

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Mercantile Customer)	
Pilot Program for Integration of Customer)	Case No. 10-834-EL-POR
Energy Efficiency or Peak-Demand)	
Reduction Programs.)	

REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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I. INTRODUCTION

On March 6, 2013, the Public Utilities Commission of Ohio ("Commission") issued an Entry directing interested parties to file initial and reply comments on the Commission Staff's ("Staff") January 15, 2013 Review and Recommendation of the Commission's Mercantile Customer Pilot Program ("Pilot Program"). Initial comments were filed by Industrial Energy Users-Ohio ("IEU-Ohio"), Ohio Edison Company, The Toledo Edison Company and The Cleveland Electric Illuminating Company (collectively, "FirstEnergy"), Ohio Power Company ("AEP-Ohio"), OMA Energy Group ("OMA-EG"), Environmental Law & Policy Center, The Ohio Environmental Council, The Natural Resources Defense Council and The Sierra Club (collectively, "Environmental Advocates"), and the Ohio Hospital Association ("OHA").

The parties' comments filed last fall in this proceeding, as well as the initial comments filed on March 27, 2013, reflect unanimous support for the Commission ending the temporary nature of the Pilot Program and establishing rules on a permanent basis. In Staff's January 15, 2013 Review and Recommendation, Staff also broadly

supported establishing the policies of the mercantile customer Pilot Program on a permanent basis.

The March 27, 2013 initial comments generally support Staff's Review and Recommendation, with some minor suggested changes. No party opposes the automatic approval process. No party opposes payments to mercantile customers who have to file annual reports to verify energy efficiency and peak demand reduction ("EE/PDR") savings that resulted from behavioral changes still exist. With the exception of the Environmental Advocates, every intervenor (customer representatives and electric distribution utilities or "EDUs") and Staff support continuation of the as-found methodology to measure EE/PDR savings and to calculate the level of incentives available to a mercantile customer who commits its EE/PDR savings to its EDU. With the exception of the Environmental Advocates, every intervenor and Staff support continuation of the benchmark comparison methodology for purposes of calculating the duration of a mercantile customer's exemption from its EDU's EE/PDR rider. Accordingly, there is general consensus that the Pilot Program is working well, and there is general support for making the policies in the Pilot Program permanent.

There is also some general support for several modifications to Staff's Review and Recommendation. First, FirstEnergy, AEP-Ohio, and OHA oppose moving the deadline for filing historical mercantile customer EE/PDR projects to December of the third year following the project's in-service date.¹ IEU-Ohio and OMA-EG also oppose ongoing annual reporting requirements for mercantile customers that elect an EE/PDR

¹ Because Ohio law indicates that the Commission must count the effects of all mercantile customer EE/PDR projects, there should not be limitation on the timeframe to file mercantile customer applications. See Comments of IEU-Ohio at 9 (Mar. 27, 2013). However, if the Commission rejects IEU-Ohio's argument, IEU-Ohio would support FirstEnergy's, AEP-Ohio's, and OHA's position on the filing deadline.

rider exemption² and, in the alternative, IEU-Ohio recommends that mercantile customers receive compensation for filing annual reports associated with all EE/PDR verification reports.³ IEU-Ohio also opposes artificially reducing EE/PDR savings to levels below what a mercantile customer actually achieves and, therefore, opposes Staff's recommendation to use a hypothetical EE/PDR baseline for counting the EE/PDR improvements for the replacement of failed equipment at the end of its useful life.⁴ Because these modifications to Staff's Review and Recommendation are lawful and reasonable, the Commission should adopt them.

The only party that does not generally support the Pilot Program in its current form is the Environmental Advocates. The Environmental Advocates continue to oppose using the as-found methodology to measure the EE/PDR savings from the replacement of failed equipment and oppose using the benchmark comparison methodology for measuring the length of a mercantile customer's rider exemption.⁵ The Environmental Advocates claim that the use of the as-found methodology is inconsistent with Ohio law, and that only savings in excess of a baseline reflecting current code or industry standard should be counted when equipment is replaced.⁶ They also oppose the use of the benchmark comparison method because it allows mercantile customers to identify and commit low-cost energy efficiency improvements.

² OMA-EG Comments at 1-2 (Mar. 27, 2013); IEU-Ohio Comments at 10-15 (Mar. 27, 2013).

³ IEU-Ohio Comments at 14 (Mar. 27, 2013).

⁴ IEU-Ohio Comments at 3-8 (Mar. 27, 2013).

⁵ Environmental Advocates Comments at 3-6 (Mar. 27, 2013).

⁶ *Id.*

As indicated in their initial comments, the Environmental Advocates are merely reiterating the comments they filed in this proceeding last fall.⁷ Accordingly, IEU-Ohio incorporates by reference its reply comments to the Environmental Advocates' initial comments last fall.⁸ As IEU-Ohio and others have consistently maintained through the four years of this seemingly endless debate, Ohio law requires that **all** EE/PDR savings be counted. Because the as-found methodology quantifies **all** of a mercantile customer's savings, it is therefore mandated by law.⁹ Additionally, IEU-Ohio and others have demonstrated the reasonableness and practicality of using the benchmark comparison.

II. AS-FOUND METHODOLOGY

Contrary to the unsupported claims of the Environmental Advocates, the as-found methodology is expressly required by Ohio law for purposes of quantifying a mercantile customer's EE/PDR savings.¹⁰ The Environmental Advocates, however, urge the Commission to reject using the as-found methodology in the case of failed equipment and replace the measurement baseline with a hypothetical baseline.¹¹ The Commission has correctly rejected the argument that the use of the as-found method

⁷ Environmental Advocates Comments at 2 (Mar. 27, 2013).

⁸ Reply Comments of IEU-Ohio (Dec. 7, 2012).

⁹ Section 4928.66(A)(2)(c), Revised Code, provides:

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, **all** waste energy recovery systems and **all** combined heat and power systems, and **all** such mercantile customer-sited energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs, adjusted upward by the appropriate loss factors. (emphasis added).

¹⁰ Section 4928.66(A)(2)(c), Revised Code.

¹¹ Environmental Advocates Comments at 2-5 (March 27, 2013).

was unlawful or unreasonable on two previous occasions.¹² Given the Commission's repeated findings that the use of the as-found method is both lawful and reasonable and the fact that the Environmental Advocates have raised no new arguments that the Commission has not previously considered and rejected, the Commission has no reason to adopt the Environmental Advocates' recommendation to use a hypothetical current code or industry standard as the baseline to measure mercantile customer savings when failed equipment is replaced.

Further, the Environmental Advocates' recommendation would inject additional administrative complexity and uncertainty into the compliance process not supported by the law or consistent with Ohio's common sense initiatives. As discussed in IEU-Ohio's initial comments, the hypothetical standard proposed by the Environmental Advocates is based on references to "standard-less" standards.¹³ As result, the hypothetical baseline cannot serve to guide the practical business decisions that mercantile customers must make. Thus, the as-found methodology is not only mandated by law, but is practically the only workable solution.¹⁴

¹² Second Entry on Rehearing (May 25, 2011); Sixth Entry on Rehearing (Oct. 31, 2012). These same issues have been repeatedly raised to the Commission in other proceedings as well.

¹³ IEU-Ohio Comments at 6-8 (Mar. 27, 2013).

¹⁴ OMA-EG urged the Commission to allow mercantile customers to elect to use a hypothetical benchmark standard instead of the as-found methodology, claiming the hypothetical standard would be more streamlined. OMA-EG Comments at 2 (Mar. 27, 2013). While OMA-EG claims that using the as-found methodology is not applicable in some circumstances and difficult to administer in others, OMA-EG does not provide any further explanation or cite any examples of its claimed difficulty. Moreover, as demonstrated in IEU-Ohio's March 27, 2013 comments, a hypothetical industry standard baseline has not been developed for the vast majority of mercantile EE/PDR projects and the references in the draft Technical Resource Manual fail to provide any meaningful additional information. IEU-Ohio Comments at 6-8 (Mar. 27, 2013). Thus, for the vast majority of mercantile customer projects, there is not a "streamlined" hypothetical standard to choose from.

III. BENCHMARK COMPARISON METHODOLOGY

The Environmental Advocates are also the only party filing initial comments that oppose the Staff's recommendation to continue the use of the benchmark comparison methodology for determining the length of a mercantile customer's rider exemption. The Environmental Advocates oppose the use of the benchmark comparison methodology based upon a claim that it will allow some mercantile customers to receive multi-year EE/PDR rider exemptions for completing low-cost EE/PDR projects.¹⁵ In essence, the Environmental Advocates oppose mercantile customers that implement the cost-effective projects from being eligible to receive a rider exemption for the reason that higher cost choices could be made. The Environmental Advocates' recommendation is inconsistent with Ohio law which requires the Commission to provide rider exemptions when such action will reasonably encourage a mercantile customer to commit their capabilities towards an EDU's portfolio obligation.¹⁶ Requiring the mercantile customer to use a more cost-intensive solution to generate similar EE/PDR savings provides a less effective incentive to undertake the energy efficiency improvements. The Environmental Advocates' proposal defies both good economics and common sense.¹⁷

The benchmark comparison methodology, on the other hand, provides a straightforward and efficient methodology for a mercantile customer to screen the results of its self-directed projects to determine if they will be eligible to seek a rider exemption, and if so, the length of the exemption. For these reasons, the Commission

¹⁵ Environmental Advocates Comments at 6 (Mar. 27, 2013).

¹⁶ Section 4928.66(A)(2)(c), Revised Code.

¹⁷ See Reply Comments of IEU-Ohio at 12-16 (Dec. 7, 2012).

should reject the Environmental Advocates' argument to eliminate the use of the benchmark comparison method.

IV. CONCLUSION

As IEU-Ohio indicated in its initial comments filed on March 27, 2013, the Commission has several open dockets regarding its review of its EE/PDR rules and a review of the mercantile customer EE/PDR application process. IEU-Ohio again urges the Commission to use this proceeding to bring some finality and certainty to the mercantile customer application process and urges the Commission to adopt the recommendations reflected in IEU-Ohio's March 27, 2013 initial comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Comments of Industrial Energy Users-Ohio* was served upon the parties of record this 10th day of April 2013 via electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

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