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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to Amend Their Energy Efficiency Benchmarks	)	**Case Nos. 09-1004-EL-EEC** **09-1005-EL-EEC** **09-1006-EL-EEC**

APPLICATION

Pursuant to R.C. § 4928.66(A)(2)(b), Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "the Companies") hereby request that the Commission issue an order, on or before December 2, 2009, amending the Companies' energy efficiency benchmarks. Because of regulatory reasons beyond the Companies' reasonable control, the Companies anticipate that they will not achieve the statutory 0.3% benchmark for 2009. Not only have many of the Companies' programs filed with the Commission not yet been addressed by the Commission, but the Commission's final energy efficiency rules – rules that were supposed to provide guidance for compliance with statutory mandates -- are still not in effect and more than likely will not become effective this year. Moreover, as this Commission is well aware, the Companies designed and obtained Commission approval of a High Efficiency Light Bulb Program (the "CFL Program") in order to achieve annualized energy savings of approximately 300 GWhs per year.[1] Subsequent to such approval,

[1] *See* September 23, 2009 Opinion and Order, Case No. 09-580-EL-EEC *et seq.*

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the Commission directed the Companies to delay the launch of this program,[2] which was and is essential to the Companies' attainment of their combined benchmark of 167 GWhs in 2009. In light of the foregoing, the Companies respectfully ask the Commission to grant this Application for an amendment, reducing each of their respective 2009 benchmarks to zero.[3]

I. Discussion

Upon application of the Companies, the Commission may amend the energy efficiency and peak demand reduction benchmarks if it determines that amendment is necessary due to regulatory, economic, or technological reasons beyond the reasonable control of the Companies. R.C. § 4928.66(A)(2)(b). Indeed, in the Commission's fiscal analysis discussing cost of compliance with its rules adopted to implement R.C. § 4928.66, the Commission pointedly observed that it has authority to amend the energy efficiency benchmarks upon an application of an electric utility.[4] Pursuant to R.C. § 4928.66(A)(2)(b), the Companies file such an application herein.

The Companies do not submit this application lightly and without having first made a conscientious effort to comply with the statutory requirements.

- The Companies requested Commission approval of their 2006-08 transmission and distribution ("T&D") programs in an application filed on May 8, 2009, asking that the Commission rule on the application by July 1, 2009, in order to provide the Companies sufficient lead time to modify their compliance strategy should the Commission reject

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[2] The Commission's October 7, 2009 "Statement from PUCO Chairman on FirstEnergy's compact fluorescent light bulb program" directed as follows: "Until the PUCO has specific details regarding the program costs, FirstEnergy should not deploy its compact fluorescent light bulb program."

[3] Inasmuch as the Commission has yet to rule on virtually any of the Companies' currently pending applications, it is impossible for the Companies to estimate the degree to which they will comply with the statutory benchmark, thus requiring the request to amend the benchmarks to zero. Alternatively, the Companies request an amendment of their 2009 statutory benchmarks to a level equal to the amount of energy savings ultimately approved by the Commission through the Companies' pending applications.

[4] *See* Rule Summary and Fiscal Analysis (Part A), filed October 16, 2009, in support of refiled Rule 4901:1-39-05.

any of the projects included in the filing.[5] Approval of this application, which remains pending today, would contribute 103 GWhs toward the 2009 benchmark.

- On June 30, 2009, the Companies filed (and supplemented on August 27, 2009) an application for approval of administrator agreements that were entered into pursuant to a stipulation approved by this Commission in Case No. 08-935-EL-SSO ("ESP Case").[6] These administrator agreements created a cost effective approach to accumulate qualifying mercantile customer projects for submission to the Commission for consideration. This application, too, remains pending before the Commission, thus causing the Companies to pursue a less efficient approach to "marketing" the program to its mercantile customers.

- On July 9, 2009, the Companies filed an application for approval of its Online Home Energy Education Tool Program known as Aclara, and approval of a CFL program.[7] Notably, the program plan and cost details of both programs were presented to the collaborative and its residential and small business subcommittee before the Companies requested Commission approval. Modified versions of Aclara and the CFL program were approved on September 23, 2009.[8] On October 7, 2009, the Commission directed the Companies to postpone the launch of the CFL Program, which the Companies have done. Had the program been launched, it represented annualized energy savings of approximately 300 GWhs per year.

- On July 15, 2009, the Companies filed their first application for approval of a mercantile customer agreement.[9] The Companies filed three additional mercantile customer applications later in July and two additional applications in early October.[10] These mercantile customer project applications, all of which too are pending, represent in the aggregate approximately 20 GWhs towards the Companies' compliance with 2009 benchmarks.

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[5] *See* Case Nos. 09-384-EL-EEC, 09-385-EL-EEC, 09-386-EL-EEC.

[6] While normally the Companies would not file such contracts for consideration by the Commission, these contracts include costs associated with the Companies' historic mercantile customer project program, which will be included for recovery as part of the program costs. Pursuant to the stipulation approved in the ESP Case, cost recovery for various programs are to be pre-approved. *See* Stipulation and Recommendation at p. 23, filed Feb. 19, 2009, in Case No. 08-935-EL-SSO.

[7] *See* Case No. 09-580-EL-EEC *et al.*

[8] Based on certain comments from interested parties, the Companies filed modified Aclara and CFL programs on September 16, 2009.

[9] *See* Case No. 09-595-EL-EEC.

[10] *See* Case Nos. 09-1100-EL-EEC, 09-1200-EL-EEC, 09-1201-EL-EEC, 09-1202-EL-EEC, 09-1203-EL-EEC.

- On October 14, 2009, the Companies requested Commission approval of their 2009 T&D programs, which would contribute 17 GWhs in the aggregate toward the 2009 benchmark. Action has yet to be taken by the Commission on this application.

The Commission's failure to address most of the above applications, when coupled with the Commission's postponement of the launch of the CFL Program, leaves the Companies with a single approved program – Aclara – which represents approximately 1/167th of the Companies' statutory 2009 benchmark.

Another factor contributing to the Companies' inability to meet the statutory benchmarks for 2009 is the Commission's failure to settle on a final version of the energy efficiency rules. The Commission has issued, revised, and re-revised these rules and in each version, the Commission seems to add new requirements, many of which are focused on mercantile customer programs. This continuously moving target over the past several months has made it virtually impossible for the Companies to launch a comprehensive mercantile customer program, which is a key component in the Companies' 2009 compliance strategy, and has created unnecessary confusion and uncertainty. Moreover, the most recent version of the rules, which were filed with JCARR on October 16 and 19, 2009, continue to face challenges from many stakeholders. JCARR has once again placed these rules on "to be re-filed" status, which likely will prevent them from going into effect this year. The Companies cannot reasonably be expected to design, obtain approval of, and fully implement programs for 2009 when there is absolutely no direction as to what the Commission requires in a program before it is approved.

And, finally, the approval of the Companies' ESP Case was delayed until March, 2009, until all interested stakeholders could reach agreement on its terms. Further delay resulted from the ESP's requirement that energy efficiency programs garner general support from stakeholders through a collaborative process and be pre-approved for statutory compliance and cost recovery by the Commission.[11]

In sum, not only did the delay in obtaining an approved plan in the Companies' ESP Case provide the Companies with only nine months in which to comply with the 2009 statutory requirements, but (i) the Commission's failure to address virtually any of the Companies' applications; (ii) its failure to provide guidance through rules in a timely manner; and (iii) its mandate to postpone the launch of the Companies' approved CFL Program has created a situation that has been beyond the reasonable control of the Companies and makes it impossible for the Companies to comply with 2009 requirements.

II. Conclusion

In light of the foregoing, the Companies respectfully ask the Commission to amend each of the Companies' 2009 energy efficiency benchmarks under R.C. § 4928.66(A)(1)(a), reducing them all to zero or, alternatively, to the level of energy savings ultimately approved by the Commission if and when it addresses the Companies' pending applications.

Respectfully submitted,

James F. Lang (N.T.A. 0080713)

Kathy J. Kolich (Counsel of Record)
Arthur E. Korkosz
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
Telephone: (330)384-4580
Facsimile: (330) 384-3875
kjkolich@firstenergycorp.com
korkosza@firstenergycorp.com

[11] *See* Stipulation and Recommendation at p. 23, filed Feb. 19, 2009, in Case No. 08-935-EL-SSO.

James F. Lang
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
Telephone: (216) 622-8200
Facsimile: (216) 241-0816
jlang@calfee.com

ATTORNEYS FOR APPLICANTS, OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY