

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Energy Efficiency and)
Peak Demand Reduction Program Portfolio) Case No. 09-951-EL-EEC
of Ohio Edison Company, The Cleveland) 09-952-EL-EEC
Electric Illuminating Company, and The) 09-953-EL-EEC
Toledo Edison Company.)

FINDING AND ORDER

The Commission finds:

- (1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) Section 4928.66, Revised Code, requires electric utilities, beginning in calendar year 2009, to meet certain annual energy efficiency and peak demand reduction benchmarks specified in the statute.
- (3) On October 14, 2009, as supplemented on April 7, 2010, FirstEnergy filed an application, pursuant to Section 4928.66(A)(2)(d), Revised Code, for approval of certain transmission and distribution (T&D) projects completed during calendar year 2009 for inclusion as part of its compliance with the energy efficiency benchmarks set forth in Section 4928.66(A)(1)(a), Revised Code.
- (4) On October 30, 2009, the Natural Resources Defense Council (NRDC) filed a motion to intervene in this proceeding. In addition, the Office of the Ohio Consumers' Counsel (OCC) and the Ohio Environmental Council (OEC) filed motions to intervene on November 2, 2009. On November 3, 2009, Ohio Partners for Affordable Energy (OPAE) filed a motion to intervene and a motion for admission *pro hac vice* on behalf of David C. Rinebolt. Industrial Energy Users-Ohio (IEU-Ohio) filed a motion to intervene on December 1, 2009. Finally, Citizen Power, Inc., (Citizen Power) filed a motion to intervene and a motion for admission *pro hac vice* on behalf

of Theodore S. Robinson on December 7, 2009. No party opposed the motions to intervene or the motions for admission *pro hac vice*.

- (5) The Commission finds that the motions to intervene are reasonable and should be granted. Further, the Commission finds that the motions for admission *pro hac vice* are reasonable and should be granted.
- (6) On November 23, 2009, OCC, OEC, and NRDC filed a motion for hearing, and the Companies filed a memorandum contra to the motion for hearing on December 8, 2009. OCC, OEC, and NRDC filed a reply on December 14, 2009.
- (7) OCC, OEC, and NRDC contend that the Companies' application appears to violate Ohio law, as the application does not clearly state that the energy efficiency programs at issue will be implemented by an electric utility. OCC, OEC, and NRDC contend that an electric utility cannot include in its energy efficiency programs any projects conducted on facilities owned by the utility's affiliate. In addition, OCC, OEC, and NRDC maintain that the application suffers from technical deficiencies, as the calculations used by the Companies to determine line-loss reductions are unreliable.
- (8) While acknowledging that some of the projects at issue were undertaken by their transmission affiliate, American Transmission Systems, Inc. (ATSI), the Companies argue that the Commission has already ruled that improvements to transmission infrastructure owned by an electric utility affiliate do count towards compliance with energy efficiency benchmarks, citing *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill No. 221, Case No. 08-888-EL-ORD, Opinion and Order (April 15, 2009)* at 8. The Companies contend that, contrary to the argument made by OCC, OEC, and NRDC, Section 4928.66, Revised Code, does not condition or tie eligible energy efficiency programs to ownership or control of the assets involved in achieving energy efficiency goals. The Companies maintain that, under Section 4928.66(A)(2)(d), Revised Code, demand-

response programs and customer-sited programs can be included in a utility's energy efficiency plans even though these programs do not fall under a utility's ownership or control. The Companies also state that one of the objectives of Section 4928.66, Revised Code, is to encourage the implementation of cost-effective energy efficiency programs, and claim that line loss reductions represent one of the best values for energy efficiency savings.

The Companies also argue that the criticisms made by OCC, OEC, and NRDC of the methodology employed by the Companies when calculating energy efficiency savings are misplaced. The Companies assert that the methods they used are accepted by the industry and produce accurate results. Accordingly, the Companies contend that there is no need for a hearing in this matter, and ask that the motion for hearing filed by OCC, OEC, and NRDC be denied.

- (9) In their reply, OCC, OEC, and NRDC reiterate their contention that a hearing is necessary in this matter because some of the projects included in the Companies' application are not projects undertaken by an electric utility, and thus are not eligible for inclusion in an electric utility's energy efficiency program, and also because the Companies failed to respond to the specific criticisms made by OCC, OEC, and NRDC regarding the measurement methods employed in the application to calculate line-loss reductions.
- (10) On May 28, 2010, Citizen Power, OCC, OEC, and NRDC (collectively, Joint Movants) filed a motion to dismiss, requesting dismissal of those portions of the application relating to the projects, as identified by the Companies in their discovery responses, involving facilities owned by ATSI. The Companies filed a memorandum contra the motion to dismiss on June 14, 2010, and Joint Movants filed a reply on June 21, 2010. The arguments raised in these filings are similar to the arguments the parties raised when addressing this issue in the relation to the motion for hearing filed by OCC, OEC, and NRDC.
- (11) On September 1, 2010, Staff filed its review and recommendations in this matter. Staff agrees with FirstEnergy that the projects were installed to enhance T&D system reliability due to load growth in specific service

areas. Staff expects that the installation of these projects will result in improvements to overall system reliability and adequacy while also reducing system losses in the area. During its review of the application, Staff confirmed that FirstEnergy properly determined the energy savings claimed in the application. Staff also found that the projects at issue successfully passed the Total Resource Cost (TRC) test.

Based on its review, Staff recommends that the T&D projects under consideration should properly be included in each company's respective energy efficiency compliance plan. While recognizing that some of the projects were conducted on facilities owned by an affiliate of the Companies, Staff believes it is appropriate to include the results of these projects in the Companies' compliance plan. Staff states that most energy efficiency projects are completed by parties other than the electric utility on non-electric utility property. Staff also notes that Section 4928.66(A)(2)(d), Revised Code, clearly states that programs implemented by a utility may include T&D infrastructure improvements that reduce line losses. Staff suggests that there is no concomitant requirement that the electric utility plan, develop, or even pay for such T&D infrastructure improvements.

- (12) On January 6, 2011, OCC and NRDC filed a second motion for hearing. The Companies filed a memorandum contra the second motion for hearing on January 24, 2011, and OCC and NRDC filed a reply on January 31, 2011.
- (13) OCC and NRDC explain that the second motion for hearing is based upon the development of a technical resource manual (TRM) as part of *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC (TRM Case). OCC and NRDC argue that the Companies' claimed energy savings in this proceeding should be rejected based on the draft TRM and comments made by the technical expert employed by the Commission to evaluate energy savings calculations in the TRM Case. OCC and NRDC allege that using an appropriate definition of a baseline for energy efficiency projects, as provided by the TRM, the Companies' proposed T&D projects do not result in energy savings. OCC and NRDC contend that, since most T&D improvement projects are required in the course of ordinary

business to meet other regulatory requirements, the Companies' reliance upon a "do nothing" approach when establishing a baseline should be rejected. Instead, OCC and NRDC propose that only projects which generate energy savings beyond the savings that would result from the utility's normal practice should be deemed energy efficiency projects. Thus, the baseline from which energy efficiency savings would be calculated should be the standard practice of the utility to meet regulatory compliance for system operation absent the energy efficiency benchmarks required by Section 4928.66, Revised Code. OCC and NRDC state that this approach is consistent with the draft TRM.

OCC and NRDC also argue that the Companies should not be permitted to use a proxy system-wide loss factor to determine annual losses for projects, as this approach is very simplified, not transparent for verification of purported losses, and inconsistent with the draft TRM. OCC and NRDC explain that the Companies derived their system-wide loss factor by calculating the weighted average loss factors for 98 circuits. OCC and NRDC contend that the Companies failed to explain how the 98 circuits were selected or if they are representative of the system as a whole. In place of the proxy system-wide loss factor proposed by the Companies, OCC and NRDC suggest that, as stated in the draft TRM, an annualized load duration curve, applied at or near a new piece of equipment or project, provides a transparent method for determining energy savings.

Finally, OCC and NRDC contend that an evaluation of the specific projects included in the Companies' application shows that the projects were undertaken to meet other regulatory requirements, such as increased minimum voltage delivery requirements due to load growth, and therefore were required regardless of any energy savings. OCC and NRDC claim that the true energy savings for the projects included in the Companies' application is zero since each project reflects the standard practice of the Companies.

- (14) The Companies respond that OCC and NRDC's second motion for hearing incorrectly relies upon the draft TRM. The Companies note that the draft TRM is only a draft

document with several defects that has not yet been approved by the Commission. In addition, the Companies state that the application in this case was filed ten months before the draft TRM was filed, and in any case, Staff recommended approval of the application nearly a month after the draft TRM was filed.

The Companies also challenge OCC and NRDC's assertion that only energy savings above those resulting from standard utility practices should count towards energy efficiency programs. The Companies contend that the Commission lacks the authority to limit energy savings from T&D infrastructure improvement projects and point out that OCC and NRDC's position would increase compliance costs, particularly if the baseline from which savings were calculated was reset each time "industry standards" changed, while also decreasing the Commission's ability to balance costs and policy objectives.

The Companies assert that a proxy system-wide loss factor is an appropriate methodology for calculating losses, pointing out that load duration curves are not always available and that real time historical data does not provide accurate projections of future energy flows. The Companies also argue that some T&D projects are better measured at the system level because improvements or changes made on one site can affect loading on other sites. Finally, the Companies explain how they calculated savings for each specific T&D project.

- (15) In reply, OCC and NRDC assert that their arguments in the second motion for hearing are not based on the timing of the filing of the application, the draft TRM, or Staff's recommendation, but rather are based upon OCC and NRDC's view that the contents of the TRM substantiate the existence of real controversies in the measurement of energy efficiency savings in the Companies' application. OCC and NRDC argue that the Companies' approach for measuring energy savings will result in no energy reduction beyond that of historic levels, as only improvements from the status quo resulting from normal operational changes will occur.
- (16) The Commission initially notes that the final version of the TRM has not yet been approved. Once a final version of the

TRM is adopted, then all future filings should conform to that TRM. With regard to the arguments raised in the motion to dismiss, the Commission finds that there is no basis to justify a difference in treatment between T&D infrastructure improvements to facilities owned by an electric utility and identical improvements made to facilities owned by an electric utility affiliate. Section 4928.66(A)(2)(d), Revised Code, states that programs implemented by a utility may include T&D infrastructure improvements that reduce line losses, and the Commission is also cognizant of the fact that most energy efficiency projects are completed by parties other than the electric utility on non-electric utility property. Accordingly, the Commission finds that the motion to dismiss should be denied. Finally, the Commission notes that line loss reductions are subject to verification from the Companies' EMV consultant.

- (17) The Commission agrees with Staff and the Companies that the improvement projects would result in a reduction in system line losses in the area, consistent with Section 4928.66(A)(2)(d), Revised Code. The Commission emphasizes that, although the reduction in system line losses constitutes only a modest percentage of the overall annual energy efficiency and peak demand reduction benchmarks, it is nevertheless a step toward fulfilling the overall benchmark. The Commission also concurs with Staff's assessment that the energy savings claimed in the application and supplemental filing were appropriately determined. The Commission notes that, in future applications, the Companies will be required to verify that reduction in line losses in one segment will not result in higher line losses in any other segment. Moreover, the Commission will provide further guidance to electric utilities in the future regarding additional information to facilitate consideration of transmission and distribution infrastructure improvements.

Accordingly, the Commission finds that a hearing is not required in this matter and therefore both motions for hearing should be denied and the Companies' application should be granted. The Commission notes the Companies' application did not include a request for cost recovery for

these projects and we are, therefore, not granting cost recovery in this proceeding.

It is, therefore,

ORDERED, That all pending motions to intervene and all pending motions for admission *pro hac vice* be granted, in accordance with findings (4) and (5). It is, further,

ORDERED, That Joint Movants' motion to dismiss be denied, in accordance with finding (16). It is, further,

ORDERED, That the motion for hearing filed by OCC, OEC, and NRDC, and the second motion for hearing filed by OCC and NRDC be denied, in accordance with finding (17). It is, further,

ORDERED, That the Companies' application be approved, in accordance with finding (17). It is, further,

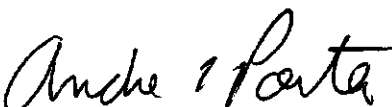
ORDERED, That a copy of this finding and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman

Paul A. Centolella


Steven D. Lesser

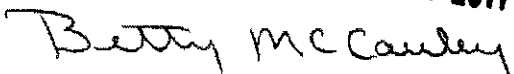

Andre T. Porter

Cheryl L. Roberto

MLW/sc

Entered in the Journal

JUN 08 2011


Betty McCauley
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Energy Efficiency and)	
Peak Demand Reduction Program Portfolio)	Case No. 09-951-EL-EEC
of Ohio Edison Company, The Cleveland)	09-952-EL-EEC
Electric Illuminating Company, and The)	09-953-EL-EEC
Toledo Edison Company.)	

CONCURRING AND DISSENTING OPINION
OF COMMISSIONERS PAUL A. CENTOLELLA AND CHERYL L. ROBERTO

We concur with the majority that there is no basis to justify a difference in treatment between T&D infrastructure improvements to facilities owned by an electric utility and identical improvements made to facilities owned by an electric utility affiliate. However, seeking a prompt resolution of this case, we recognize that transmission and distribution infrastructure improvements as energy efficiency programs for purposes of Section 4928.66, Revised Code, raise issues of first impression. We note that there could be relevant differences between a temporary reduction in resistive losses when an improvement is made to support anticipated load growth and the transmission and distribution efficiency improvements that the statute encourages. We do not believe the record in this case is sufficient to support granting this application. Therefore, we would grant a hearing for the limited purpose of addressing the following questions:

- (1) Were the cited transmission and distribution infrastructure improvements required to meet reliability standards, contractual obligations, or any RTO tariff or other regulatory standard?
- (2) What is the engineering basis for the claimed reductions in line losses associated with these improvements?
- (3) Do the claimed reductions in losses represent a sustainable improvement in transmission or distribution system efficiency?
- (4) What is the appropriate baseline for measuring reductions in losses associated with transmission and distribution infrastructure improvements?
- (5) What is the appropriate methodology for measuring the resulting energy efficiency improvements?


We note that the Companies have pending cases covering 2010 transmission and distribution infrastructure improvements that raise comparable issues. *In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Cases No. 10-3023-EL-EEC, 10-3024-EL-EEC, and 10-3025-EL-EEC. The Commission should promptly set these matters for hearing to provide appropriate guidance to the industry.


Paul A. Centolella


Cheryl L. Roberto

Entered in the Journal

JUN 08 2011



Betty McCauley
Secretary