

FILE

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO **OCT 13 PM 4:05**

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

Case No. 09-512-GE-UNC

PUCO

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

I. INTRODUCTION AND STATEMENT OF THE CASE

On June 24, 2008, the Commission issued an Entry setting forth procedures for considering issues that would aid the Commission in its determinations regarding a range of demand-side management and cost recovery cases. Some of those procedures focused on the development of a technical reference manual ("TRM"), which was intended by the Commission to "provide predictability and consistency for the benefit of the electric and gas utilities, customers, and the Commission itself."¹ The Commission provided for the hiring of a consultant and anticipated the release of that consultant's draft TRM "by the end of the second quarter of 2010."²

Vermont Energy Investment Corporation ("VEIC") was hired as the Commission's consultant, and developed a draft TRM. The Commission Staff was directed to distribute the draft TRM by August 6, 2010, and a workshop was scheduled (and held) on August 10, 2010 to discuss the contents of VEIC's draft.³

¹ Entry at 3, ¶(5) (June 24, 2008).

² Id. at 7, ¶(18).

³ Entry at 2, ¶(5) (July 29, 2010).

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On October 4, 2010, the Commission found it appropriate to provide interested parties the opportunity to comment upon the draft TRM.⁴ The October 4, 2010 Entry put in place a development discussed in the Commission's early discussion of this case in which the Commission expected to "allow for the filing of objections to the consultant's draft of the 2010 TRM, followed by a full hearing on the issues raised in the objections, if and to the extent necessary."⁵

On October 5, 2010, the Industrial Energy Users – Ohio ("IEU") filed its Application for Rehearing regarding the Commission's October 4, 2010 Entry. IEU's sole assignment of error is that the Entry "is unreasonable and perpetuates the Commission's violations of Sections 4928.64 and 4928.66, Revised Code."⁶ The instant pleading responds to IEU's Application for Rehearing.

II. ARGUMENT

IEU's Application for Rehearing does not clearly state the matter to which IEU objects. R.C. 4903.10 states that a party such as IEU may apply for rehearing "in respect to any matters *determined* in the proceeding."⁷ The Commission requested comment on the draft TRM, and IEU does not argue with that determination. IEU recognizes that the Commission "invite[d] interested parties to now formally engage in a process to fix the legal and other problems that are embedded in the draft TRM."⁸ IEU wants changes to

⁴ Entry at 2, ¶(6) (October 4, 2010).

⁵ Entry at 5, ¶(9) (June 24, 2008).

⁶ IEU's Application for Rehearing at 1 (October 5, 2010).

⁷ R.C. 4903.10 (emphasis added).

⁸ IEU's Application for Rehearing at 9 (October 5, 2010).

the TRM, and wants an additional opportunity to comment upon the draft TRM.⁹ But the Commission did not approve a final TRM in its October 4, 2010 Entry. Therefore, IEU's arguments regarding the desirability of changes to the draft are appropriate for comments upon the draft TRM (as part of the Commission's approved process¹⁰) rather than for an application for rehearing.

IEU's apparent distress over the timeliness of the Commission's actions is directed at other proceedings dealing with the compliance plans of electric utilities, and not the Commission's desire to receive comments on the draft TRM. IEU's first recommendation that the TRM undergo further editing before being reissued would *delay* this proceeding.¹¹ IEU's second recommendation that the Commission should decide pending matters in compliance plan cases is a matter that is *not the subject of this docket* or the Entry dated October 4, 2010.¹² IEU's Application for Rehearing is not directed at the Commission's most recent actions in the instant proceeding.

The Commission is proceeding in this docket largely in the direction taken in its June 24, 2008 Entry, and IEU's protest regarding that direction is long overdue.¹³ The Entry on June 24, 2008 stated that the Commission would designate a consultant, receive objections to the consultant's draft, and hold a hearing (if necessary) regarding the

⁹ Id. at 10 ("reissue a law-conforming draft TRM for final comment").

¹⁰ Entry at 2, ¶(7) (comments and replies due on November 3 and November 15, 2010).

¹¹ Id.

¹² Id. ("Commission should act . . . on the compliance plans that have been pending").

¹³ R.C. 4903.10 provides that an application for rehearing must be submitted "within thirty days after the entry of the order"

objections.¹⁴ The anticipated date for filing the draft TRM was “the end of the second quarter of 2010.”¹⁵ The draft TRM was available roughly six weeks later than anticipated in the Entry issued two years ago, not a long delay considering the complexity of matters and the number of interested parties to this proceeding. This complexity could not be addressed in time to help resolve the initial plans submitted by electric utilities to comply with their annual energy efficiency requirements.¹⁶ IEU’s use of the instant docket to argue its case in other dockets is inappropriate. IEU was informed of the expected schedule, and IEU’s argument is untimely.

IEU-Ohio’s desire to attack matters that are not the subject of the October 4, 2010 Entry should be rejected.

III. CONCLUSION

For the foregoing reasons, IEU’s Application for Rehearing should be denied. The Commission should continue on its course to receive comments on the draft TRM according to the aims set forth in the Entry dated June 24, 2008, and the specific details set forth in the Entry dated October 4, 2010.

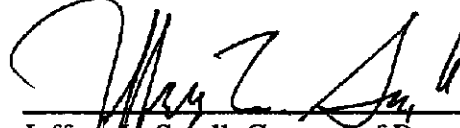
¹⁴ Entry at 5, ¶(9) (June 24, 2008).

¹⁵ Id. at 7, ¶(18).

¹⁶ See, e.g., id. at 7, ¶(19) (“the schedule will not allow for the Commission to review the framework TRM prior to the January 1, 2010, filing date for the electric utilities’ program portfolio plans”).

Respectfully submitted,

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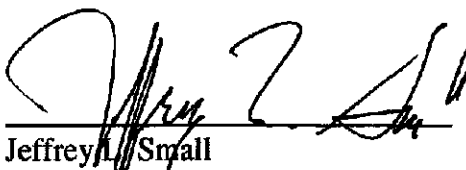


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 13th day of October 2010.


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