

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Verification)	
of the Energy Efficiency and Peak)	
Demand Reductions Achieved by the)	Case No. 12-665-EL-UNC
Electric Distribution Utilities Pursuant)	
to Section 4928.66, Revised Code)	

COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO

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I. INTRODUCTION

On January 27, 2010, the Public Utilities Commission of Ohio (“Commission”) directed the Commission Staff (“Staff”) to issue a request for proposal to obtain a qualified engineering consultant to serve as the statewide Independent Program Evaluator (“Evaluator”).¹ The Evaluator’s scope of work included “(a) evaluating and validating the electric energy savings and peak demand reductions resulting from each approved electric utility program and mercantile customer activity; (b) determining program and portfolio cost-effectiveness; and (c) conducting some program process evaluations of energy efficiency programs.”² By subsequent entries, the Commission approved Evergreen Economics (“Evergreen”) to conduct the evaluation.³ On August 29, 2012, the Staff filed Evergreen’s “Report of the Ohio Independent Evaluator”

¹ *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Entry at 3 (Jan. 27, 2010) (“*TRM Case*”).

² Entry at 1 (Oct. 3, 2012).

³ *Id.* at 2.

("Report") for 2009 and 2010. On October 3, 2012, the Commission established a comment period and invited comments and reply comments.⁴

In the Report, Evergreen advances two recommendations that the Commission should reject. First, Evergreen urges that the baseline for one mercantile customer-sited project be changed, reducing the energy savings claimed by AEP-Ohio by 74% for that mercantile customer.⁵ Second, it recommends that the Evaluator's role be expanded to "involve helping utilities and PUCO staff review the application savings calculations as they are being submitted for approval for those projects where there may be disagreement on determining the appropriate baseline."⁶

Evergreen's recommendations highlight the continuing misapplication of the requirements contained in Sections 4928.64 and 4928.66, Revised Code. As the Commission is well aware, it has the authority and is required to measure compliance with the State's energy efficiency requirements by including the effects of all mercantile customer-sited capabilities.⁷ Because the two recommendations addressing mercantile

⁴ *Id.*

⁵ Report at 9 and 24.

⁶ *Id.* at 9.

⁷ In addition to these Comments, IEU-Ohio has repeatedly filed pleadings demonstrating that the Commission must follow the plainly written language of Amended Substitute Senate Bill 221 ("SB 221") and count all of the energy efficiency and peak demand reduction measures of Ohio's mercantile customers towards the EDUs' compliance requirements contained in Section 4928.66, Revised Code. See, e.g., *In the Matter of the Application for Approval of a Pilot Program Regarding Mercantile Applications for Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders*, Case No. 10-834-EL-POR, Industrial Energy Users-Ohio's Memorandum Contra the Application for Rehearing of the Ohio Environmental Council (Oct. 25, 2012) ("*Pilot Program*"); *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221*, Case No. 08-888-EL-ORD, Industrial Energy Users-Ohio's Application for Rehearing and Memorandum in Support at 14-16 (May 15, 2009) ("*Green Rules Proceeding*"). The Commission has granted rehearing for further consideration. *Green Rules Proceeding*, Entry on Rehearing at 2 (Dec. 9, 2009). Similarly, see, also, *TRM Case*, Entry on Rehearing at 3 (July 29, 2010).

customer-sited capabilities are based on an unlawful and unreasonable application of Section 4928.66, Revised Code, the Commission should reject them.

II. DISCUSSION

- A. Evergreen's recommendation to reduce the energy savings associated with the energy efficiency improvements of an AEP-Ohio mercantile customer by 74% is unlawful and unreasonable because the calculation of mercantile customer energy efficiency improvements should be based on the as-found method.**

Evergreen recommends that the energy efficiency improvements of an AEP-Ohio mercantile customer be recalculated and reduced by applying a hypothetical measure of the baseline for the calculation.⁸ At issue is the appropriate starting point for measuring the energy efficiency improvement that is eligible to be counted for compliance purposes. According to Evergreen, "the replacement baseline should be used (i.e., savings should be calculated compared to standard efficiency new equipment) while the AEP Ohio evaluation team believes that this should be considered as a retrofit project, where savings are calculated relative to the usage of equipment previously in place."⁹ In rejecting AEP-Ohio's characterization of the mercantile customer commitment of its energy efficiency capability, Evergreen's recommendation relies on the draft Technical Reference Manual ("TRM"), even though the draft TRM remains the subject of a Commission order granting rehearing of the measurement of mercantile customer-sited energy efficiency capabilities.¹⁰ The recommendation should be rejected because its

⁸ Report at 23.

⁹ *Id.*

¹⁰ *Id.* at 8-9. The audit report is silent on why Evergreen believes the specific mercantile customer project involved equipment replacement rather than equipment retrofit. In other words, Evergreen provides no support in the audit report for the implicit conclusion that the existing equipment has reached the end of its useful life.

acceptance would result in an unambiguous violation of Section 4928.66, Revised Code.

Compliance with Section 4928.66, Revised Code, in any given year, is measured against a baseline that is computed as the average of the three prior years (subject to such baseline adjustments as the Commission may make under the law). Section 4928.64, Revised Code, defines the mercantile resources that are eligible to count towards compliance as those which meet the substantive resource definitions (“advanced” and “renewable”). Section 4928.64(A)(1), Revised Code, defines “alternative energy resource” as an “advanced energy resource” or “renewable energy resource” (defined in Section 4928.01, Revised Code) or *mercantile customer-sited advanced energy resource or renewable energy resource* (new or existing) that the mercantile customer commits for integration to the electric distribution utility’s (“EDU”) compliance with energy efficiency, peak demand response and reduction requirements as provided under Section 4928.66 (A)(2)(c), Revised Code. The definition of an “advanced energy resource” (Section 4928.01(A)(34), Revised Code) includes demand side-management and any energy efficiency improvement. In addition, “advanced energy project” is defined in Section 4928.01(A)(25), Revised Code. It means any technologies, products, activities, management practices, or strategies that facilitate the generation or use of electricity, and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit or residential energy users.

Section 4928.66(A)(2)(c), Revised Code, directs the Commission to count such resources against the compliance requirement when the mercantile customer commits

the eligible resource for integration into the EDU's demand response, energy efficiency, or peak demand reduction programs. Section 4928.66, Revised Code, directs the Commission to measure *compliance* with divisions (A)(1)(a) and (b) by including the effects of all demand response capabilities of mercantile customers of the subject EDU and all such mercantile customer-sited energy efficiency and peak demand reduction capabilities adjusted upward by appropriate loss factors. Section 4928.66(A)(2)(d), Revised Code, states that the Commission is to apply this compliance language to facilitate efforts by a mercantile customer or group of mercantile customers to offer customer-sited demand response and energy efficiency or peak demand reduction capabilities to the EDU as part of a Section 4905.31, Revised Code, reasonable arrangement. When an EDU develops and implements, as part of its Section 4928.66, Revised Code, or Section 4928.64, Revised Code, compliance effort, programs that are designed to harvest the new and existing customer-sited capabilities of mercantile customers, the Commission must include (in the compliance count) the *effects* of *any* and *all* demand response capabilities for mercantile customers of the subject EDU and *all* such mercantile customer-sited energy efficiency and peak demand reduction capabilities adjusted upwards by appropriate loss factors.

Section 4928.66(A)(2)(c), Revised Code, states that the Commission may exempt a mercantile customer from any Section 4928.66(A)(1)(a) and (b), Revised Code, compliance cost recovery mechanism when the mercantile customer commits its demand response or other new or existing customer-sited capabilities for integration into the EDU's demand response, energy efficiency or peak demand reduction programs if the Commission determines that the exemption will reasonably encourage such customers to commit those capabilities. If the mercantile customer makes such

new or existing capabilities available to the EDU pursuant to Section 4928.66(A)(2)(c), Revised Code, the EDU's compliance baseline shall be adjusted to exclude the effects of all such demand response, energy efficiency or peak demand reduction capabilities that may have existed during the period used to establish the baseline.

Section 4928.66(A)(2)(c), Revised Code, thus, requires that compliance with energy efficiency requirements of the EDU shall be measured by including all mercantile customer-sited energy efficiency capabilities using what has become known as the "as-found" method. Under the as-found method, the baseline for energy savings is the efficiency rating of the existing equipment at the time of replacement.¹¹

Evergreen's recommendation to reduce an AEP-Ohio mercantile customer's energy efficiency improvement by 74% through the substitution of a hypothetical measurement method for the as-found method, therefore, is unlawful and suggests Evergreen's bias regarding Ohio law.¹² The practical consequence of Evergreen's recommendation is to increase the performance required to achieve compliance, and the cost for that compliance will be passed on to customers. As discussed above, Section 4928.66, Revised Code, permits the EDU to treat for compliance purposes all efficiency improvements that have been committed by mercantile customers. The Revised Code does not permit the Commission to discount the energy efficiency improvement "compared to standard efficiency new equipment," as Evergreen recommends.

¹¹ *Pilot Program*, Entry at 4 (Sept. 15, 2010).

¹² Evergreen's bias regarding Ohio law also is demonstrated on page 9-10 of the Report which states "[w]hile we understand that this is the law in the State of Ohio and was being correctly followed by the utilities, we would be remiss as independent evaluators if we did not note that claiming savings for actions taken before a program is offered is inconsistent with standard industry practice."

Furthermore, Evergreen's recommendation produces a non-symmetrical compliance obligation because Evergreen's recommendation does not reduce the actual (as-found) three year average of kilowatt hour sales of the EDU¹³ to reflect the hypothetical compliance measurement yardstick that Evergreen proposes to introduce for purposes of measuring the energy efficiency savings associated with a mercantile customer's installation of new equipment. In other words, Evergreen is proposing that the Commission use a hypothetical numerator that reduces the amount of compliance while maintaining an "as-found" denominator. This non-symmetrical introduction of a hypothetical compliance measurement yardstick (one that reduces the amount of compliance that would be recognized by the "as-found" means of measuring compliance) will also force an effective rate of compliance that is above the nominal percentage specified in Section 4928.66, Revised Code, and thereby increase the cost of compliance that is passed on to customers. Even if it was lawful and reasonable to introduce a hypothetical compliance measurement yardstick (and it is not), Evergreen's proposed non-symmetrical application of the hypothetical compliance measurement yardstick is unreasonable because it raises the effective rate of compliance and makes compliance much more expensive (a consequence of importance to customers since they pick up the compliance tab).

In addition to being unlawful, Evergreen's recommendation to reduce a mercantile customer-sited energy efficiency improvement unreasonably relies on the TRM. The TRM remains a draft, as noted by Evergreen. The Commission has granted rehearing to address whether the TRM's use of measurements other than the as-found

¹³ Section 4928.66(A)(2)(a), Revised Code.

method for calculating energy efficiency improvements is lawful and reasonable,¹⁴ but has not yet issued a final decision on the lawfulness or reasonableness of the provisions of the TRM on which Evergreen relies to support its recommendation. Further, the Commission subsequently approved the use of the as-found method for energy efficiency calculations in applications submitted under the terms of the *Pilot Program*.¹⁵ In the process of approving the as-found method, the Commission determined that the authorization of the use of the as-found method was within its statutory authority. More recently, the Commission has approved the continuation of the use of the as-found method when it extended the *Pilot Program* through March 2013.¹⁶

Despite the fact that the Commission has granted rehearing so that it could address the lawfulness and reasonableness of the retrofit/replacement distinction contained in the TRM and approved the as-found method for the calculation of energy efficiency improvements for *Pilot Program* applications, Evergreen relies on the draft TRM's treatment of retrofit/replacement distinction to support its recommendation to use a hypothetical compliance measurement method and reduce the energy efficiency improvements attributed to a mercantile customer's equipment replacement. Such reliance at this point is plainly unreasonable as well as unlawful.

¹⁴ *TRM Case*, Entry on Rehearing at 3 (July 29, 2010). See *Id.*, Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 12-17 (July 2, 2010).

¹⁵ *Pilot Program*, Entry at 3-4 (Sept. 15, 2010).

¹⁶ *Id.*, Finding and Order at 2 (Sept. 5, 2012). The Commission also has rejected an application for rehearing by Ohio Environmental Council seeking to revise the Pilot Program to remove the as-found method. *Id.*, Entry on Rehearing (Oct. 31, 2012).

Finally, Evergreen's recommendation will lead to administrative gridlock. Changes in the energy efficiency of a mercantile customer based on historic usage are readily measureable and verifiable. In contrast, Evergreen's reliance on the TRM will lead to endless debate over hypothetical "standard efficiency new equipment."¹⁷ Applications will be subject to challenge, Commission resources measured in both Staff time and hearing time will be taxed, and the already significant cost of compliance will increase. All of this will occur despite the fact that Evergreen's recommendation is inconsistent with the requirements contained in Section 4928.66, Revised Code.

B. Evergreen's recommendation to expand the role of the Evaluator to help resolve disputes over the appropriate baseline is unreasonable.

Evergreen also offers the following recommendation:

In anticipation of future differences in interpretation for these types of projects [i.e., mercantile customer improvements in the energy efficiency of their operations], we propose that part of the Independent Evaluator role involve helping utilities and PUCO staff review the application savings calculations as they are being submitted for approval for those projects where there may be disagreement on determining the appropriate baseline. This would include mercantile customers and could also be extended to other large custom projects.¹⁸

Evergreen has proposed an unnecessary expansion of the role (and probably the cost) of the Evaluator. Because the statutorily required baseline is the energy usage of the mercantile customer based on its usage prior to the implementation of the energy efficiency improvements, there is no need for a third party such as the Evaluator to mediate which standard applies.

¹⁷ Injection of the wrong standard leads Evergreen to propose a new and unnecessary role for the Evaluator to mediate disputes over the appropriate baseline. As discussed below, adopting the appropriate baseline eliminates that unnecessary addition to the Evaluator's duties.

¹⁸ Report at 9.

III. CONCLUSION

For the reasons discussed above, the Commission should reject Evergreen's recommendation to recalculate AEP-Ohio mercantile customer energy efficiency savings and its recommendation for an expansion of the Evaluator's role to assist in resolving differences regarding baseline determinations for energy efficiency projects. Both recommendations are based on an inaccurate interpretation of Ohio law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 2nd day of November 2012, *via* hand-delivery, electronic transmission, or first class mail, U.S. postage prepaid.

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