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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of Protocols for the)
Measurement and Verification of Energy)
Efficiency and Peak Demand Reduction)
Measures.)

Case No. 09-512-~~SE~~^{PUCAC}UNC

**INDUSTRIAL ENERGY USERS-OHIO'S
COMMENTS ON APPENDIX B**

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures.)
Case No. 09-512-GE-UNC)
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**INDUSTRIAL ENERGY USERS-OHIO'S
COMMENTS ON APPENDIX B**

On May 1, 2009, Governor Strickland signed into law Amended Substitute Senate Bill 221 ("SB 221"), which revised Ohio law related to the regulation of electric service. Among other things, SB 221 included energy efficiency and peak demand reduction ("EE/PDR") requirements that require electric distribution utilities ("EDUs") to achieve annual energy efficiencies in excess of 22% by 2025 as well as specific peak demand reductions.

The Public Utilities Commission of Ohio ("Commission") released proposed rules to implement these statutory requirements in August 2008 but did not actually adopt rules until April 2009, eight months later. On June 17, 2009, the Commission issued its Entry on Rehearing and directed the rules to be filed at JCARR. Of note, the EDUs must meet benchmarks by the end of 2009 even though the rules will not be effective until late summer or early fall. This timeframe assumes the rules clear JCARR without delay, which seems unlikely.

In the Entry on Rehearing that adopted the rules described above, the Commission indicated that it would initiate a statewide collaborative process to develop measurement and verification guidelines for both standard and custom programs and

ultimately create a technical reference manual ("TRM") of deemed savings for standard, off-the-shelf measures and the process of auditing customer measures and programs to ensure that there is consistency among EDUs as to deemed savings. The Commission issued an Entry in this docket on June 24, 2009 stating:

The Commission believes that it is appropriate to allow interested parties to participate in the development of the TRM. The consideration of policies and protocols in a single proceeding will allow interested parties to conserve their resources, will increase the likelihood that relevant and available information will be before the Commission in its decision-making process, and will ensure that energy savings and demand reduction values are determined in a complete, transparent, and consistent manner, with a proper balance between the certainty of the values and the cost required to achieve such certainty.

June 24, 2009 Entry at 4-5. The Entry described the procedure that the Commission would use to develop the TRM and established a procedural schedule beginning with comments on Appendix B to the Entry. Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits its comments for the Commission's consideration.

SB 221 contained multiple opportunities for industrial and large commercial customers, which are called "mercantile customers" by the Ohio Revised Code¹, to participate in helping the utilities meet the EE/PDR benchmarks. However, the Commission's rules essentially rewrote SB 221 and obliterated the opportunities for mercantile customers contained in SB 221. The provisions of the Commission's rules on EE/PDR that limit or eliminate customer-sited opportunities are plainly contrary to SB 221 and conflict with the General Assembly's intent.² The Commission's adopted rules

¹ Section 4928.01(A)(19), Revised Code.

² Specifically, for example, the provisions in Rule 4901:1-39-05(D), Ohio Administrative Code, that exclude measures producing results that improve energy efficiency, reduce peak demand or otherwise increase utilization of alternative energy resources for purposes of measuring compliance with the portfolio requirements because they may also comply with other energy performance standards set by law, regulation, or an applicable building code are unreasonable and unlawful. Similarly, the prohibition

result in a powerful barrier to any serious effort to implement a law that was designed to, in part, reduce the energy intensity of Ohio's economy while establishing a better legal framework for integrating new technologies and customer-sited capabilities into Ohio's energy portfolio.

The Entry in this case specifically states that “[u]nderlying policy considerations will, of necessity, shape the protocols, assumptions, and values included in the TRM.” June 24, 2009 Entry at 5.³ However, the policies identified in the Entry and the appendices reflect the framework of the Commission’s adopted, but not yet effective, rules.

At this late date, given that the rules are subject to change, rather than drifting further away from a practical and balanced set of rules, the Commission should take advantage of all opportunities to capture the value that might otherwise come from a more practical implementation of the portfolio requirements in SB 221 that recognizes both the current economic realities and the potential long-term effects and opportunities created by the delegation of authority by the General Assembly. However, instead of taking advantage of the opportunities, the Commission has requested that stakeholders

against utilizing a mercantile customer's capabilities to count towards both the EE/PDR and the alternative energy portfolio standard requirements, or "double counting," in Rule 4901:1-40-04(C), Ohio Administrative Code, is unreasonable and unlawful. Additionally, the provisions of Rule 4901:1-39-08(B), Ohio Administrative Code, that limit mercantile customers' energy savings and peak demand reductions to the difference between actual energy use and peak demand and the estimated energy use and peak demand that would have occurred had the customer used industry standard new equipment or practices are unlawful and unreasonable. Finally, the provisions in Rule 4901:1-39-08(B), Ohio Administrative Code, that preclude counting a mercantile customer's on-site generation as energy savings or reductions in peak demand are unreasonable and unlawful.

³ It is also worth noting that, despite the Commission identifying its intent to allow parties to conserve their resources by addressing these issues in a single proceeding, the framework for the policy decisions combined with the projected schedule for completion of this process make compliance impossible and any attempt at compliance a serious strain on already severely constrained time and resources.

attempt to create guidelines, through comments, on the rules that have become progressively disconnected from SB 221 and reality over time.

Unless and until the Commission's rules are revised to permit mercantile customers to utilize customer-sited opportunities within the spirit and letter of SB 221, IEU-Ohio does not have the resources available to provide substantive comments on Appendix B, particularly when mercantile customers are unreasonably, illegally and effectively foreclosed from employing the measures being addressed therein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Comments on Appendix B* was served upon the following parties of record this 15th day of July, 2009, via electronic transmission, hand-delivery or first class mail, postage prepaid.



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