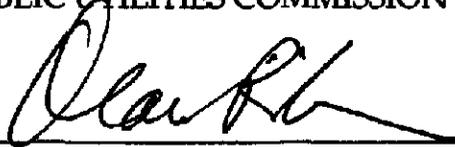
- (14) In practice, this should not be a difficult distinction to make. An applicant need only establish that among its options for meeting its needs, it selected the option that yielded the greater savings; it is, thus, incumbent upon an applicant to identify the equipment or practice it could have chosen and the equipment or practice that it did choose, at least in part, because of its higher energy efficiency. Once the applicant has made this showing, the assumption will be that its energy savings are a result of its energy efficiency program. It then falls upon any party opposing the application to affirmatively demonstrate that the assertions set forth in the application are incorrect.
- (15) In order to assist the Commission in expediting the approval process for such mercantile applications for special arrangements with electric utilities and exemptions from energy efficiency and peak demand reduction riders, the Commission has directed Staff to develop a standard application template. Accordingly, in the near future, the Commission will publish an application and filing instructions for such applications. Additionally, the Commission intends to streamline the approval of certain types of applications via an auto-approval process. Case No. 10-834-EL-EEC has been opened for this purpose.

It is, therefore,

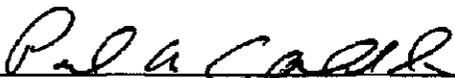
ORDERED, That the applications for rehearing filed by FirstEnergy, IEU-Ohio, and OCC be denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



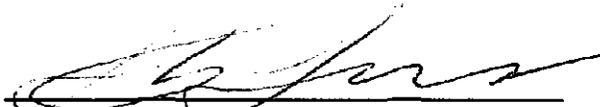
Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser



Cheryl L. Roberto

RLH:sc

Entered in the Journal

JUN 16 2010



Renee J. Jenkins
Secretary