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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Adoption of Rules for)
Alternative and Renewable Energy Technology,)
Resources, and Climate Regulations, and)
Review of Chapters 4901:5-1, 4901:5-3, 4901:5-)
5, and 4901:5-7 of the Ohio Administrative)
Code, Pursuant to Chapter 4928.66, Revised)
Code, as Amended by Amended Substitute)
Senate Bill No. 221.)

Case No. 08-888-EL-ORD

**APPLICATION FOR REHEARING
OF
THE OHIO HOSPITAL ASSOCIATION
AND
THE OHIO MANUFACTURERS' ASSOCIATION**

Pursuant to Ohio Revised Code ("R.C.") Section 4903.10, the Ohio Hospital Association ("OHA") and the Ohio Manufacturers' Association ("OMA") respectfully and jointly submit this Application for Rehearing of the April 15, 2009, Opinion and Order ("Order") of the Public Utilities Commission of Ohio ("Commission") in the above-captioned proceeding. The Commission's Order is unreasonable and unlawful in the following respects: (1) The Commission's adoption of Rules 4901:1-39-08(B)(4) ("Rule 39-08(B)(4)") and 4901:1-39-05(D) ("Rule 39-05(D)") overstep the Commission's authority under R.C. 4928.66; and (2) the Commission's suggestion in the Order that it may adjust the baseline by which it would measure an electric distribution utility's ("EDU") compliance with the energy efficiency and peak demand reduction benchmarks of R.C. 4928.66 to reflect economic downturns is also beyond the Commission's authority provided by that section as well as unsound public policy.

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OHA and OMA request that the Commission reconsider and rescind its determinations concerning these portions of its rules. The reasons supporting this Application for Rehearing are given below in the attached Memorandum in Support.

MEMORANDUM IN SUPPORT

I. The Commission's adoption of Rule 39-08(B)(4) is unreasonable and unlawful and should be revised to conform with the requirements of R.C. 4928.66.

The Commission's rule unreasonably limits the scope of mercantile customer energy efficiency and demand reduction initiatives that may be integrated into an EDU's demand reduction, demand response, and energy efficiency programs promulgated pursuant to R.C. 4928.66.

As adopted by the Commission Rule 39-08(B)(4) provides that

[a] mercantile customer's energy savings and peak-demand reductions shall be calculated by subtracting the energy [use] and peak demand associated with the customer's projects from the estimated energy use and peak demand that would have occurred if the customer had used industry standard new equipment or practices to perform the same functions in the industry in which the mercantile customer operates. Kilowatt-hours of energy and kilowatts of capacity provided by electric generation sited on a mercantile customer's side of an electric utility's meter shall not be considered energy savings or reductions in peak demand.

The Commission's rule improperly inserts requirements into an EDU's energy efficiency and demand reduction programs that do not exist in the law. Nowhere in R.C. 4928.66 does it state that only efficiencies and demand reductions *over and above* industry standard new equipment or practices. The clear intent of R.C. 4928.66 is to foster efficiency and demand reduction for the actual electric load of the EDU, rather than in some abstract, absolute sense, as the Commission's rule attempts to accomplish. As adopted, Rule 39-08(B)(4) restricts the ability of EDUs to capture

very real efficiency and demand reduction opportunities. Instead, the rule should encourage EDUs to seek out these very opportunities.

The problem with Rule 39-08(B)(4) stems from the fact that each EDU's current electric demand is produced by an embedded set of load centers (as that term is used in R.C. 4933.81), with various vintages and levels of efficiency relative to the current "state of the art" technologies and standards. The rule as adopted recognizes efficiency gains from customer projects only to the extent that such projects produce gains that *exceed* the efficiency of the current industry standard for new equipment or practices. The rule effectively assumes that an EDU's embedded load is already based upon current industry standards. In other words, if a mercantile customer makes an investment to bring existing equipment *up to* current standards, such a project will not be recognized in the utility efficiency or demand reduction program.

Beyond the fact that this impediment is not found in R.C. 4928.66, it is also a glaring example of unwise and counterproductive public policy. It is bad policy because it excludes the most readily available and affordable energy efficiency and demand reduction projects, namely the replacement of older, less efficient equipment with "up to date" equipment. Because the rule requires improvements above and beyond the merely "up to date," it discards the majority of efficiency and demand reduction options available to the EDUs. This will certainly lead to a more expensive program for ratepayers, and will likely reduce the total efficiency gains and demand reductions that the EDUs' programs will produce – contrary to the intent of the General Assembly.

The following example illustrates the problem. A hospital or a manufacturer has a bank of older motors for HVAC or some process application. Assume that if those motors were installed new today, there would be efficiency gains of 400 kW. The capital cost of this project may be such that it is close to, but does not meet, the payback criteria necessary for the hospital or manufacturer to justify that capital expenditure. A modest subsidy through a special arrangement adopted as part

of the EDU's efficiency/demand reduction program may tip the scales in favor of the capital improvement. But because the Commission's rule effectively forecloses consideration of this project unless it goes above and beyond the current "state of the art" for that application, this available 400 kV remains untapped without any consideration of its cost per kV. Yet this example is likely the most readily available and least-cost sources of energy efficiency, the sort of project that ratepayers should be seeking. The Commission's rule will instead inflate the cost of energy efficiency by preventing electric distribution utilities from addressing the problem presented by the "front-loaded" nature of capital project expenditures.

The second flaw in Rule 39-08(B)(4) is its exclusion of demand reductions produced by customer-sited distributed generation. As discussed above, R.C. 4928.66 is directed squarely at the load characteristics of the EDU – its aggregate level of efficiency and its peak demand characteristics. To the extent that distributed generation contributes to the EDU's level of efficiency and peak demand, that contribution should qualify to be counted in the EDU's efficiency and demand reduction program. Nothing in the language of R.C. 4928.66 would suggest that any customer-sited projects that contribute to the accomplishment of the benchmarks should be overlooked, including distributed generation. Indeed, R.C. 4928.02 is replete with policy directives which would suggest that the exclusion of customer sited distributed generation from the scope of this rule is contrary to the intentions of the General Assembly, specifically, R.C. 4928.02(C) and (K). The General Assembly intended distributed generation to play a significant role in achieving the overall policy of SB 221, and if distributed generation would also contribute to the specific directives of R.C. 4928.66, the Commission's baseless exclusion of distributed generation from consideration under this rule runs afoul of these clear policy directives.

II. Rule 39-05(D) is unreasonable and unlawful because it is unduly restrictive and should be revised to conform with the requirements of R.C. 4928.66.

The legal and policy flaws that attend Rule 39-08(B)(4) are fully applicable to the Commission's adopted Rule 39-05(D). Again, this rule completely ignores the fact that a huge portion of each EDU's embedded load centers is comprised of facilities that are not up to current performance standards. The Commission's rule eliminates from consideration the benefits of capturing these efficiencies and their attendant cost savings, along with the environmental benefits that they offer. The Commission cannot ignore the fact that building codes and manufacturing standards do not typically apply to installed applications. The Commission's rule assumes that we are starting from a "state of the art" embedded electric load, and making improvements from there. The intention of R.C. 4928.66 is to provide incentives to the EDU and its customers to find and rectify inefficiencies wherever they may be found, not just to provide incentives for incremental gains over and above current standards.

The flaw in Rule 39-05(D) is illustrated by the following, not-so-far-fetched example. If Congress or the Ohio General Assembly were to pass a new building code that required the absolute latest and best energy efficiency technologies, such that few, if any, additional efficiencies beyond the new code standards were available, it would be virtually impossible for any EDU to comply with the benchmarks of R.C. 4928.66 because no efficiency gains beyond that required by law or current standards would be available. Meanwhile, there would be vast consumption by electric loads that do not meet this standard. This is the logical result of the Commission's rule. The Commission must correct this flaw in order to avoid this absurd outcome.

III. The Commission should refrain from any attempt to revise an EDU's benchmark due to economic contractions

Finally, the OHA and OMA take issue with logic found in the Commission's April 15, 2009 Opinion and Order, at page 18, concerning the calculation of an EDU's compliance baseline,

wherein the Commission conceptually equates an adjustment to that baseline to account for economic growth with an adjustment to the baseline to account for economic shrinkage, as the state is currently experiencing. These two considerations are not equivalent, either conceptually or for the purposes of implementing R.C. 4928.66.

As an initial observation, R.C. 4928.66 specifically contemplates an adjustment to the baseline to account for economic expansion – certainly it would be counterproductive to penalize a distribution utility for economic growth within its service territory. The opposite consideration – a perceived “windfall” to the utility for demand destruction within its service territory – is actually much different and the considerations that go into an adjustment for economic expansion do not apply to economic contractions. First, demand destruction is in fact the purest form of peak-demand reduction – “negawatts,” to put it differently. There is no logical reason to penalize EDU and its customers by artificially raising the bar on compliance with R.C. 4928.66 by ignoring the rational behavior of consumers to cease consumption for whatever reason – it still achieves the goals of R.C. 4928.66.

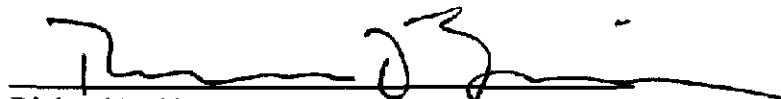
Second, just as the EDU will have a difficult time demonstrating the need for an adjustment to the baseline to account for economic growth, other parties will have an even more difficult time showing that the baseline should be adjusted to account for an economic slowdown. This is because the concepts of expansion and contraction are not equal. There are pre-existing incentives for demand reduction and efficiency, legal and economic, which do not exist on the other side of the equation. How the Commission would differentiate demand destruction due to an economic downturn from demand destruction due to the basic incentives to consume less electricity would be fraught with complexities that would outweigh any conceivable benefit to the state from undertaking such an exercise.

Although the Commission's stated intention to make such adjustments for economic contractions does not appear in its rules, the OMA and OHA urge the Commission to abandon any notions of such an exercise.

IV. CONCLUSION

WHEREFORE, the Ohio Hospital Association and the Ohio Manufacturers' Association respectfully urge the Commission to grant its application for rehearing.

Respectfully submitted on behalf of
OHIO HOSPITAL ASSOCIATION

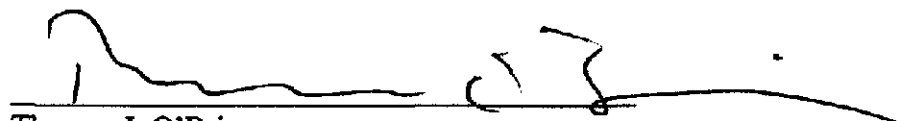


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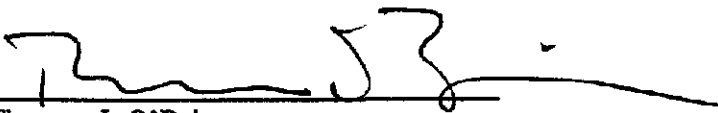
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CERTIFICATE OF SERVICE

I hereby certify that the OHIO HOSPITAL ASSOCIATION'S APPLICATION FOR REHEARING was served by electronic mail on the parties of record listed below this 15th day of May 2009.


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