FILE

20

RECEIVED-DOCKETING DIV

2010 OCT -5 PM 5:17

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 AND MEMORANDUM IN SUPPORT OF INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo (Counsel of Record)
Joseph M. Clark
McNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
jclark@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

October 5, 2010

{C32184:3}

TABLE OF CONTENTS

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

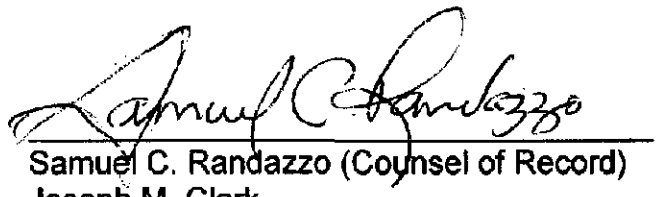
APPLICATION FOR REHEARING OF INDUSTRIAL ENERGY USERS-OHIO

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 from the Entry issued by the Public Utilities Commission of Ohio ("Commission") on October 4, 2010 ("October 4 Entry"). As explained in more detail in the attached Memorandum in Support, the Commission's October 4 Entry is unlawful and unreasonable for the following reasons:

> The Commission's October 4 Entry is unreasonable and perpetuates the Commission's violations of Sections 4928.64 and 4928.66, Revised Code.

IEU-Ohio respectfully requests the Commission promptly grant its Application for Rehearing and the relief requested herein.

Respectfully submitted,



Samuel C. Randazzo (Counsel of Record)
Joseph M. Clark
McNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
jclark@mwncmh.com

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

MEMORANDUM IN SUPPORT

I. BACKGROUND

On June 16, 2009, the Commission opened this case for the purpose of developing protocols for the measurement and verification of energy and peak demand reduction measures that would "...provide predictability and consistency for the benefit of the electric and gas utilities, customers, and the Commission itself."[1] As part of this process and on June 24, 2009, the Commission issued an Entry in which it said (at pages 2-4):

> (5) The Commission must be in a position to be able to determine, with reasonable certainty, the energy savings and demand reductions attributable to the energy efficiency programs undertaken by gas and electric utilities, including mercantile customers, in order (a) to verify each electric utility's achievement of energy and peak-demand reduction requirements, pursuant to Section 4928.66(B), Revised Code; (b) to consider exempting mercantile customers from cost recovery mechanisms pursuant to Section 4928.66(A)(2)(c), Revised Code; and (c) to review cost recovery mechanisms for energy efficiency and/or peak-demand reduction programs implemented by the electric or gas utilities. In order to provide guidance regarding how the Commission will determine energy savings and/or peak-demand reductions, the Commission intends to establish protocols for the measurement and verification of energy efficiency and peak-demand reduction measures, which will be incorporated into a Technical Reference Manual (TRM).

[1] Entry at 3 (June 24, 2009).

The Commission's intent is that the TRM would provide predictability and consistency for the benefit of the electric and gas utilities, customers, and the Commission itself.

(6) In many instances, the savings and/or reductions achieved by implementing a particular measure can be predicted, *ex ante*, with such certainty that the savings and/or reductions can be assumed, without any *ex post* evaluation other than to verify proper installation and operation of the measure. In other instances, energy savings and/or peak-demand reductions will be able to be determined through the application of specific engineering calculations that have been previously defined. In some instances, the set of measures installed at a customer's facility may be unique or complex, thus requiring the savings and/or reductions to be calculated on a case-by-case basis for each measure or representative sample of measures. Further, in some cases, *ex ante* estimates may need to be modified based on statistical analysis of billing data to reflect the impact on overall program results of additional factors, including variations in baseline energy use, free ridership, and spillover effects.

(7) Therefore, the TRM will include the following information:

(a) Predetermined energy savings and demand reduction values and calculation assumptions for specific electricity and gas efficiency deemed measures and deemed calculated measures, when such values can be defined with a reasonable level of certainty, including applicability conditions.

(b) Custom measure protocols consisting of standard engineering calculations and/or other methods that are used for determining energy savings and/or peak-demand reductions for electricity and gas efficiency measures that do not have applicable predetermined savings values.

(c) Verification procedures that electric and gas utilities will utilize to confirm both baseline conditions, when appropriate, and the proper installation of energy efficiency measures for which energy savings and/or peak-demand reductions claims will be made.

(d) Protocols and assumptions for determining cost effectiveness parameters, other than energy savings and demand reductions, used in the total resource cost (TRC) test for calculating the cost effectiveness of energy efficiency programs undertaken by the electric and gas utilities.

(8) The Commission recognizes that the TRM will likely continue to evolve as measures and protocols are added, refined, and updated over time. As such, part of the development of the TRM will be the establishment of transparent and participatory procedures to populate the TRM with predetermined values for additional measures or updated values, as well as updated protocols and assumptions, on an ongoing basis.

In the June 24, 2009 Entry, the Commission called for collaboration and asked utilities to work with mercantile customers to advise the Commission on measures that are in current use, measures which the utilities may intend to use in their compliance programs and measures that mercantile customers may intend to use to seek an exemption from cost recovery mechanisms. In Appendix A to the June 24, 2009 Entry, the Commission identified areas in need of policy guidance. Accordingly, numerous parties, including IEU-Ohio, filed comments and reply comments for the Commission's consideration.

The Commission issued a Finding and Order on October 15, 2009, about four months after it set out on its mission to bring predictability and certainty to the effort by utilities and mercantile customers to comply with the requirements in Sections 4928.64 and 4928.66, Revised Code, and nine months into the first compliance year.

The October 15, 2009 Finding and Order introduced a new batch of policy questions (contained in Appendix C) with proposed provisional policy recommendations for the manner in which those questions should be resolved in the context of

development of the yet-illusive and ever-mysterious TRM. It also invited more comments. The Finding and Order also signaled the Commission's intent to illegally rewrite Ohio law so as to change the baseline specified by the General Assembly for purposes of measuring the effects of energy efficiency programs and compliance with the portfolio benchmarks established by the General Assembly. For example, the Commission tossed out measurement based on actual achieved efficiency relative to the three-year average required by Section 4928.66, Revised Code (which has become known as the "as-found" method[2]), and, in effect, it rewrote the law to establish a higher baseline.

In November 2009, Applications for Rehearing were filed by IEU-Ohio, the Office of the Ohio Consumers' Counsel ("OCC"), and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy").

The Commission issued its Entry on Rehearing on June 16, 2010. For reasons previously explained by IEU-Ohio and others in this proceeding, the June 16 Entry on Rehearing worked to modify Sections 4928.66 and 4928.66, Revised Code, in ways that imposed undue, unjust and unconscionable prejudice on Ohio's mercantile customers.

On July 2, 2010, IEU-Ohio protested the June 16, 2010 Entry on Rehearing by filing another Application for Rehearing. FirstEnergy also filed an Application for Rehearing on July 16, 2010 protesting the Commission's ongoing violations of Sections 4928.64 and 4928.66, Revised Code.

[2] "Under the 'as-found' method, savings are calculated by subtracting the energy efficiency of existing equipment from the proposed new, more efficient equipment." Finding and Order at 8, fn 5 (October 24, 2009).

On July 29, 2010, the Commission granted the July 2, 2010 and July 16, 2010 Applications for Rehearing filed by IEU-Ohio and FirstEnergy.

On July 29, 2010, the Commission issued an Entry establishing a workshop in conjunction with the Staff's release of a draft TRM.

On August 6, 2010, the draft TRM was filed in this proceeding.

The draft TRM workshop was held on August 10, 2010 at the Commission's offices. IEU-Ohio participated in the workshop and, among other things, identified technical and legal defects in the draft TRM. The legal defects were tied back to conflicts with Sections 4928.64 and 4928.66, Revised Code.

On September 15, 2010, the Commission issued an Entry in Case No. 10-834-EL-EEC announcing a so-called mercantile customer pilot program.[3] In that Entry (beginning at page 3), the Commission provided clarifications regarding the meaning of Section 4928.66, Revised Code. The clarifications confirm, among other things, that the compliance math required by Section 4928.66, Revised Code, must rely on the "as-found" approach for measuring energy efficiency and peak demand reduction capabilities of mercantile customers, that the "benchmark comparison methodology" is a proper going forward method and that things like the life expectancy of equipment at the point of replacement or the duration of the payback period have nothing to do with the determination of what must be counted for purposes of measuring compliance with Section 4928.66, Revised Code.[4]

---

[3] *In the Matter of a Mercantile Application Pilot Program Regarding Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders*, PUCO Case No. 10-834-EL-EEC, Entry (September 15, 2010).

[4] Unfortunately, the application form issued by the Commission following the September 15, 2010 Entry in Case No. 10-834-EL-EEC conflicts with the clarifications provided by the Commission in said Entry.

One Commissioner dissented from the September 15, 2010 Entry in Case No. 10-834-EL-EEC. The dissent contributes to the confusion which the Commission appears to have been trying to remedy in said Entry. The dissent also relies, in part, on statements in prior Commission orders for which Applications for Rehearing have been granted by the Commission.

On October 4, 2010, the Commission issued an Entry in this proceeding to establish a formal process to address the draft TRM that has been the subject of prior comments and the workshop held on August 10, 2010. It is unlikely that this formal process will be completed before the end of 2010, the second Ohio portfolio mandate compliance year.

Because it represents customers, IEU-Ohio has stood, often alone, to formally oppose efforts to substitute new notions on what the law should be in this area for the law as written by the General Assembly. Other parties have documented the problems with the Commission's too-long-delayed and confusion-friendly performance in this area.

In a letter to Governor Strickland dated June 19, 2009,[5] Mr. Alexander, President and Chief Executive Officer of FirstEnergy, urged the Governor to act to address the problems presented by the Commission's "...costly and convoluted rules." He said that "[i]f not changed, the rules would effectively create a program that customers won't embrace, utilities won't be able to implement, and Ohio can't afford" and added that "... 'the perfect has become the enemy of the good,' because the rules eliminated the incremental steps that would lead customers to long-term, sustainable energy savings."

[5] Mr. Alexander's letter is attached hereto as Appendix A.

In a letter to Chairman Schriber dated June 2, 2010,[6] Mr. Alexander expressed his growing concern about the Commission's delay in issuing an order to address a proposed compliance plan. He said that "... I am concerned that absent prompt action, and quite frankly even with prompt action, ... the Companies will have no meaningful opportunity to meet their energy efficiency and peak demand requirements for 2010 as required by Senate Bill 221."

In a letter to Chairman Schriber dated June 11, 2010,[7] Mr. Dimoff, the Executive Director of the Ohio Environmental Council ("OEC"), "...echo[ed] the concerns of Anthony J. Alexander". While IEU-Ohio's and OEC's views diverge on many issues, OEC has also publicly expressed concern about the Commission's inability to provide timely guidance on critical issues related to compliance with Ohio's portfolio mandates.

The tone of this pleading is strong and its message is direct. But, the tone and directness of this pleading are the byproducts of frustration that has accumulated over many months. IEU-Ohio and others have repeatedly urged the Commission to follow the law and do so with great respect for common sense and the realities that mercantile customers must contend with in the real world. The Commission has responded to kinder invitations with a buffet of confusion that causes mercantile customers (and perhaps others) to believe that the views, wants and needs of mercantile customers are irrelevant to the Commission and perhaps the State of Ohio. The Commission can do much better and it desperately needs to do so forthwith.

[6] Mr. Alexander's June 2, 2010 letter is attached hereto as Appendix B.

[7] Mr. Dimoff's June 11, 2010 letter is attached hereto as Appendix C.

II. The Commission's October 4 Entry is Unreasonable and Perpetuates the Commission's Violations of Sections 4928.64 and 4928.66, Revised Code.

In its October 4 Entry, the Commission invites interested parties to now formally engage in a process to fix the legal and other problems that are embedded in the draft TRM. In no small way, the problems embedded in the TRM are there because the consultants selected by the Commission did not take into account the requirements of Ohio law on the "what counts" question.

Kicking off a formal process, one that is unlikely to be completed before the end of what is now the second compliance year, for the purpose of fixing the legal defects that ripple through the draft TRM is unreasonable and unlawful. The October 4 Entry works to perpetuate confusion and profoundly frustrate the ability of customers and utilities alike to comprehend compliance requirements so that they can act to achieve compliance when compliance is due. The fog that the Commission has created around compliance creates a standardless trap which is prohibited by the Ohio and United States Constitutions.

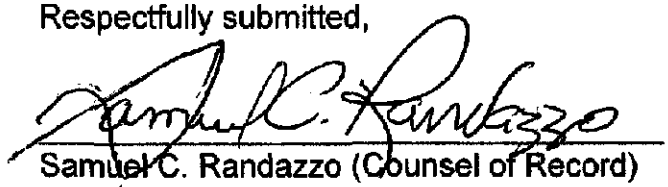
While the September 15, 2010 Entry in Case No. 10-834-EL-EEC offers some hope that the Commission intends to respect the requirements of Section 4928.66, Revised Code, the October 4 Entry fosters more confusion on what the Commission will do and when the Commission will allow any meaningful doing to commence. Requiring stakeholders to burn additional resources to ferret out the unlawful provisions in documents created by Commission-selected consultants tosses an inefficient process in the way of Ohio's efforts to reduce the energy intensity of its real economy. The Commission's fiddling on this important assignment is sequestering real energy efficiency opportunities in Ohio.

Rather than starting another paper chase focused on the draft TRM, IEU-Ohio urges the Commission to discharge its duty to eliminate the confusion that the Commission has created as a result of its actions which are either in conflict with Ohio law or may be perceived to be so. It should require its consultants or its Staff to eliminate the conflicts between the draft TRM and Ohio law and reissue a law-conforming draft TRM for final comment. In the meantime, the Commission should act, through a final order, on the compliance plans that have been pending at the Commission for many months and the hundreds of mercantile customer applications that continue to await a final and lawful response from the Commission.

III. CONCLUSION

IEU-Ohio respectfully requests the Commission grant its Application for Rehearing.

Respectfully submitted,



Samuel C. Randazzo (Counsel of Record)
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
jclark@mwncmh.com

Appendix A

FirstEnergy

76 South Main Street
Akron, Ohio 44308

Anthony J. Alexander
President and Chief Executive Officer

330-384-5793
Fax 330-384-5982

June 19, 2009

The Honorable Ted Strickland
Governor, State of Ohio
77 S. High Street, 30th Floor
Columbus, OH 43215

Dear Governor Strickland:

I'm writing to share with you several concerns I have about the energy efficiency rules adopted on Wednesday by the Public Utilities Commission of Ohio (PUCO).

I believe these rules would jeopardize Ohio's energy efficiency program by costing customers far more than anyone expects and creating unrealistic standards that may be impossible for customers and utilities to meet.

For example, the Commission's rules regarding interruptible programs for large industrial customers would disrupt production and add to the economic challenges facing our already hard-pressed manufacturers – without creating any new benefits beyond those offered through current programs.

Interruptible programs are important tools that utilities would use to comply with one of the key energy efficiency requirements of S.B. 221 – that is, reducing electricity demand during periods of peak customer usage. Through these voluntary programs, our industrial customers agree to curtail operations when demand is high and electricity supplies are tight. In exchange, they receive favorable pricing that reflects the value of the reduced need for capacity.

A primary objective of these programs is to avoid costly investments in new facilities that would be needed to meet customer demand for only a few hours a year. In fact, interruptible programs for manufacturers offer the most effective and cost-efficient way to reduce peak demand. Other approaches – whether they involve business or residential customers, and no matter how worthwhile they seem to be – simply would achieve less at a greater expense.

Over the years, these programs have been used judiciously to minimize any negative impact on our state's largest employers. For example, manufacturing operations are only curtailed when customer demand for electricity is approaching the limits of available supply.

Unfortunately, the Commission's new rules would impose unnecessary and costly service disruptions on customers – regardless of how much electric supply is available to serve their needs. The PUCO added a requirement that utilities "actually" interrupt service to customers to qualify for the load reduction targets included in S.B. 221, rather than offering proven programs that are "designed to achieve" load reductions, which is the express language of the law.

This is an important distinction, especially when you consider that the former approach could make it even more difficult for our state's major employers to recover from the current recession. By creating a far more expensive energy efficiency program than the General Assembly required, the PUCO undermines the state's efforts to retain business and attract new employers to Ohio.

As the Ohio Energy Group (OEG) stated in its reaction to the Commission's decision, "It would be economically wasteful to require manufacturers to actually shut down for a period of time to prove they can," especially when you consider that many of these customers have had their service interrupted several times in recent years. The OEG also notes, "It would be more reasonable to simply require a demonstration of the ability to interrupt, if needed. There is no reason to unnecessarily disrupt a manufacturing operation which will tend to hurt Ohio's economic competitiveness."

Another example of the significant problems associated with these rules is the Commission's attempt to rewrite S.B. 221 by creating unknowable standards for energy efficiency -- based on an uncertain definition of "industry standard new equipment or practices." Simply put, a customer could make an energy efficiency improvement that achieves real and documentable energy savings, but that improvement would not count toward the state's targets unless the customer has used the most efficient product or process available. That's a daunting task under any scenario, and an especially dangerous course to follow as we deal with Ohio's worst economy in decades.

These are just a few of the many significant issues raised by the PUCO's costly and convoluted rules. If not changed, the rules would effectively create a program that customers won't embrace, utilities won't be able to implement, and Ohio can't afford. It appears "the perfect has become the enemy of the good," because the rules have eliminated the incremental steps that would lead customers to long-term, sustainable energy savings.

Governor, I truly believe that we could be facing a worst-case outcome for our customers and the state of Ohio unless significant changes are made to these rules.

Sincerely,

Tony Alexander

AJA/ab

cc: The Honorable Bill Harris
The Honorable Armond Budish

Appendix B

FirstEnergy

76 South Main Street
Akron, Ohio 44308

Anthony J. Alexander
President and Chief Executive Officer

330-384-5793
Fax: 330-384-5859

June 2, 2010

Chairman Alan Schriber
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Re: Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company (the "Companies"), Case Nos. 09-1947-EL-POR, et.al., Case Nos. 09-1942-EL-EEC, et. al., and Case Nos. 09-580-EL-EEC, et. al.

Dear Chairman Schriber:

I am writing to express my growing concern with the Commission's delay in issuing an Opinion and Order in the Companies' Energy Efficiency and Peak Demand Reduction Program Portfolio Plan proceedings for 2010-2012 (the "EE&PDR Portfolio Plan"). Specifically, I am concerned that absent prompt action, and quite frankly even with prompt action, in this docket approving the Companies' Application, the Companies will have no meaningful opportunity to meet their energy efficiency and peak demand requirements for 2010 as required by Senate Bill 221.

The Companies filed their EE&PDR Portfolio Plan on December 15, 2009. This filing was made five days after the energy efficiency and peak demand rules went into effect[1], and approximately 15 days before the December 31, 2009 required filing date. In their Application, the Companies requested Commission approval on or before March 10, 2010. Moreover, the Companies notified the Commission that it was critical that certain programs be implemented no later than April 1, 2010, in order to achieve the projected savings and help ensure compliance with the 2010 benchmarks. We are now approaching June 1, 2010 and still no decision has been rendered by the Commission.

As valuable time slips away, it is becoming increasingly evident that the Companies again will be required to file an application seeking a waiver or amendment of their 2010 energy efficiency and peak demand reduction benchmarks. This is not the Companies' preferred path – but may be the only path remaining available to the Companies.

[1] The Commission's rules, which are set forth in Section 4901:1:1-39-01 et seq. of the Ohio Administrative Code, went into effect on December 10, 2009 and are still subject to applications for rehearing.

Although it may no longer be possible for the Companies to meet their 2010 energy efficiency and peak demand reduction benchmarks, the Companies, with prompt Commission-approval of this EE&PDR Portfolio Plan, can nevertheless begin implementing a cost-effective portfolio of programs that will provide significant opportunities for energy and cost savings for all of the Companies' customers. I therefore urge the Commission to promptly approve the Companies' EE&PDR Portfolio Plan.

Sincerely,

AJA:cjd

Appendix C

Ohio Environmental Council

1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212

614 487-7506
www.theOEC.org

| UNLEASHING THE POWER OF GREEN |

June 11th, 2010

Keith Dimoff
Executive Director
The Ohio Environmental Council

Chairman Alan Schriber
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company ("FirstEnergy"), Case Nos. 09-1947-EL-POR, et. al., Case Nos. 09-1942-EL-EEC, et. al., and Case Nos. 09-580-EL-EEC, et. al.

Dear Chairman Schriber:

I am writing today to echo the concerns of Anthony J. Alexander and various stakeholders regarding the Commission's delay in issuing an Opinion and Order in FirstEnergy's Energy Efficiency and Peak Demand Reduction Program proceedings for 2010-2012. Delay could hamper efforts to deploy low-cost, job-intensive efficiency investments in the FirstEnergy service territory. In particular, there are some controversial provisions in the FirstEnergy proposal on which all intervenors would appreciate guidance from the Commission.

That noted, the OEC wishes to emphasize that under Senate Bill 221's provisions, energy efficiency targets are binding, and enforced by penalties. These targets are binding regardless of whether or not an efficiency plan authored by an investor owned utility is formally approved by the commission before it is carried out. Ohio utilities, even FirstEnergy, have at one time or as a matter of practice deployed energy efficiency programs for S.B. 221 compliance purposes *without* formal commission approval.

Duke Energy, American Electric Power, and Dayton Power and Light all began to deploy 2009 energy efficiency programs prior to formal approval from the Commission. This practice was continued in 2010, when Duke Energy and American Electric Power deployed programs in the early part of the year to comply with 2010 energy efficiency targets prior to the issuance of a formal Opinion and Order by the Commission.

FirstEnergy has itself engaged in this practice. For instance, FirstEnergy continues to file mercantile applications, designed to assist in the 2010 compliance period, even though FirstEnergy's administrative agreements for mercantile programs have not yet been formally approved by the Commission.[1] These administrative agreements are controversial for a host of reasons, yet FirstEnergy sees fit to move forward to achieve compliance with mercantile program implementation, without formal approval.

Accordingly, as Ohio's investor owned utilities have all engaged in the practice of development and deployment of energy efficiency programs designed to achieve S.B. 221 benchmarks without formal approval of those programs, lack of formal approval can never be a justification for failure to achieve benchmarks or for the issuance of a wavier. Waivers may only be granted in cases where an amendment is necessary because a utility cannot reasonably achieve benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control.[2]

Ohio utilities have proven that the lack of formal approval of programs from the Commission is not a "regulatory" barrier beyond their control. Utilities, including FirstEnergy, have on numerous occasions moved forward with programs absent Commission approval. Many energy efficiency programs deployed by Ohio utilities are common-sense, well established programs that have been implemented many times in other states with considerable success. Most of these programs are non-controversial, and can be initiated at any time by a utility without Commission approval. This is the established practice in Ohio.

In conclusion, the OEC notes that Commission guidance on the more controversial aspects of FirstEnergy's plan is appreciated and desired, but delays in Commission approval do not abrogate the responsibility of utilities to meet S.B. 221 targets and benchmarks.

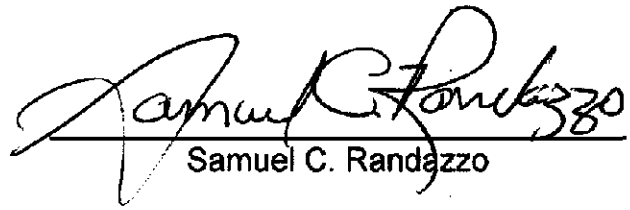
Thank you for your consideration,

Keith Dimoff
Executive Director

[1] See Case No. 09-553-EL-EEC; Entry on Rehearing, February 11th, 2010, p. 4.
[2] Section 4928.66(A)(2)(b) Revised Code, states: "(b) The commission may amend the benchmarks set forth in division (A)(1)(a) or (b) of this section if, after application by the electric distribution utility, the commission determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control."

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 5th day of October 2010, via hand-delivery, electronic transmission or first class U.S. mail, postage prepaid.



Samuel C. Randazzo

David A. Kutik
JONES DAY
North Point, 901 Lakeside Avenue
Cleveland, Ohio 44114

Paul A. Colbert
Grant W. Garber
JONES DAY
P.O. Box 165017
Columbus, Ohio 43216

ON BEHALF OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

Eric Gallon
Porter Wright Morris & Arthur LLP
Huntington Center
41 South High Street

Stephen Seiple
Columbia Gas of Ohio, Inc.
200 Civic Center Drive
P.O. Box 117
Columbus, Ohio 43215

ON BEHALF COLUMBIA GAS OF OHIO, INC.

Steven Nourse
American Electric Power Service Corp.
1 Riverside Plaza – 29th Floor
Columbus, Ohio 43215

ON BEHALF OF COLUMBUS SOUTHERN POWER AND OHIO POWER COMPANY

Mark A. Whitt
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215

ON BEHALF OF VECTREN ENERGY DELIVERY OF OHIO, INC.

Amy Spiller
Elizabeth H. Watts
Duke Energy Business Services, Inc.
139 Fourth Street
25 Atrium II
Cincinnati, OH 45202

ON BEHALF OF DUKE ENERGY OHIO, INC.

Candice M. Jones
Janet K. Stoneking
Ohio Department of Development
77 S. High Street
P.O. Box 1001
Columbus, Ohio 43216

ON BEHALF OF THE OHIO DEPARTMENT OF DEVELOPMENT

Thomas J. O'Brien
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215

ON BEHALF OF THE OHIO MANUFACTURERS ASSOCIATION AND OHIO HOSPITAL ASSOCIATION

Randall V. Griffin
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432

ON BEHALF OF THE DAYTON POWER AND LIGHT COMPANY

Nolan Moser
Will Reisinger
Trent A. Dougherty
Director of Legal Affairs
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449

Todd M. Williams
Williams & Moser LLC
PO Box 6885
Toledo, OH 43612

ON BEHALF OF THE OHIO ENVIRONMENTAL COUNCIL

Janine L. Migden-Ostrander
Ohio Consumers' Counsel
Jeffrey L. Small
Richard C. Reese
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

David Rinebolt
Ohio Partners for Affordable Energy
P.O. Box 1793
Findlay, OH 45840-1793

ON BEHALF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

Mary W. Christensen
Christensen Christensen & Owens LLP
100 East Campus View Blvd., Suite 360
Columbus, OH 43235

ON BEHALF OF PEOPLE WORKING COOPERATIVELY, INC.

Kathy J. Kolich
FirstEnergy Service Company
76 S. Main Street
Akron, Ohio 44308

ON BEHALF OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

Rebecca Stanfield
Senior Energy Advocate
Natural Resources Defense Council
101 North Wacker Drive, Suite 609
Chicago, IL 60606

ON BEHALF OF NATURAL RESOURCES DEFENSE COUNCIL

Theodore Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

ON BEHALF OF CITIZEN POWER

Amy Goldberg
Environment Ohio
203 East Broad Street, Suite 3
Columbus, OH 43215

ON BEHALF OF ENVIRONMENT OHIO

Ned Ford
Sierra Club Ohio Chapter
131 North High Street, Suite 605
Columbus, OH 43215

ON BEHALF OF SIERRA CLUB, OHIO CHAPTER

Robert Kelter
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601

ON BEHALF OF ENVIRONMENTAL LAW & POLICY CENTER ("ELPC")

William Wright
Senior Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, OH 43215

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO