**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**

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**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,

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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 following parties of record this 19th day of November 2012, via hand-delivery, electronic transmission or first class U.S. mail, postage prepaid.

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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)