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 Electric Distribution Utilities Pursuant to R.C. 4928.66	))))	Case No. 13-1027-EL-UNC

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

INTRODUCTION

On May 2, 2013, Staff, on behalf of Evergreen Economics, the Ohio Independent Evaluator ("Evergreen" or "the Evaluator"), issued the Report on the Electric Distribution Utilities' 2011 Ohio Efficiency Programs, dated April 21, 2013 ("2011 Report"). On December 11, 2013, the Attorney Examiner issued an entry establishing a comment period in which interested parties could provide comments to the 2011 Report and a reply to other parties' comments. On January 13, 2014, each of the Ohio Electric Distribution Utilities ("EDUs") submitted comments, along with the Environmental Law & Policy Center, The Ohio Environmental Council, The Sierra Club and The Natural Resource Defense Council (collectively, the "Environmental Group"), who jointly submitted comments. Pursuant to the Attorney Examiner's entry, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("Companies") hereby submit their reply comments.

COMMENTS

As a preliminary matter, the Companies agree with the general observations made by the other Ohio EDUs. More specifically, the Companies agree with Duke Energy Ohio, Inc. ("Duke") that the free ridership work contemplated by the Evaluator is premature and inconsistent with Commission directive,[1] and that the Evaluator's standard should be one of reasonableness and not a substitution of judgment.[2] The Companies also agree with Duke, AEP Ohio ("AEP") and Dayton Power & Light Company ("DPL") that a blanket adoption of program process recommendations is inappropriate because there are legitimate reasons why some of these recommendations are rejected. As each of the Ohio EDUs explained, they each have implemented the recommendations that make sense under their respective circumstances – a decision that should be theirs to make, given that they are responsible for meeting the statutory targets.[3] Inasmuch as the Companies agree with their EDU counterparts, the remainder of these comments will focus on the joint comments of the Environmental Group – the only other party to submit comments -- explaining why its recommendations should be rejected.

A. The Environmental Group's recommendation to transition to a net savings measurement standard is beyond the scope of the 2011 Report and should be summarily rejected.

It comes as no surprise that the Environmental Group embraces the concept of shifting from a gross savings reporting system to a net-to-gross ("NTG") savings methodology. However, this was not the Evaluator's recommendation. Nowhere in the 2011 Report does the Evaluator recommend that the Commission move to a NTG methodology for measuring savings. The Evaluator indicated that it was doing *limited*

[1] Duke Comments, p. 8.
[2] Id. at 9.
[3] Duke Comments, p. 12; AEP Comments, p. 4; DPL Comments, p. 1 ; Companies Comments, pp. 4-5.

work on free ridership, noting that the Commission "anticipates requiring the utilities to also report net impacts ..." *at some point in the future.*[4] The Evaluator described the work it completed in this area during 2012, stating that it "began developing a battery of survey questions and a scoring algorithm related to free ridership as a *first step* in creating a standard approach for estimating net impacts for the Ohio electric utilities" and that it intends to "continue to examine this issue and refine the related self-report question battery as needed in 2013."[5] However, as the Companies pointed out in their initial comments (at page 2), the Commission, in its August 7, 2013 Finding and Order in Case No. 12-665-EL-UNC expressed its belief that "Evergreen's efforts to develop a standard free ridership question battery and scoring algorithm are premature, as [the Commission has] not indicated that net savings should be evaluated."[6] As the Companies further noted, since the Commission has yet to indicate its intention to revisit the issue of net savings, there is no need for any further work in this area at this time.[7]

Inasmuch as the purpose of submitting comments in the instant docket is to address the Evaluator's 2011 Report[8], and *not* to provide a forum in which to advocate for a shifting of Commission policy, the Environmental Groups' comments on the issue of NTG should be summarily rejected as being beyond the scope of the comments solicited. Should the Commission desire to pursue the NTG issue, all aspects of that issue should be considered before making a policy shift in savings determination. The Companies submit that this docket is simply not the forum in which to discuss the NTG issues raised by the Environmental Group. However, should the Commission disagree,

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[4] 2011 Report, p. 6.
[5] *Id.* (Emphasis added).
[6] *In re Annual Verification of the Energy Efficiency and Peak Demand Reductions Achieved by the Electric Distribution Utilities Pursuant to R.C. 4828.66*, Case No. 12-665-EL-UNC, Finding and Order, p. 6 (Aug. 7, 2013).
[7] Companies' Comments, p. 2.
[8] Entry, p. 1 (Dec. 11, 2013).

then for the reasons discussed below, the Environmental Group's comments on the NTG issue should be rejected on the merits.

The Environmental Group selectively quotes excerpts from the 2011 Report claiming that residential free ridership is estimated at "greater than 50 percent" and between 37 and 55 percent for non-residential customers.[9] The Environmental Group conveniently ignores several other related statements in the 2011 Report that puts the results quoted by the Environmental Group in context. Specifically, the Evaluator notes that its analysis "ignores both participant and non-participant spillover – both of which can potentially offset free ridership to increase program net benefits" and that the approach taken by the Evaluator to estimate free ridership has "shortcomings".[10] Moreover, the Evaluator notes that its work is a "*first step*" in developing an approach to determine free ridership[11], thus implying that much more work is necessary before NTG results can be incorporated into any consideration of a shift in Commission policy on savings measurement.

The Environmental Group also notes that the Commission indicated that it would "revisit the issue of net and gross savings in the future."[12] As the Companies explained in their initial comments, however, the Commission has given no indication that it intends to revisit this issue *now;* and that should it decide to do so in the future, such an evaluation should not be done through this docket -- a docket in which historical energy efficiency programs and related results are being assessed.[13]

The Environmental Group also claims that R.C. 4928.66 somehow requires the Commission to revisit the NTG issue, arguing that "utilities must implement programs

[9] Environmental Group comments, p. 2.
[10] 2011 Report, p. 90.
[11] Id. at 6.
[12] Environmental Group Comments, p. 3.
[13] Companies' Comments, p. 2.

that achieve the energy efficiency savings" and that the "legislature is [allegedly] interested in more than a tracking of savings that occur" and that "it [the legislature] wants to track savings generated by – and that would not have occurred but for the existence of – utility-run programs."[14] In support of these assertions, the Environmental Group quotes R.C. 4928.66(A)(1)(a) which provides:

> Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state.

Nowhere in this provision does it address how that savings is to be *measured*, nor does it describe how the utility is to achieve such a result. It makes no mention of determining the driving factors that influence customers to participate in a program and it never even mentions the tracking of savings. Rather, it simply requires the energy programs to reduce energy savings by a certain percentage of sales.

A review of R.C. 4928.66 demonstrates that the Environmental Group relies on the wrong portion of the statute. The legislature addresses the *measurement* of program results in R.C. 4928.66(A)(2)(c), indicating that compliance with the statutory energy efficiency and peak demand reduction benchmarks

> shall be *measured* by including the *effects* of *all* demand-response programs for mercantile customers of the subject electric distribution utility, *all* waste energy recovery systems and *all* combined heat and power systems, and *all* such mercantile customer-sited energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs… [emphasis added].

Clearly, the legislature intends for the utility, when measuring savings results, to include the *effects* of all qualified energy efficiency program, no matter how those effects are created. Had this not been its intent, the legislature would have expressly excluded those

[14] Environmental Group Comments, p. 3.

effects that it did not want to be counted towards compliance. What may be even more telling is the fact that the legislature provided in 2008 through R.C. 4928.66 a mechanism that would allow EDUs to count energy savings effects from *historic* mercantile customer-sited projects that were put in place even before the EDU was required to file an energy efficiency and peak demand reduction portfolio for consideration by the Commission.[15] And, R.C. 4928.66 also allows the EDU to include the results from programs that don't even involve customers, such as cost effective smart grid investment programs and transmission and distribution infrastructure improvements that reduce line losses.[16] Both of these provisions negate the Environmental Group's notion that the legislature "wants to track savings generated by – and that would not have occurred but for the existence of – utility-run programs."

Finally, the Environmental Group claims that a shift to a NTG methodology "will be relatively simple because "[e]nergy efficiency measurement and verification analysts are able to quantify the free rider and spillover impacts to derive the energy savings attributable to energy efficiency programs.[17] It further observes that "*some* of the utilities have already *begun* to research net impact effects through the use of self-report phone survey question batteries exploring free ridership and spillover" and that "utilities are already incorporating *some* net-to-gross analyses of their programs."[18] The Environmental Group's analysis is flawed in several material respects. First, even the

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[15] This provision was created through Am. Sub. S.B. 221, which went into effect on July 31, 2008, while the EDU's first statutory energy efficiency and peak demand reduction requirement was set for calendar year 2009. *See also, In re Mercantile Application Pilot Program Regarding Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders,* Case No. 10-834-EL-POR, Second Entry on Rehearing, p. 6 (May 25, 2011) ("We are finding that such [mercantile] programs which were implemented in calendar year 2006 or thereafter should be eligible for counting and incentives regardless of the fact that the applications were not filed until 2010.")
[16] R.C. 4928.66(A)(2)(d).
[17] Environmental Group Comments, pp. 5-6.
[18] Id. at 6 (emphasis added).

Evaluator has admitted that it is only on the first step of evaluating free ridership and that participant and non-participant spillover needs to be considered "at some point in the future."[19] Second, while *some* of the utilities may have *begun* to research net impacts, there is no indication that all of the utilities have done so – especially since the Commission has yet to indicate that it is ready to revisit this issue. Nor is there any indication that any of the research that has begun is anywhere near complete. Third, it appears that the research that has begun involves self-report survey question batteries that, as the Evaluator noted, are known to have shortcomings. And, finally, given that Ohio has some of the highest energy efficiency and peak demand reduction requirements in the country,[20] which are already expected to be very difficult to achieve in upcoming years,[21] consideration must be given to the impacts on target achievement and the cost thereof should the Commission shift to an NTG measurement methodology.

In sum, as the Companies explained in their initial comments, the Commission has not indicated its desire to revisit the NTG issue at this time. Therefore, the Environmental Group's recommendation to move to a NTG methodology is premature and misplaced. Moreover, notwithstanding the Environmental Group's claims to the contrary, there is much work that must be done before any decisions involving a shift in Commission policy on savings measurement should be made. These issues not only include those discussed above, but also include legal issues such as whether R.C. 4928.66

[19] 2011 Report, pp. 6, 90.

[20] As an example, *see* Pa Act 129, which requires less than 0.8% per year only through 2016; *See also*, ACEE Report: The 2013 State Energy Efficiency Scorecard, Appdx B, pp. 115-119; DSIRE, Energy Efficiency Resource Standards, http://www.dsireusa.org/documents/summarymaps/EERS_map.pdf. Further less than half the states have any energy efficiency or peak demand reductions mandates, including Kentucky, Tennessee, West Virginia and North Carolina – all key states with which Ohio competes for business.

[21] *See* American Council for an Energy Efficient Economy: Shaping Ohio's Energy Future, Report No. EO92, Executive Summary, p. iii (March 2009) ("SB 221 created an aggressive Energy Efficiency Resource Standard" and requires implementation of government action that will contribute approximately 10% towards achieving the 22% statutory mandates.)

even allows the Commission to make such a shift, given the statutory interpretation discussion, *supra*, and, if so, how any such concept should be incorporated into the statutory targets, given that the legislature established them without factoring in the NTG concept. Should the Commission desire to revisit the NTG issue, it should do so through a separate docket in which all interested parties have an opportunity to address these and the many other issues that come with NTG measurement, rather than try to address the issue in this docket.

B. There is no need for additional cost-effectiveness analysis by the Independent Evaluator

The Environmental Group recommends that the Evaluator "provide its own analysis of program costs and benefits" and that the Commission "direct [the Evaluator] to review all benefits of the programming, including price suppression impacts of energy efficiency upon both wholesale and capacity electricity costs, estimated employment impacts, and estimated economic development impacts" as part of its cost effectiveness analysis.[22] As more fully explained below, the adoption of the first recommendation is redundant with work already performed by independent third parties, thus unnecessarily increasing evaluation costs, while the adoption of the second would be contrary to Commission rules.

The Commission addresses cost effectiveness in Rule 4901:1-39-04(B), requiring that the EDU "demonstrate that its program portfolio plan is cost-effective on a portfolio basis." Rule 4901:1-39-05(C)(2)(b) requires each EDC to include in its annual status report "[a]n evaluation, measurement and verification ["EMV"] report that documents the energy savings and peak-demand reduction values and the *cost effectiveness* of each energy efficiency and demand-side management program reported in the electric utility's

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[22] Environmental Group Comments, pp. 6-7.

portfolio status report. Such report shall include documentation of any process evaluations and expenditures, measured and verified savings, and *cost-effectiveness* of each program" (emphasis added). As indicated in each of the Ohio EDU's annual status reports, their respective EMV reports, which includes a calculation of program cost effectiveness, are prepared by third party, independent consultants.[23] To require the Evaluator to, in essence, calculate the results already calculated by reputable consulting firms is not only redundant, but also a waste of time, resources and money, which will result in an unnecessary increase in costs that must be paid by customers. The Evaluator has access to all information related to the reports, as well as the underlying supporting documentation. Therefore, there is no need for the Evaluator to recreate work performed by reputable and independent firms. The Evaluator already has available what it needs to review the cost effectiveness calculations already made to the degree that it deems it necessary. Simply because the Environmental Group is not privy to the detailed information that would allow it to re-check the calculations of the Evaluator who, if the Environmental Group's recommendation is adopted, would be re-checking the work of another independent consulting firm, does not make the current process improper. Indeed, adoption of this recommendation would simply add additional costs to the EMV process. Accordingly, this first cost effectiveness recommendation should be rejected.

The second cost effectiveness recommendation is equally unnecessary and is, in fact, contrary to Commission rules. Again, the Environmental Group attempts to use this docket to advance its policy agenda by trying to modify the factors to be considered when determining the cost effectiveness of the various energy efficiency and peak demand reduction programs. This issue is governed by Commission rules. Section 4901:1-39-

[23] The Companies utilize ADM Associates, Inc. as their EMV contractor. AEP utilizes Navigant; Duke, TecMarket Works; and DP&L, The Cadmus Group.

01(F) defines "cost effective" as "the measure, program, or portfolio being evaluated that satisfies the total resource cost test." Rule 4901:1-39-01(Y) establishes the factors to be considered in the total resource cost test, defining the test as follows:

> [A]n analysis to determine if, for an investment in energy efficiency or peak-demand reduction measure or program, on a life-cycle basis, the present value of the avoided supply costs for the periods of load reduction, valued at marginal cost, are greater than the present value of the monetary costs of the demand-side measure or program borne by both the electric utility and the participants, plus the increase in supply costs for any periods of increased load resulting directly from the measure or program adoption. Supply costs are those costs of supplying energy and/or capacity that are avoided by the investment, including generation, transmission, and distribution to customers. Demand-side measure or program costs include, but are not limited to, the costs for equipment, installation, operation and maintenance, removal of replaced equipment, and program administration, net of any residual benefits and avoided expense such as the comparable costs for devices that would otherwise have been installed, the salvage value of removed equipment, and any tax credits.

The Environmental Group's recommendation for the Commission to direct the Evaluator to review issues such as price suppression impacts of energy efficiency upon both wholesale and capacity electricity costs, estimated employment impacts and estimated economic development impacts as part of its cost effectiveness analysis would, in effect, amend the rule contrary to Commission procedure. The Commission has a well established process in place for amending its rules, which must be followed.

Moreover, this recommendation is again beyond the scope of this proceeding. Nowhere in the 2011 Report did the Evaluator recommend that the cost effectiveness test be modified. Therefore, the Environmental Group's comments on this subject are misplaced and should be summarily rejected. If the Environmental Group believes that changes to the cost benefit test are necessary, it should abide by the Commission processes for amending a rule, rather than attempt to accomplish it through a proceeding in which historic energy efficiency and peak demand reduction programs and related results are being evaluated.

CONCLUSION

In sum, the Companies agree with the general observations made by each of their Ohio EDU counterparts. Further, the Environmental Group's recommendations are beyond the scope of this proceeding and should be summarily rejected, if not for this reason, then for the reasons set forth above. Accordingly, based upon the foregoing, the Companies respectfully ask that the Evaluator's 2011 Report be modified consistent with the Companies' initial and reply comments.

Respectfully submitted,

Kathy J. Kolich

Kathy J. Kolich (Reg. No. 038855)
FirstEnergy Service Company
76 S. Main Street
Akron, Ohio 44308
Tel: (330) 384-4580
Fax: (330) 384-3875
kjkolich@firstenergycorp.com

Attorney for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

CERTIFICATE OF SERVICE

The foregoing document was electronically filed through the Commission's Docketing Information System on this 28th day of January, 2014. Parties may access this document electronically from that system. Courtesy copies of this document were provided via electronic mail to all intervening parties of record as of the date of this filing.

Kathy J. Kolich

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