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 for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 to 2015.	:	Case Nos. 12-2190-EL-POR 12-2191-EL-POR 12-2192-EL-POR

INITIAL POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Michael DeWine
Attorney General

William L. Wright, Section Chief
Public Utilities Section

Devin D. Parram
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
614.644.8599 (telephone)
614.644.8764 (fax)
devin.parram@puc.state.oh.us

November 20, 2012

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (cont'd)

Page

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 for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 to 2015.	:	Case Nos. 12-2190-EL-POR 12-2191-EL-POR 12-2192-EL-POR

INITIAL POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

This case involves Ohio Edison Company's ("OE"), The Cleveland Electric Illuminating Company's ("CEI"), and The Toledo Edison Company's ("TE") (collectively, "FE" or "Companies") proposed portfolio filing of July 31, 2012 ("Proposed Portfolio"). The Proposed Portfolio is FE's second portfolio. FE's first portfolio ("Initial Portfolio") was filed with the Commission on December 15, 2009, and was later approved by the Commission.[1]

1 *In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanism*, Case Nos. 09-1947-EL-POR, 09-1948-EL-POR, and 09-1949-EL-POR.

Much has happened since FE's Initial Portfolio was filed. Staff has learned many lessons from observing FE's implementation of its Initial Portfolio Programs. Staff's recommendations in this case are largely based on these lessons. Staff also suggests modifications to FE's Proposed Portfolio based upon Staff's knowledge of successful strategies used by other electric distribution utilities ("EDU") while implementing their portfolio programs. Staff also recommends, like many other parties involved in this case, that FE bid planned resources into PJM so that customers can benefit from the potential capacity cost savings derived from their energy efficiency programs. Just this summer, the Commission indicated that it wants FE to take the steps necessary to ensure that all potential capacity associated with energy efficiency savings are bid into PJM.

Staff respectfully requests that the following recommendations be adopted by the Commission in this case. Doing so will make FE's Proposed Portfolio programs more successful, help save customers money, and ultimately help ensure that FE meets the statutory requirements of RC. 4928.66.

ARGUMENT

I. FE should improve its proposed Energy Efficient programs for Large C&I customers by increasing the budgets for OE and CEI and implementing a detailed system of tracking rebates.

FE should take proactive steps to avoid issues that arose during its Large C&I Energy Efficient ("EE") Equipment Program. Staff Witness Scheck testified regarding problems that occurred in FE's commercial lighting programs for both Large and Small

C&I customers.[2] These problems occurred primarily because of two reasons: (1) the programs were inadequately funded and (2) FE failed to timely process and distribute rebates to customers.[3] Such problems may deter customers from participating in FE's programs in the future and possibly reduce the likelihood of FE meeting its statutory requirements. In order to avoid similar problems going forward, FE should adopt Staff's following recommendations.

a. The Commission should Order FE to increase the amount budgeted for OE's and CEI's Large C&I Customer EE Equipment Programs relative to what the Company has proposed for Toledo Edison.

Staff is concerned that FE has not properly allocated funds for its Large C&I EE Customer Equipment Programs. Part of Staff's concern results from funding problems that occurred during FE's Initial Portfolio programs.[4] In its Initial Portfolio, FE budgeted $7,952,338 for OE's Large C&I Equipment Program and $8,172,066 for CEI's Large C&I Equipment Program.[5] TE's budget was $7,475,698.[6] After the C&I Equipment Programs were up and running, both OE and CEI had funding issues. OE and CEI needed to transfer money from different programs into the C&I Equipment Programs

2 Staff Ex. 1, Direct Testimony of Gregory Scheck ("Scheck Direct") at 4.

3 *Id.* at 4-5.

4 *Id.*

5 Staff Ex. 2 & Staff Ex. 3, (Tables from OE and CEI Initial Portfolio-EE Program Subtotals).

6 Staff Ex. 4, (Table from TE Initial Portfolio-EE Program Subtotal).

because the budgets for OE's and CEI's commercial lighting program had been depleted. This lack of funds delayed rebate payments, which then led to informal customer complains.[7] Further, the need to transfer funds was not a one-time event. OE and CEI needed to reallocate funds on a number of occasions in order to properly fund their Large C&I commercial lighting programs.[8] Although reallocating funds eventually alleviated the problem, this was after Staff had already received various complaints from customers about FE's inability to timely process rebates. Once customers complain about a program, the damage has been done. Staff's recommendations are intended to prevent FE from repeating the same mistakes.

FE does not dispute that these funding problems occurred.[9] FE's current budgets, however, still do not appear to properly align with the number of Large C&I customers in each operating company's territory. Nor do these budgets align with the amount of MWh used by Large C&I customers in each service territory. For example, FE proposes budgets for OE's and CEI's C&I Equipment Programs that are less than the amount budgeted for TE's C&I Equipment Programs despite the fact TE has the smallest customer base and the smallest MWh sales level.[10] In addition, although CEI has more Large C&I customers that use more electricity than TE's customers, TE's budget is

7 Tr. IV at 762-763, 780.

8 *Id.*

9 Tr. III at 446, 507-511.

10 Company Ex. 12 (OE Plan), pg. 5 (indicating number of customers and MWh for OE) Appendix C-3, PUCO 6A (indicating EE Total Program cost); Company Ex. 13 (CEI Plan) at pg. 5; Appendix C-3, PUCO 6A; Company Ex. 14 (TE Plan) at pg. 5, Appendix C-3, PUCO 6A;

almost twice as large as CEI's.[11] The below table shows how TE's budget exceeds OE's and CEI's budgets, despite the fact that TE has fewer customers that use less electricity[12]:

	Number of Customers	**MWh**	**Budget for 2013-2015**
OE Mercantile-Utility (Large Enterprise)	1423	8,498,736	$6,762,845
CEI Mercantile-Utility (Large Enterprise)	650	6,440,519	$4,322,811
TE Mercantile-Utility (Large Enterprise)	459	6,437,645	$8,603,775

Considering the budgeting issues and numerous transfers of funds that occurred during the Initial Portfolio programs, Staff believes FE should increase the amount allocated to OE's and CEI's Large C&I Equipment Programs. FE should base its Large C&I EE budgets on the square-footage of Large C&I customers within each service territory and the amount of MWh sales to these customers.[13] Since FE is presumably

---

11 Company Ex. 12 (OE Plan), pg. 5 (indicating number of customers and MWh) Appendix C-3, PUCO 6A (indicating EE Total Program cost); Company Ex. 13 (CEI Plan) at pg. 5; Appendix C-3, PUCO 6A; Company Ex. 14 (TE Plan) at pg. 5, Appendix C-3, PUCO 6A.

12 Company Ex. 12 (OE Plan), pg. 5 (indicating number of customers and MWh for OE) Appendix C-3, PUCO 6A (indicating EE Total Program cost); Company Ex. 13 (CEI Plan) at pg. 5; Appendix C-3, PUCO 6A; Company Ex. 14 (TE Plan) at pg. 5, Appendix C-3, PUCO 6A.

13 Staff Ex. 1, Scheck Direct at 5.

surveying many of these customers already, FE could determine the square-footage of these customers by asking customers the size of their premises on current survey forms.[14]

Staff's ultimate goal with this recommendation is to ensure that FE's Large C&I programs are sufficiently funded and successful. If this goal is met, customers will not encounter unnecessary rebate-processing delays and will be more likely to participate in FE's programs in the future.

b. FE should improve its rebate process by closely tracking receipt of applications and payment of rebates.

Another way FE can improve its Large & Small C&I programs is by closely tracking when applications are received and accepted, and when rebates are paid. As previously discussed, FE had problems with its initial commercial lighting programs for C&I customers. Some of these issues could have been remedied by closely monitoring the number of approved-applications and the total dollar amount of rebates paid.[15] Although budgeting issues caused customers to complain, FE's failure to properly monitor rebate processes also caused numerous complaints.[16]

In order to avoid similar issues in the future, Staff recommends that FE establish a detailed system of tracking receipt of rebate applications and actual payment of rebates.[17] Some aspects of the system should include:

---

14 Tr. IV at 785-787.

15 Tr. IV at 780-781.

16 *Id.*

17 Staff Ex. 1, Scheck Direct at 6-7.

i. Date-stamping all applications received by FE;

ii. Notifying applicants if any deficiencies are found in their application. This notification should be in writing and should explain how the deficiency can be remedied; and

iii. Completing review and submission of rebates within 45 days of receipt of approved applications.[18]

Staff also suggests that FE submit a report to Staff every quarter regarding the processing of C&I customers' prescriptive applications. If FE would prefer to share this information with the collaborative quarterly, Staff would approve of this process.[19]

c. FE should perform customer surveys after customers receive rebates.

FE should perform a customer survey after each particular customer receives a rebate.[20] These surveys will provide FE with feedback regarding particular problems or issues that arose during the application and rebate process. FE can then use this information to improve the administration of its C&I prescriptive programs.[21] If FE is currently performing such surveys, Staff requests that the results of these surveys be shared with the collaborative.

---

18 Staff Ex. 1, Scheck Direct at 6-7.

19 Tr. IV at 788-789.

20 Staff Ex. 1, Scheck Direct at 7.

21 *Id.*

II. The Commission should order FE to bid any potential capacity reductions obtained from its planned EE and PDR programs into future PJM auctions.

a. Requiring FE to bid potential capacity reductions into the PJM auctions will benefit customers by reducing DSE rider costs.

Requiring FE to bid energy efficiency savings into PJM auctions can substantially benefit customers. The Commission previously stated that it expects FE to "avoid unnecessary RPM price increases" by bidding all cost-effective energy efficiency and peak demand reductions into the PJM BRA.[22] The Commission also articulated its desire to have FE bid qualified capacity from its energy efficiency programs into the PJM BRA in FE's most recent ESP case:

> [T]he Companies should continue to take the necessary steps to verify the energy savings to qualify for participation in the base residual auctions, and the Companies should bid qualifying energy resources into the auction ... [T]he Companies are well positioned to substantially increase the amount of energy efficiency resources they can bid into the auction, which will assist in mitigating the impact of the transmission constraint in the ATSI zone.[23]

The demand savings from energy efficiency and load management programs can be bid into the PJM base residual auctions if the savings from the programs have a PJM-

---

22 OCC Exhibit 1, Direct Testimony of Wilson Gonzalez ("Gonzales Direct") at 21; *In the Matter of the Commission's Review of the Participation of The Cleveland Electric Illuminating Company, the Ohio Edison Company, and The Toledo Edison Company in the May 2012 PJM Reliability Pricing Model Auction*, Case 12-814-EL-UNC (Entry) (February 29, 2012).

23 *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO (Opinion and Order at 38) (July 18, 2012).

approved Measurement & Verification plan.[24] The monetary benefits of bidding energy efficiency savings into PJM auctions are two-fold: i) bidding EE savings into PJM can lower the final capacity auction price and ii) the potential revenue payments received by FE from bidding the EE savings into the BRA can be used to reduce EE program costs.[25] Both benefits may lower rates for FE's customers. FE Witness Mikkelsen admitted that bidding planned resources may benefit customers by lowering the clearing price in the BRA.[26]

These potential benefits are not merely theoretical. FE recently recognized monetary benefits from bidding energy efficiency savings into the BRA. In the May 2012 BRA, FE bid 36 MW of energy efficiency savings.[27] These 36 MW cleared at $357 a megawatt-day. These energy efficiency savings constituted an approximately $4.7 million reduction in the DSE rider amount.[28] Unfortunately, FE's bid of 36 MW was only 55% of the 65 MW that FE could have bid into PJM.[29] Bidding the full 65 MW could have saved customers more money by reducing future capacity costs.[30]

---

24 OCC Exhibit 1, Gonzales Direct at 18.

25 *Id.*

26 Tr. VI at 1147.

27 Tr. III at 498, 517-518.

28 *Id.* at 517-518. (36MW x 365days x $357 = **$4,690,980.00**)

29 OCC Exhibit 1, Gonzalez Direct at 17.

30 *Id.*

b. FE can mitigate risks associated with bidding planned resources into PJM by adopting Staff's recommendations.

Despite the clear benefits customers can enjoy when energy efficiency savings are bid into PJM auctions, FE plans to bid only installed resources into PJM.[31] FE claims that it will not bid planned resources into PJM because it is allegedly too risky.[32] This argument, however, carries little weight.

There is a wealth of evidence that proves that FE can mitigate its bidding risk, benefit customers, and potentially profit from bidding planned resources into PJM. Staff Witness Scheck proposed a number of recommendations that FE should adopt to reduce the risk of bidding planned resources into PJM. First, FE can bid into the auction the price of zero (or the EM&V and bidding costs).[33] This would mitigate risk for FE and benefit customers by ensuring that the prices actually clear the BRA. FE's Witness Dargey indicated that this a potential way for FE to mitigate the risk of bidding planned resources into the BRA.[34] Staff also recommends that FE mitigate potential "performance or quantity risks" by bidding in 75% of its projected capacity reduction into the

31 Company Ex. 1, Direct Testimony John C. Dargie ("Dargie Direct") at 15; Company Ex. 23, Rebuttal Testimony of Eileen Mikkelsen ("Mikkelsen Rebuttal") at 3-4.

32 Company Ex. 23, Mikkelsen Rebuttal at 3-6.

33 Staff Ex. 1, Scheck Direct at 11-12; OCC Exhibit 1, Gonzalez Direct at 23.

34 Tr. I at 92.

BRA.[35] FE Witness Dargie acknowledged that this too would mitigate the potential risks of bidding planned resources.[36]

In addition, FE's Witness Demirey testified that he was not aware of any obstacles within the PJM bidding rules that would prevent FE from adopting Staff's proposed mitigation measures for bidding planned resources.[37] Further, FE Witness Mikkelsen acknowledged that PJM's rules specifically allow parties to bid planned resources into the PJM BRA and acknowledged that bidding such resources would satisfy PJM's interest in system reliability. [38]

Bidding planned resources may also be profitable for FE. Staff proposed that FE be allowed to share in any revenues received from the auctions if the amount cleared and delivered into PJM exceeds the annual statutory peak demand reduction benchmark.[39] Allowing FE to share in revenue from EE savings bid into PJM will lead to a win-win situation: customers will win by paying lower rates and FE will win by sharing in the EE capacity savings revenues.

---

35 Staff Ex. 1, Scheck Direct at 11-12.

36 Tr. I at 92.

37 Tr. III at 543-544

38 Tr. VI at 1154.

39 Staff Ex. 1, Scheck Direct at 11-12

III. Staff supports FE's request for a shared savings mechanism but suggests modifications to FE's shared savings proposal.

Staff generally supports FE's proposed shared savings mechanism but has a few concerns. Staff's primary concern is that FE's proposed after-tax incentive percentage level of 13% is too high.[40] Shared savings incentives should only be set marginally higher than the rate-of-return level that utilities could earn by investing in non-energy efficiency investment. Although rates-of-return related to various non-energy efficiency investment vary (such as investment in distribution and transmission plant), it is unlikely that FE would see a rate-of-return of 13% on its other non-energy efficiency investments in the current economic environment. Staff recommends that following shared-savings mechanism be adopted:

Incentive Tier	Compliance Percentage	Incentive Percentage
1	< 100%	0.0%
2	100 - 110%	3.0%
3	110 – 115%	5.0%
4	115 – 120%	7.5%
5	➢ 125%	10.0%

The historical self-direct mercantile consumption and the associated savings should not be included in the shared savings calculation.[41] Mercantile self-direct custom-

40 Staff Ex. 1, Scheck Direct at 9.

41 *Id.* at 10.

ers did not install energy efficiency measures due to any action of FE.[42] These customers independently decided to make their make the facilities more energy efficient. As such, removing historical self-direct consumption and savings from the calculation is appropriate because FE should only be "rewarded" for actions it takes to encourage customers to become more energy efficient.

IV. FE should increase the audit payment amount for its Small C&I Customers and incentivize audit participants to install recommended prescriptive measures.

Ensuring that audit payment amounts are sufficient is essential to having an effective audit program. Staff recommends that FE increase the audit payout amounts from $4000 to $5000.[43] In addition, Staff recommends that FE allow customers to reduce the overall costs of the audit by installing recommended prescriptive measures that result from the audit.[44] Other EDU's within Ohio have audit payout amounts of $5,000 for small commercial customers.[45] These other utilities also allow customers to "pay down" the cost of performing the audit by participating in rebate programs. FE should allow small C&I customers to reduce the total audit amount on a dollar-for-dollar basis by installing prescriptive measures.[46] For larger customers, Staff recommends that FE pay

42 Staff Ex. 1, Scheck Direct at 10.

43 *Id.* at 7-8.

44 *Id.*

45 Tr. IV at 792.

46 *Id.*

50% of the audit cost because these audits can costs substantially more than $5000.[47] The large customer can then reduce 50% of the audit cost by installing recommended prescriptive measures.[48]

The goal of audit programs is to educate customers on potential prescriptive measures, which will hopefully influence customers to actually install the recommended measures. The more customers install prescriptive measures as a result of an audit (the "conversion rate"), the more successful the audit program. FE previously stated that its audit conversion rate for its Pennsylvania affiliate was 0% to 5%.[49] By comparison, AEP and DP&L report conversion rates of 30% to 50%.[50] This shows that the steps AEP and DP&L are taking, such as setting audit payout amounts higher and allowing customers to reduce the audit cost by installing recommended prescriptive measures, help increase conversion rates. FE should take the same steps to make its audits more successful.

In addition, FE should require customers that fail to install the recommended prescriptive measures within six months of the audit to pay the cost of the audit.[51] Currently, FE often pays the entire costs of the audit for small customers. Unless these audits cause customers to install prescriptive measures, the audits are essentially useless reports that have been paid for by other ratepayers. Customers will become more invested in imple-

---

47 Tr. IV at 792.

48 *Id.*

49 *Id.*.

50 *Id.* at 793.

51 Staff Ex. 1, Scheck Direct at 7-8.

menting the audit report recommendations if they potentially have to pay for the audit themselves. Further, allowing customers to reduce the audit costs by implementing recommended prescriptive measures will increase FE's conversion rates, which should be FE's ultimate goal in designing it audit program.

V. The Commission should order FE to provide an avoided T&D cost study regarding projects FE will be implementing over the next five years.

Reliable T&D avoided costs must be used when designing portfolio programs. T&D avoided costs are part of the total resource cost calculation. If inaccurate or outdated T&D avoided costs are used in designing the portfolio, the total resource cost test calculation may be inaccurate also. It will then be impossible to determine how cost effective the proposed measures, programs, and portfolio really are.

In its Proposed Portfolio, FE repeatedly uses T&D avoided costs of $20/kw/yr. but does not provide any support for how it developed these avoided costs assumptions.[52] FE should perform an avoided T&D cost study from actual projects that it is relatively certain will be implemented over the next five years. [53] FE should then modify the avoided cost based upon T&D avoided costs studies performed in the future. This will

52 Staff Ex. 1, Scheck Direct at 12.

53 *Id.*

provide a more accurate reflection of FE's total avoided costs and help the Commission determine the true cost-effectiveness of FE's programs.[54]

VI. The Commission should not allow FE to count demand response resources participating in the PJM market unless those customers have "committed" to those resources to FE.

Under R.C. 4928.66, mercantile customer customers have the option to commit EE or peak demand reductions to EDU's for purposes of meeting the EDU's statutory requirements. If these customers chose to do so, the customer may be exempt from the EE/PDR rider and the EDU is allowed to incorporate the committed reductions into the baseline. The customer is not, however, required to commit these EE/PDR reductions to the EDU. And if the customer chooses not to, the EDU cannot count these reductions towards its statutory requirement. Staff Witness Scheck explained testified that this is his understanding of R.C. 4928.66.[55] Thus, Staff believes FE is not allowed to count demand response resources unless those customers have "committed" to those resources to FE as required by R.C. 4928.66(A)(2)(c).[56]

54 Staff Ex. 1, Scheck Direct at 13.

55 Tr. IV at 817-818.

56 Staff Ex. 1, Scheck Direct at 12.

CONCLUSION

Staff respectfully requests that the foregoing recommendations be adopted by the Commission in this case and that the Commission order FE to incorporate these recommendations into its Proposed Portfolio filing.

Respectfully Submitted,

Michael DeWine
Attorney General

William L. Wright, Section Chief
Public Utilities Section

/s/ Devin D. Parram

Devin D. Parram
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
614.644.8599 (telephone)
614.644.8764 (fax)
devin.parram@puc.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the forgoing **Initial Post-Hearing Brief** submitted on by the Staff of the Public Utilities Commission of Ohio was served via electronic mail upon the following parties of record, this 20th day of November, 2012.

/s/ Devin D. Parram

Devin D. Parram
Assistant Attorney General

Parties of Record:

Kathy J. Kolich
Carrie M. Dunn
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308
kjkolich@firstenergycor.com
cdunn@firstenergycor.com

Cathryn N. Loucas
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
cathy@theoec.org
trent@theOEC.org

Kyle L. Kern
Associate Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
kern@occ.state.oh.us
allwein@occ.state.oh.us

Todd M. Williams
Williams Allwein and Moser, LLC
Two Maritime Plaza, 3rd Floor
Toledo, OH 43604
toddm@wamenergylaw.com

Michael L. Kurtz
Kurt J. Boehm
Jody M. Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
kboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
jkyler@BKLlawfirm.com

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
drinebolt@ohiopartners.org
cmooney2@columbus.rr.com

Justin M. Vickers
Staff Attorney
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
jvickers@elpc.org

J. Thomas Siwo
Thomas J. O'Brien
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215-4291
tsiwo@bricker.com
tobrien@bricker.com