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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 No. 09-1004-EL-EEC Case No. 09-1005-EL-EEC Case No. 09-1006-EL-EEC

APPLICATION FOR REHEARING BY THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES

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The undersigned members of the Ohio Consumer and Environmental Advocates (collectively "OCEA")[1] jointly and individually submit this Application for Rehearing pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35(A) regarding the Finding and Order issued by the Public Utilities Commission of Ohio ("PUCO" or "Commission") on January 7, 2010 in the above-captioned case.

The Commission's Finding and Order amended the 2009 energy efficiency benchmarks for the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "the Company" or "FirstEnergy") to zero contingent upon FirstEnergy meeting the cumulative energy savings mandated by statue for 2012. The undersigned OCEA members submit that the Commission's January 7 Finding and Order is unreasonable and unlawful because the Commission should also order the Company to amend the 3-year Energy Efficiency and

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[1] OCEA includes the Office of the Ohio Consumers' Counsel, Natural Resources Defense Council, Environment Ohio, Environmental Law and Policy Center, Ohio Environmental Council, and Citizen Power.

Peak Demand Reduction Plan it filed on December 15 and identify how it will comply with this mandate.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING
BY THE
OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES

On October 27, 2009 FirstEnergy filed an application at the Commission requesting that the Commission amend the Company's 2009 energy efficiency benchmarks because of regulatory reasons beyond its reasonable control. On November 30, 2009, the undersigned members of OCEA filed Comments in Opposition, arguing that the Company's failure to meet its 2009 energy efficiency benchmarks was as a result of its own inaction in the face of a clearly-defined legislative mandate, rather than the result of regulatory reasons beyond its reasonable control. In the January 7, 2010 Finding and Order, the Commission found that "FirstEnergy's application for a waiver should be granted and that FirstEnergy's energy efficiency benchmarks for 2009 should be amended to zero, contingent upon FirstEnergy meeting revised benchmarks for 2010 through 2012."[2] The Commission agreed with numerous parties, including the Office of the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy that

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[2] Finding and Order at 3.

"FirstEnergy should meet the cumulative energy savings in the statute."[3] The Commission further stated that its approval of FirstEnergy's waiver application was "contingent on FirstEnergy meeting revised benchmarks for 2020, 2011, and 2012."[4] Finally, the Commission stated that it will consider the level of FirstEnergy's amended benchmarks for 2010, 2011 and 2012 when it considers FirstEnergy's energy efficiency portfolio plan in Case No. 09-1947-EL-POR.[5]

On December 15, 2009, the Company filed its 3-year Energy Efficiency and Peak Demand Reduction Plan ("Program Portfolio Plan"). According to the testimony of George Fitzpatrick on behalf of FirstEnergy, the plan has been filed to "comply with all benchmarks" and "meet or exceed the targets imposed" in the period between January 1, 2010 and December 31, 2012. [6] According to Fitzpatrick, the plan contains a "cushion" designed to absorb some of the risks of program performance and "there may be a need to over-comply in one year in order to achieve compliance in a subsequent year."[7] Also, Fitzpatrick states that "the Plans are designed with a provision that allows the Companies to "back down" programs that exceed expectations, so as to achieve compliance in a cost effective manner."[8] The Company's Market Potential Study Report confirms that there is substantial cost effective energy efficiency beyond that contained in the three-year plan. Even in the conservative "Base Case," which assumes only the customers that expressed

[3] Id. at 4

[4] Id.

[5] See Id.

[6] See Direct Testimony of George L. Fitzpatrick, Page 4, Case No. 09-1097-EL-POR, et al.

[7] See Direct Testimony of George L. Fitzpatrick, Page 5, Case No. 09-1097-EL-POR, et al. The Cleveland Electric Illuminating Company's Energy Efficiency and Peak Demand Reduction Program Portfolio estimates that the plan will save 1% more energy than the target requires in 2010, 24% more than required in 2011, and 10% more than required in 2012.[7] The plans of Toledo Edison and Ohio Edison show similar levels of planned over-compliance or "cushion."

[8] See Direct Testimony of George L. Fitzpatrick, Page 6, Case No. 09-1097-EL-POR, et al.

high interest in programs in customer surveys participate in programs, FirstEnergy has more than six times the achievable energy efficiency opportunity in 2010-2012 than the amount required to comply with the law.[9]

Given this large energy efficiency opportunity, the Company should be able to construct a 2010-2012 portfolio of energy efficiency programs that meets the targets and allows the Company to make up the deficit it incurred by not running energy efficiency programs in 2009. This is not the time to utilize the "back down" provisions that Fitzpatrick mentions. If the Company's new energy efficiency programs are cost effective, exceeding expectations, and transforming the market, they should receive more resources, not fewer.

Based on the potential, the Company may be in a position to make up the 2009 compliance deficit before the end of 2012. However, the plan was not designed to account for the 2009 shortfall. In order to assure that FirstEnergy's customers get the cumulative amount of energy efficiency they are due, the Commission should require the Company to submit a supplement to its Energy Efficiency and Peak Demand Reduction Program Portfolio that shows how they will ramp up programs to account for energy savings not achieved in 2009. The Company's own market potential study suggests that complying with the Commission's order requiring it to make up 2009's energy savings is more than achievable. The Commission should amend the 3-year Energy Efficiency and Peak Demand Reduction Plan it filed on December 15 and identify how it will comply

[9] See Appendix D – Assessment of Potential (Market Potential Study), Page 3, Case No. 09-1097-EL-POR, et al. Table E1 indicates that the 2010-2012 energy efficiency goals are 487,945 MWh, while the Base Case DSM Savings in the same period are 3,255,182 MWh. From Tables E4 and E7, both the Cleveland Electric Illuminating Company and Toledo Edison have more than 6 times the achievable opportunity in 2010-2012 than the amount required to comply with the law.

with the Commission's mandate for the Company to save the cumulative amount of energy required by R.C. 4928.66.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing Comments on the following counsel, by regular U.S. Mail Service, postage prepaid, this

5 February 2010
30th day of ~~November 2009~~.

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