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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Protocols for the)
Measurement and Verification of Energy) Case No. 09-512-GE-UNC
Efficiency and Peak Demand Reduction)
Measures.)

**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT
OF INDUSTRIAL ENERGY USERS-OHIO**

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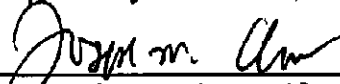
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures.)
) Case No. 09-512-GE-UNC
)
)

APPLICATION FOR REHEARING OF INDUSTRIAL ENERGY USERS-OHIO

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C"), Industrial Energy Users-Ohio ("IEU-Ohio") submits this Application for Rehearing of the Finding and Order ("Finding and Order") issued by the Public Utilities Commission of Ohio ("Commission") on October 15, 2009 issuing policy guidance on measurement and verification guidelines for both standard and custom energy efficiency and demand reduction programs for the purposes of proceeding with a technical reference manual ("TRM"). As explained in more detail in the attached Memorandum in Support, the Commission's definitions of baseline efficiency and market penetration for determining energy savings and demand reductions (Issue 2) is both unlawful and unreasonable. IEU-Ohio respectfully requests the Commission grant its Application for Rehearing and revise its policy guidance in accordance with Ohio law and sound public policy.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF INDUSTRIAL ENERGY USERS-OHIO

In its Finding and Order, the Commission establishes two separate baselines for measuring energy efficiency and demand reductions that will count towards the electric distribution utilities' ("EDU") compliance with the benchmarks established in Section 4928.66, Revised Code. For early retirement of existing equipment, the Commission determines that an "as found" method of measurement should be used until the remaining useful life of the existing equipment would have expired.¹ Subsequent to the expiration of the existing equipment's useful life, the baseline will be calculated at the higher of federal or state minimum efficiency standards, or, if data is readily available on the Department of Energy ("DOE") Energy Information Agency ("EIA") website, efficiency levels for current market practices for that equipment.² Second, for purposes of calculating compliance with statutory benchmarks for programs other than those targeting early retirement of functioning equipment, the baseline is set at the higher of federal or state minimum efficiency standards, or, if data is readily

¹ Finding and Order at 9.

² Id.

available on the EIA website for the measures at issue, efficiency levels for current market practices for those measures.³

The Commission's Finding and Order acknowledges IEU-Ohio's arguments that Section 4928.66, Revised Code, requires the Commission to count the effects of all mercantile customer demand-response and energy efficiency programs and that Amended Substitute Senate Bill ("SB 221") does not permit the Commission to make the results of certain types of activities that produce energy efficiencies or peak demand reductions ineligible for compliance with the portfolio requirements.⁴ The Commission's Finding and Order also recognizes the positions of IEU-Ohio, the Ohio Manufacturers' Association, and the Ohio Hospital Association that using any method other than the "as-found" method for calculating energy efficiencies and demand reductions will increase the cost of compliance with the requirements of Section 4928.66, Revised Code.⁵ Despite the statutory arguments and cost increase concerns of IEU-Ohio and others, the Commission explained that it will not adopt the "as found" methodology in all circumstances because it may overstate energy savings or peak demand reductions and could potentially allow utilities to claim savings for changes in energy use that are unrelated to any effects of efficiency programs.⁶ The Commission made no attempt to address the statutory objections or practical effects highlighted by IEU-Ohio and others.

Section 4928.66(A)(2)(c), Revised Code, requires the Commission to count the effects of all mercantile customer energy efficiency and peak demand reduction measures towards an EDU's benchmark requirements. Thus, SB 221 directs the

³ Id.

⁴ Id. at 7-8.

⁵ Id. at 7-8.

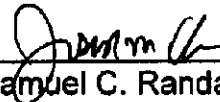
⁶ Id. at 8.

Commission to adopt the "as found" condition as the baseline for mercantile customer-sited measures. The Commission's choice to miscount customer-sited capabilities exceeds the Commission's authority. Further, the Commission's decision contradicts the provisions of Section 4928.66(A)(2)(d), Revised Code, that require the Commission to facilitate the offering of mercantile-customer sited energy efficiency and peak demand reduction, and demand response capabilities to EDUs through the use of reasonable arrangements. As a creature of statute, the Commission may only exercise that jurisdiction conferred upon it by statute 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. The limits placed on the counting of customer-sited measures runs contrary to the plain text of SB 221 and the Commission should reverse its decisions in this regard and count the "as found" energy efficiency and peak demand reduction effects of customer-sited measures against the EDUs' energy efficiency and peak demand reduction benchmarks.

Aside from being unlawful, the Commission's decision is also unreasonable inasmuch as using a benchmark that is not the "as found" condition unreasonably increases benchmark compliance costs that will be passed onto customers. The Commission's choice to constrain opportunities to count customer-sited measures to meet the EDUs' energy efficiency and peak demand reduction benchmarks and thereby unreasonably increase compliance costs could not come at a worse time for Ohio's fragile economy.

The Commission has never revealed the logic it is employing in this or its "Green Rules" case to interpret the word "all" in Section 4928.66, Revised Code, to mean "some" or how the restraints placed on counting customer-sited measures towards the energy efficiency or peak demand reduction benchmarks is consistent with the legislature's intent in adopting SB 221. Nor has the Commission ever rebutted the claims of IEU-Ohio and others that constraining opportunities to comply with SB 221 will raise compliance costs that will be passed onto customers. The Commission owes all customers, the General Assembly, and the public at-large an explanation of how the Commission is interpreting SB 221 to come to its conclusions and how the Commission's choices will not increase compliance costs beyond the minimum necessary to comply with SB 221.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio* was served upon the following parties of record this 16th day of November 2009, via hand-delivery, electronic transmission or first class mail, postage prepaid.



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