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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

INDUSTRIAL ENERGY USERS-OHIO'S COMMENTS ON APPENDIX A

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I. INTRODUCTION

Among other things, Amended Substitute Senate Bill 221 ("SB 221"), requires 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 with the Joint Committee on Agency Rule Review ("JCARR"). On July 17, 2009, several parties filed second Applications for Rehearing. 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. And, the second Entries on Rehearing may further delay the effective date. Moreover, as mentioned before, it is unlikely that the rules will clear JCARR without delay.

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 energy efficiency measures that lend themselves to a standardized measurement and verification protocol to ensure that there is consistency among EDUs on documenting 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, including a request that interested stakeholders file comments on Appendix A to the Entry, which includes an identification of a number of policy issues that may affect the approach and scope of the TRM and Staff's provisional recommendations on the issues. Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits its comments for the Commission's consideration on Appendix A.

II. COMMENTS

SB 221 contained multiple opportunities for mercantile customers[1] to participate in helping the utilities meet the energy efficiency and peak demand reduction ("EE/PDR") benchmarks. However, the Commission's rules essentially rewrote SB 221 and obliterated the opportunities for mercantile customers contained in SB 221. While

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

IEU-Ohio will not rehash its arguments regarding the legality of the Commission's rules, suffice it to say that the Commission's adopted rules 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 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.[2] However, the policies identified in the Entry and the appendices reflect the framework of the Commission's adopted, but not yet effective, rules.

IEU-Ohio stands by its conclusion that the Commission's rules must be revised to permit mercantile customers to utilize customer-sited opportunities within the spirit and letter of SB 221, IEU-Ohio provides its response to the policy issues identified in Appendix A.

Issue 1: Should the Commission evaluate performance of utility programs on the basis of achieved gross or net savings, or both?

Section 4928.66 requires EDUs to implement programs that achieve specific reductions in peak demand and improvements in energy efficiency. Compliance is to be determined by measuring performance relative to a historical baseline. The entire effect of programs implemented by EDUs is to be counted. Thus, while trying to quantify the

[2] 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.

effects of free ridership would be extremely difficult, as noted in the Commission's Entry, it is also not contemplated by S.B. 221.

Additionally, with respect to mercantile customers, SB 221 requires that the effects of "**all** demand-response programs for mercantile customers of the subject electric distribution utility and all such mercantile customer-sited energy efficiency and peak demand reduction programs, adjusted upward by the appropriate loss factors" be included when measuring compliance with an EDU's peak demand and energy efficiency performance requirements. Section 4928.66(A)(2)(c), Revised Code (emphasis added). Thus, it is not necessary (or lawful) to attempt to estimate net savings associated with mercantile customer-sited programs.

Issue 2: How should baseline efficiency and market penetration be defined for determining energy savings and demand reductions?

The Commission describes the "baseline" as defining the conditions, including energy consumption and related demand, which would have occurred without the subject program. The Commission identifies two types of baseline definitions in the appendix: a site-specific baseline that reflects the difference between the characteristics of equipment in place before an efficiency measure is implemented and how and when the affected equipment/systems are operated; and, a broader, policy-oriented baseline that involves ensuring that the energy and savings and demand reductions are "additional" to any that would otherwise occur due, for example, to federal or state energy standards.

The Commission identifies three options for establishing the project-specific, baseline efficiency for individual products or equipment including: 1) using "as found" condition; 2) using federal or state standards; and, 3) using standard practice for new purchases in the region. Similarly for performance standards, which may be used for large-scale programs where the range of equipment being replaced and how it is operated cannot be individually determined, the Commission indicates that existing practice or federal and state standards can be used to define the baseline.

The provisional recommendation is that the Commission should use the higher of minimum efficiency requirements of federal and state standards or current market practice as the baseline to calculate savings. If the measure is not covered by standards or codes, then the average efficiency or performance of current market practice should be used as the baseline. The Commission notes that as currently approved, Rule 4901:1-39-05(D), Ohio Administrative Code, prohibits an EDU from counting measures that are required to comply with other laws, regulations or building codes.

"Energy efficiency" "means reducing the consumption of energy while maintaining or improving the end-use customer's existing level of functionality, or while maintaining or improving the utility system functionality".[3] As noted above, Section 4928.66(A)(2)(c), Revised Code, requires the Commission to count the effects of all mercantile demand response and energy efficiency programs. Thus, while the Commission does not elaborate on (and does not even seem to consider) the first option identified, which is to use the "as found" condition as the baseline, for mercantile projects, to comply with SB 221, there can be no other starting point. As a creature of

[3] Rule 4901:1-39-01(J), Ohio Administrative Code.

statute, the Commission may only exercise that jurisdiction conferred upon it by statute[4] and SB 221 does not permit the Commission to make the results of certain types of activities that produce energy efficiency or peak demand reductions ineligible for compliance with the portfolio requirements by raising the baseline for determining savings. From a practical standpoint, to use anything other than the "as found" condition as the baseline effectively increases the costs of compliance with the portfolio requirements. Particularly when Ohio's EDUs must meet the benchmarks for 2009 with less than half of the year remaining, and given current economic conditions in Ohio, the Commission should not adopt requirements that will increase the ultimate costs to consumers of meeting the benchmarks. Accordingly, IEU-Ohio recommends that the Commission adopt the "as found" condition option as the benchmark from which to determine efficiencies in as many instances as possible.

Issue 3: Should reported energy savings and demand reduction use retroactive or prospective TRM values?

This issue seeks to address the level of savings the Commission should count in instances where an ex post examination of the savings determines that the actual savings were less than ex ante estimates. The provisional recommendation is that the Commission should not retroactively modify the deemed or deemed calculated savings based on ex post examinations of the programs. However, ex post calculations of the savings should be used going forward. IEU-Ohio agrees that this is a reasonable approach.

[4] *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 234 (1999).

Issue 4: Should the cost-effectiveness test be applied at the measure, project program or portfolio level?

The provisional recommendation is that the Commission will approve reasonable individual programs and overall portfolios for each EDU that are cost-effective as defined by the total resource cost ("TRC") test. However, if EDUs propose to include a non-cost effective measure in a program, the EDU must provide the rationale for offering the measures. While IEU-Ohio believes that this is an administratively burdensome process, IEU-Ohio believes it is a reasonable approach.

Issue 5: What expectations should the Commission establish for energy savings and demand reduction determination certainty?

The provisional recommendation is that EDUs and the Independent Program Evaluator use "best practices" to establish quality assurance and quality control procedures that include filed site inspections and to provide full documentation of analyses. Additionally, evaluation sampling should provide results at a 90% confidence level with 10% precision.

As Ohio does not yet have any experience with these important issues, IEU-Ohio urges the Commission to gain some experience before setting inflexible requirements for evaluation sampling. While IEU-Ohio understands the Commission's goal of demonstrating actual savings, this must be balanced against incurring excessive costs to administer programs. For specific programs, depending on the level of customer participation, documenting savings at a 90% confidence level with 10% precision could require evaluation sampling that would make the administrative costs of the program excessive. Thus, at least until more experience is gained, IEU-Ohio urges the

Commission to adopt a more flexible approach, and permit EDUs to propose project specific sampling requirements.

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 A* was served upon the following parties of record this 24th day of July 2009, via hand-delivery, electronic transmission or first class mail, postage prepaid.

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