**Before**

**The Public Utilities Commission Of Ohio**

In the Matter of the Annual Verification )

of the Energy Efficiency and Peak )

Demand Reductions Achieved by the ) Case No. 12-665-EL-UNC

Electric Distribution Utilities Pursuant )

to Section 4928.66, Revised Code )

**REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO**

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Joseph E. Oliker

Matthew R. Pritchard

McNees Wallace & Nurick

Fifth Third Center

21 East State Street, Suite 1700

Columbus, OH 43215

Telephone: 614-469-8000

Telecopier: 614-469-4653

sam@mwncmh.com

fdarr@mwncmh.com

joliker@mwncmh.com

mpritchard@mwncmh.com

**November 19, 2012**  **On Behalf of Industrial Energy Users-Ohio**

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On January 27, 2010, the Public Utilities Commission of Ohio (“Commission”) directed the Commission Staff (“Staff”) to issue a request for proposal to obtain a qualified engineering consultant to serve as the statewide Independent Program Evaluator (“Evaluator”).[[1]](#footnote-1) By subsequent entries, the Commission approved Evergreen Economics (“Evergreen”) to conduct the evaluation.[[2]](#footnote-2) On August 29, 2012, the Staff filed Evergreen’s “Report of the Ohio Independent Evaluator” (“Report”) for 2009 and 2010. On October 3, 2012, the Commission established a comment period and invited comments and reply comments.[[3]](#footnote-3)

On November 2, 2012, Industrial Energy Users-Ohio (“IEU-Ohio”) filed initial comments addressing two problems with the Report. As demonstrated in IEU-Ohio’s initial comments, Evergreen’s recommendations highlight the continuing misapplication of the requirements contained in Sections 4928.64 and 4928.66, Revised Code. First, Evergreen urges that the baseline for one mercantile customer-sited project be changed, reducing the energy savings claimed by AEP-Ohio by 74% for that mercantile customer.[[4]](#footnote-4) Second, it recommends that the Evaluator’s role be expanded to “involve helping utilities and PUCO staff review the application savings calculations as they are being submitted for approval for those projects where there may be disagreement on determining the appropriate baseline.”[[5]](#footnote-5) As the Commission is well aware, it has the authority and is required to measure compliance with the State’s energy efficiency requirements by including the effects of all mercantile customer-sited capabilities.[[6]](#footnote-6) Because the two recommendations addressing mercantile customer-sited capabilities are based on an unlawful and unreasonable application of Section 4928.66, Revised Code, the Commission should reject them.

Other parties agree. AEP-Ohio and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“FirstEnergy”) note in their comments that the recommendations concerning the use of alternatives to the “as-found” method for calculating energy efficiency improvements by mercantile customers is not supported by the applicable law or the Commission’s approval of the as-found method in the Mercantile Pilot Program.[[7]](#footnote-7) Similarly, Ohio Partners for Affordable Energy (“OPAE”) supports the use of the as-found method and offers the additional insight that use of the as-found method for mercantile programs is consistent with the method of calculating savings in residential programs when doing shell measures.[[8]](#footnote-8)

In comments consistent with concerns raised by IEU-Ohio, several of the commenters also raised concerns with the Independent Evaluator’s use of the Technical Reference Manual (“TRM”).[[9]](#footnote-9) The TRM remains a draft, and many of the same parties filing comments in this proceeding previously identified material problems with the TRM.[[10]](#footnote-10) The Commission has granted rehearing to address whether the TRM’s use of measurements other than the as-found method for calculating energy efficiency improvements is lawful and reasonable.[[11]](#footnote-11)

The Report highlights the consequences of the use of hypothetical measures of energy efficiency and the TRM. The Report’s approach has reopened a debate over the measurement of efficiency improvements and raised the possibility of retroactive application of standards in violation of Commission policy to the contrary.[[12]](#footnote-12) The debate over hypothetical measures should have ended long ago, and the Commission has already determined that compliance is to be determined by the best available information available at the time.[[13]](#footnote-13)

The more serious consequence of the Report’s recommendations, however, is the increased cost to customers. The compliance costs of the energy efficiency programs are borne by the retail distribution customers of the electric distribution utilities (EDU). The Commission should be making every effort to minimize those compliance costs by recognizing all energy efficiency improvements made by mercantile customers. The failure to do so will increase the EDUs’ cost of compliance unlawfully and unreasonably.

Respectfully submitted,

/s/ Frank P. Darr

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Joseph E. Oliker

Matthew R. Pritchard

McNees Wallace & Nurick LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

sam@mwncmh.com

fdarr@mwncmh.com

joliker@mwncmh.com

mpritchard@mwncmh.com

**Attorneys for** **Industrial Energy Users-Ohio**

**Certificate Of Service**

I hereby certify that a copy of the foregoing *Reply Comments* *of* *Industrial Energy Users-Ohio* was served upon the following parties of record this 19th day of November 2012, via hand-delivery, electronic transmission or first class U.S. mail, postage prepaid.

/s/ Frank P. Darr

Frank P. Darr

David A. Kutik

Jones Day

North Point, 901 Lakeside Avenue

Cleveland, Ohio 44114

dakutik@jonesday.com

**On Behalf of The East Ohio Gas**

**Company d/b/a Dominion East Ohio**

Eric Gallon

Porter Wright Morris & Arthur LLP

Huntington Center

41 South High Street

Columbus, OH 43215-6194

egallon@porterwright.com

Stephen Seiple

Columbia Gas of Ohio, Inc.

200 Civic Center Drive

P.O. Box 117

Columbus, Ohio 43215

sseiple@nisource.com

**On Behalf Columbia Gas of Ohio, Inc.**

Steven Nourse

Matthew J. Satterwhite

Anne M. Vogel

American Electric Power Service Corp.

1 Riverside Plaza – 29th Floor

Columbus, Ohio 43215

stnourse@aep.com

mjsatterwhite@aep.com

**On Behalf of Columbus Southern Power and Ohio Power Company**

Mark A. Whitt

Whitt Sturtevant LLP

PNC Plaza, 20th Floor

155 East Broad Street

Columbus, Ohio 43215

whit@whitt-sturtevant.com

**On Behalf of Vectren Energy Delivery of Ohio, Inc.**

Amy Spiller

Elizabeth H. Watts

Duke Energy Business Services, Inc.

139 Fourth Street

25 Atrium II

Cincinnati, OH 45202

Amy.Spiller@duke-energy.com

elizabeth.watts@duke-energy.com

**On Behalf of Duke Energy Ohio, Inc.**

Candace M. Jones

Janet K. Stoneking

Ohio Department of Development

77 S. High Street

P.O. Box 1001

Columbus, Ohio 43216

candace.jones@development.ohio.gov

janet.stoneking@development.ohio.gov

**On Behalf of the Ohio Department of Development**

Thomas J. O’Brien

Bricker & Eckler LLP

100 South Third Street

Columbus, Ohio 43215

tobrien@bricker.com

**On Behalf of the Ohio Manufacturers Association and Ohio Hospital Association**

Randall V. Griffin

Judi L. Sobecki

The Dayton Power and Light Company

1065 Woodman Drive

Dayton, OH 45432

Judi.sobecki@dplinc.com

Randall.griffin@dplinc.com

**On Behalf of The Dayton Power and Light Company**

Nolan Moser

Trent A. Dougherty

Director of Legal Affairs

The Ohio Environmental Council

1207 Grandview Avenue, Suite 201

Columbus, Ohio 43212-3449

Nolan@theoec.org

trent@theoec.org

**On Behalf of the Ohio Environmental Council**

Bruce J. Weston

Ohio Consumers’ Counsel

Joseph P. Serio

Terry L. Etter

Assistant Consumers’ Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

serio@occ.state.oh.us

etter@occ.state.oh.us

**On Behalf of The Office of the Ohio Consumers’ Counsel**

David C. Rinebolt

Ohio Partners for Affordable Energy

P.O. Box 1793

Findlay, OH 45840-1793

drinebolt@ohiopartners.org

**On Behalf of Ohio Partners for Affordable Energy**

Mary W. Christensen

Christensen Christensen & Owens LLP

100 East Campus View Blvd., Suite 360

Columbus, OH 43235

**On Behalf of People Working Cooperatively, Inc.**

Kathy J. Kolich

Carrie M. Dunn

FirstEnergy Service Company

76 S. Main Street

Akron, Ohio 44308

kjkolich@firstenergycorp.com

cdunn@firstenergycorp.com

**On Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company**

Christopher J. Allwein

Williams, Allwein and Moser, LLC

1371 Grandview Ave., Suite 212

Columbus, OH 43212

callwein@wamenergylaw.com

**On Behalf of the Natural Resources Defense Council and the Sierra Club**

Theodore Robinson

Citizen Power

2121 Murray Avenue

Pittsburgh, PA 15217

robinson@citizenpower.com

**On Behalf of Citizen Power**

Amy Goldberg

Environment Ohio

203 East Broad Street, Suite 3

Columbus, OH 43215

**On Behalf of Environment Ohio**

Robert Kelter

Environmental Law & Policy Center

35 East Wacker Drive, Suite 1600

Chicago, IL 60601

rkelter@elpc.org

**On Behalf of Environmental Law & Policy Center (“ELPC”)**

Thomas McNamee

Assistant Attorneys General

Public Utilities Section

180 East Broad Street, 6th Floor

Columbus, OH 43215

Thomas.mcnamee@puc.state.oh.us

**On Behalf of the Public Utilities Commission of Ohio**

Michael L. Kurtz

Jody M. Kyler

Boehm, Kurtz & Lowry

36 East Seventh Street, Suite 1510

Cincinnati, OH 45202

mkurtz@BKLlawfirm.com

jkyler@BKLlawfirm.com

**On Behalf of The Ohio Energy Group**

Jeff Jones

Sarah Parrot

Attorney Examiners

Public Utilities Commission of Ohio

180 East Broad Street, 12th Floor

Columbus, OH 43215

jeff.jones@puc.state.oh.us

sarah.parrot@puc.state.oh.us

**Attorney Examiners**

Steve Grover

Ted Helvoigt

Evergreen Economics, Inc.

2525 NE Mason Street

Portland, OR 97211

grover@evergreenecon.com

1. *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Entry at 3 (Jan. 27, 2010) (“*TRM Case*”). [↑](#footnote-ref-1)
2. *Entry* at 2(Oct. 3, 2012). [↑](#footnote-ref-2)
3. *Id*. [↑](#footnote-ref-3)
4. Report at 9 and 24. [↑](#footnote-ref-4)
5. *Id*. at 9. [↑](#footnote-ref-5)
6. In addition to its November 2, 2012 Comments in this proceeding, IEU-Ohio has repeatedly filed pleadings demonstrating that the Commission must follow the plainly written language of Amended Substitute Senate Bill 221 (“SB 221”) and count all of the energy efficiency and peak demand reduction measures of Ohio’s mercantile customers towards the EDUs’ compliance requirements contained in Section 4928.66, Revised Code. *See, e.g.,* *In the Matter of the Application for Approval of a Pilot Program Regarding Mercantile Applications for Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders*, Case No. 10-834-EL-POR, Industrial Energy Users-Ohio’s Memorandum Contra the Application for Rehearing of the Ohio Environmental Council (Oct. 15, 2012) (“*Pilot Program*”); *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment 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*, Case No. 08-888-EL-ORD, Industrial Energy Users-Ohio’s Application for Rehearing and Memorandum in Support at 14-16 (May 15, 2009) (“*Green Rules Proceeding*”). The Commission has granted rehearing for further consideration. *Green Rules Proceeding*, Entry on Rehearing at 2 (Dec. 9, 2009). Similarly, *see, also*, *TRM Case*, Entry on Rehearing at 3 (July 29, 2010). [↑](#footnote-ref-6)
7. Comments of Ohio Power Company to the Public Utilities Commission of Ohio’s October 3, 2012 Entry at 11-14 (Nov. 2, 2012); Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company’s Comments to the August 29, 2012 Report of the Ohio Independent Evaluator on the 2009 and 2010 Ohio Efficiency Programs at 5 (Nov. 2, 2012) (“FE Comments”). Ohio Energy Group (“OEG”) provides a demonstration of the evidentiary difficulties caused by the recommendation offered by the Report. Comments of the Ohio Energy Group at 1 (Nov. 2, 2012). As OEG concludes, “Confusion regarding which savings standard will be applied to given energy efficiency project has discouraged OEG members from undertaking such projects in the past.” *Id*. [↑](#footnote-ref-7)
8. Comments of Ohio Partners for Affordable Energy at 3 (Nov. 2, 2012). [↑](#footnote-ref-8)
9. *See, e.g.,* FE Comments at 3 [↑](#footnote-ref-9)
10. *TRM Case*, Joint Objections and Comments to the August 6, 2010 Draft Technical Reference Manual from Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Columbus Southern Power Company, Ohio Power Company, Duke Energy Ohio, Inc., The Dayton Power and Light Company and Industrial Energy Users-Ohio (Nov. 3, 2010). [↑](#footnote-ref-10)
11. *Id.*, Entry on Rehearing at 3 (July 29, 2010). See *id*., Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 12-17 (July 2, 2010). [↑](#footnote-ref-11)
12. FE Comments at 2-3. [↑](#footnote-ref-12)
13. *TRM Case*, Finding and Order at 11 (Oct. 15, 2009). [↑](#footnote-ref-13)