

FILE

**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 MEMORANDUM CONTRA
APPLICATION FOR REHEARING OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**BEFORE
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In the Matter of Protocols for the Measurement)
and Verification of Energy Efficiency and Peak) Case No. 09-512-GE-UNC
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MEMORANDUM CONTRA

The Office of Ohio Consumers' Counsel ("OCC") filed an Application for Rehearing in this case on November 16, 2009 requesting the Public Utilities Commission of Ohio ("Commission") clarify the 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. OCC urges the Commission to clearly state that the baseline for calculating energy savings for replacing existing equipment at the end of its useful life, as well as for all other programs, will be the higher of a federal minimum efficiency standard, a state minimum efficiency standard, or current market practices as defined by the Federal Department of Energy.¹ OCC's request is consistent with its ongoing efforts to support the Commission's illegal rewrite of Amended Substitute Senate Bill 221 ("SB 221") to limit the opportunities for Ohio's EDUs to utilize customer-sited resources to meet the portfolio obligations contained in Section 4928.66, Revised Code, regardless of the increased compliance costs that will be passed on to all customers, including residential customers.²

¹ OCC Application for Rehearing at 2.

² OCC (through a coalition called the Ohio Consumer and Environmental Advocates or "OCEA") has utilized every opportunity available to champion restrictions on benchmark compliance opportunities that will ultimately increase costs eligible to be passed on to customers. These efforts include attempting to

The Industrial Energy Users-Ohio ("IEU-Ohio") also filed its own Application for Rehearing in this proceeding to dispute the Commission's decision related to the baselines, asking the Commission to cure the unlawful restrictions adopted by the Commission. Additionally, IEU-Ohio requested the Commission finally explain how it interprets the word "all" in Section 4928.66(A)(2)(c), Revised Code, to mean "some" as well as address the claims of IEU-Ohio and others that constraining opportunities to comply with SB 221 will raise compliance costs that will be passed on to customers.

The Commission must deny OCC's Application for Rehearing and instead grant IEU-Ohio's Application for Rehearing in this proceeding to cure the unlawful and unreasonable restrictions placed on the counting of customer-sited energy efficiency/peak demand reduction ("EE/PDR") capabilities towards the EDUs' EE/PDR benchmarks. Section 4928.66(A)(2)(c), Revised Code, requires the Commission to count the effects of all mercantile customer EE/PDR measures towards an EDU's benchmark requirements.³ Additionally, Section 4928.66(A)(2)(c), Revised Code, compels the Commission to count against the benchmarks the effects of any EE/PDR capabilities of mercantile customers that are committed for integration into an EDU's benchmark compliance efforts. Finally, the Commission's decision also runs contrary to

commit Ohioans to the mandates included in the American Clean Energy Security Act (H.R. 2454, also known as the Waxman-Markey Climate Bill) while disguising it to make it look like OCEA's recommendations are based on Ohio law. *See In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221*, Industrial Energy Users-Ohio's Memorandum Contra the Application for Rehearing of the Ohio Consumer and Environmental Advocates at 4-5 (November 23, 2009).

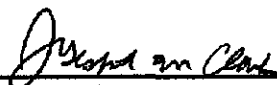
³ Notably, the Commission's baseline policy guidance undercuts its own definition of "energy efficiency" in Rule 4901:1-39-01(L), Ohio Administrative Code. The Commission defines "energy efficiency" as reducing the consumption of energy while maintaining or improving the end-use customer's existing level of functionality, or while maintaining or improving the utility system functionality. The Commission's baseline determination inserts additional unspecified and vague qualifiers into the definition of "energy efficiency" instead of simply counting towards an EDU's portfolio requirements any capabilities that qualify under this definition.

the provisions of Section 4928.66(A)(2)(d), Revised Code, that require the Commission to facilitate the offering of mercantile customer-sited EE/PDR and demand response capabilities to EDUs through the use of reasonable arrangements.

Thus, SB 221 directs the Commission to adopt the "as found" condition as the baseline for mercantile customer-sited measures and discard the limitations settled on by the Commission in its October 15, 2009 Finding and Order. The Commission may only exercise that jurisdiction conferred upon it by statute and cannot rewrite SB 221 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 as well as the intent of the legislature.

The Commission must deny OCC's Application for Rehearing, grant IEU-Ohio's Application for Rehearing, and count the "as found" EE/PDR effects of customer-sited capabilities against the EDUs' EE/PDR benchmarks.

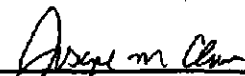
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra Application for Rehearing of the Office of the Ohio Consumers' Counsel* was served upon the following parties of record this 25th day of November 2009, via hand-delivery, electronic transmission or first class mail, postage prepaid.



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