

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MEMORANDUM CONTRA APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION AND STATEMENT OF THE CASE**

On October 15, 2009, the Public Utilities Commission of Ohio ("Commission") issued a Finding and Order ("Order") in this case dealing with the development and application of a technical reference manual for energy efficiency and peak demand reduction calculations. Applications for rehearing were filed by the FirstEnergy electric distribution utilities on November 13, 2009. Applications for rehearing were filed by the Office of the Ohio Consumers' Counsel ("OCC") and by the Industrial Energy Users - Ohio ("IEU-Ohio") on November 16, 2009. All three applications were granted for the purpose of providing the Commission additional time to consider them.<sup>1</sup> All three applications were denied by Commission Entry dated June 16, 2010.<sup>2</sup>

IEU-Ohio filed an additional application for rehearing on July 2, 2010 ("July Pleading"). The July Pleading states that IEU-Ohio seeks rehearing regarding the Commission's June 16, 2010 Entry. The arguments, however, are essentially the same as in IEU-Ohio's application for rehearing filed in November 2009.

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<sup>1</sup> Entry (December 11, 2009).

<sup>2</sup> Entry on Rehearing at 7 (June 16, 2010).

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## II. ARGUMENT

The arguments contained in IEU-Ohio's July Pleading raise matters that the Commission has previously addressed, and IEU-Ohio's repetitive arguments are not permitted by Ohio law. The July Pleading states that it is filed pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35.<sup>3</sup> Neither permits IEU-Ohio's July Pleading. R.C. 4903.10 and Ohio Adm. Code 4901-1-35 provide that applications for rehearing must be submitted within thirty days of the Commission order that is the subject of the applications.<sup>4</sup> However, IEU-Ohio's July Pleading contains two assignments of error and each was previously stated in applications for rehearing filed in November 2009.

First, IEU-Ohio argues that "[t]he Commission's June 16 Entry on Rehearing violates Section 4928.66, Revised Code, *again*."<sup>5</sup> IEU-Ohio thereby admits that it has repeated its earlier argument, one that it submitted in November 2009 in IEU-Ohio's previously filed application for rehearing.<sup>6</sup> IEU-Ohio's July Pleading states that it "incorporates by reference" its earlier arguments on the subject, including those in IEU-Ohio's November 2009 Application for Rehearing.<sup>7</sup> IEU-Ohio's July Pleading repeats its argument concerning R.C. 4928.66 and the Commission's Order dated October 15, 2009. IEU-Ohio's July Pleading is repetitive. Most importantly, IEU-Ohio's July

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<sup>3</sup> July Pleading at 1 (July 2, 2010).

<sup>4</sup> Extension beyond thirty days, not applicable to IEU-Ohio's July Pleading, is possible if the due date falls on a day when the Commission's offices are not open.

<sup>5</sup> July Pleading at 1 (July 2, 2010) (emphasis added). Also cited are IEU-Ohio's arguments in the Commission's rulemaking, Case No. 08-888-EL-ORD. *Id.* The arguments have already been heard.

<sup>6</sup> See, e.g., IEU-Ohio Application for Rehearing at 5-6.

<sup>7</sup> July Pleading at 12, citing (in part) IEU-Ohio Application for Rehearing (November 16, 2010).

Pleading is an untimely attack on a Commission order that is nine months old, in contravention of R.C. 4903.10.

Second, IEU-Ohio argues that the Commission erred regarding its treatment of certain incentives. IEU-Ohio states that the argument, timely filed by the FirstEnergy electric distribution utilities on November 13, 2009 regarding the October 2009 Order, is one that the “Commission must revisit.”<sup>8</sup> This second assignment of error is also an untimely attack on the Commission’s October 2009 Order, an argument that the Commission has already considered and rejected.

IEU-Ohio’s untimely and repetitive attacks on the Commission’s Order should be ignored. In the alternative, they should be rejected.

### **III. CONCLUSION**

IEU-Ohio’s July Pleading re-argues matters already decided in the Commission’s Order and rejected in the June 2010 Entry on Rehearing. The July Pleading is an untimely attack on the Commission’s Order issued in October 2010. IEU-Ohio’s July Pleading should be ignored.

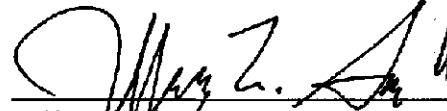
In the event that the July Pleading is considered an application for rehearing, its repeated argument on matters that have been rejected by the Commission twice in the instant proceeding should again be rejected. Such an application for rehearing, if even entertained by the Commission, should again be denied.

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<sup>8</sup> July Pleading at 18.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
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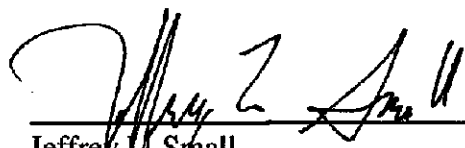
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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 12<sup>th</sup> day of July 2010.

  
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