

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	Case Nos. 12-2190-EL-POR
Illuminating Company, and The Toledo	)	12-2191-EL-POR
Edison Company For Approval of Their	)	12-2192-EL-POR
Energy Efficiency and Peak Demand	)	
Reduction Program Portfolio Plans for	)	
2013 to 2015.	)	

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**REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO**

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**October 27, 2014**

**Attorneys for Industrial Energy Users-Ohio**

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Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FE") filed an application to amend their energy efficiency and peak demand reduction ("EE/PDR") portfolio plans on September 24, 2014.<sup>1</sup> Intervenor and Staff filed initial comments on October 20, 2014. Many of the comments seek to delay the approval of the amended plans. The Public Utilities Commission of Ohio ("Commission") should reject these recommendations and approve the Amended Application promptly so that FE's energy-intensive customers understand the scope of the portfolio plans that will be in effect for 2015 and 2016 and can make the appropriate elections under Substitute Senate Bill 310 ("SB 310").

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<sup>1</sup> Verified Application for Approval of Amended Energy Efficiency and Peak Demand Reduction Plans for 2015 through 2016 (Sept. 24, 2014) ("Amended Application").

**I. THE COMMISSION MUST APPROVE OR AMEND AND APPROVE THE AMENDED APPLICATION WITHIN SIXTY (60) DAYS.**

- A. The Commission should reject the Ohio Partners for Affordable Energy's recommendation to suspend the timeline as the Commission does not have authority to do so.**

Without reference to a provision of Ohio law, Ohio Partners for Affordable Energy ("OPAE") urges the Commission to suspend the timeline for approval of the Amended Application.<sup>2</sup> SB 310, however, requires the Commission to approve or modify and approve the Amended Application within sixty (60) days.<sup>3</sup> If the Commission does not take any action, the Amended Application is deemed approved on January 1, 2015.<sup>4</sup> There is no third alternative for the Commission to suspend the timeline established in SB 310. Accordingly, the Commission should reject the recommendation that it suspend the timeline for approval of the Amended Application.

**II. THE AMENDED APPLICATION PROVIDES SUFFICIENT INFORMATION TO PROCEED IN LIGHT OF THE EXTENSIVE PRIOR REVIEW.**

The Commission has previously approved the programs that are included in the amended plans in six days of hearing. During that initial proceeding, the parties had the opportunity to test the original application, and the Commission determined that the application, with modifications, was lawful. New programs included in the amended plans are responsive to statutory requirements or are currently the subject of a pending application and conditioned on approval of the latter application. The expected costs of the remaining programs should be reduced when the amended plans are approved.

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<sup>2</sup> Comments of Ohio Partners for Affordable Energy at 1-2 (Oct. 20, 2014) ("OPAE Comments").

<sup>3</sup> SB 310, § 6.

<sup>4</sup> *Id.*

Despite the substantial record that the Amended Application is based upon, several parties urge that more information is needed. Because the Commission has already reviewed most of the programs and costs FE proposes to continue, and the new programs are either subject to Commission review or would not increase the costs of compliance, the review process the Commission has ordered to address the Amended Application is appropriate.

**A. The Commission should reject OPAE's and the Environmental Advocates' recommendation that FE refile its Amended Application.**

OPAE and the Environmental Advocates urge the Commission to require FE to refile its Amended Application or reject the Amended Application because they assert the Amended Application is incomplete.<sup>5</sup> These comments ignore that FE's Amended Application seeks to continue programs already approved by the Commission. FE has already demonstrated that current programs are effective, as the Ohio Hospital Association ("OHA") points out.<sup>6</sup> The Amended Application also seeks authorization to add, on a conditional basis, one program and a Customer Action Program.<sup>7</sup> The first is the subject of a current Commission proceeding and will be included if the Commission approves it in that separate proceeding. The second, the Customer Action Program, is authorized by R.C. 4928.662(A) and appears to allow FE to reduce compliance costs by allowing the electric distribution utilities ("EDUs") to count customer efforts to reduce the

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<sup>5</sup> OPAE Comments at 2-6; Comments of the Sierra Club, the Environmental Law and Policy Center, Natural Resources Defense Council, and Ohio Environmental Council on FirstEnergy's Application for Approval of Amended Energy Efficiency and Peak Demand Reduction Plans for 2015 through 2016 at 2 (Oct. 20, 2014) (collectively, the "Environmental Advocates' Comments").

<sup>6</sup> Comments of the Ohio Hospital Association at 9-10 (Oct. 20, 2014) ("OHA Comments").

<sup>7</sup> Amended Application at 2.

compliance burden. The Staff of the Commission (“Staff”) is supportive.<sup>8</sup> Since the inclusion of both does not appear to be unreasonable, there is no need for the Commission to order the filing of another Amended Application.

The Ohio Manufacturers’ Association Energy Group (“OMAEG”) similarly argues that the Customer Action Program should not be included because FE has not provided sufficient details of its terms and costs.<sup>9</sup> OMAEG’s recommendation that the Commission reject the Customer Action Program is unreasonable and unlawful. First, as cited by FE in its application and not mentioned by OMAEG, newly-enacted R.C. 4928.662 specifically allows an EDU to count, for compliance purposes, demand reductions associated with energy efficiency measures that are recognized by regional transmission organizations such as PJM Interconnection, LLC (“PJM”):

Energy efficiency savings and peak demand reduction achieved through actions taken by customers or through electric distribution utility programs that comply with federal standards for either or both energy efficiency and peak demand reduction requirements, including resources associated with such savings or reduction that are recognized as capacity resources by the regional transmission organization operating in Ohio in compliance with section 4928.12 of the Revised Code, shall count toward compliance with the energy efficiency and peak demand reduction requirements.<sup>10</sup>

Second, and contrary to the claims advanced by OMAEG, the mere counting of customer effectuated EE/PDR towards an Ohio EDU’s compliance obligation is not tantamount to ceding ownership of capacity attribute bidding rights in PJM. In fact, the Commission’s prior orders specifically address this issue. In granting requests for rehearing related to this issue, the Commission found that mercantile customers could

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<sup>8</sup> Initial Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio at 3 (Oct. 20, 2014) (“Staff Comments”).

<sup>9</sup> The Ohio Manufacturers’ Association Energy Group Comments at 2-3 (Oct. 20, 2014) (“OMAEG Comments”).

<sup>10</sup> R.C. 4928.662(A).

retain ownership of PJM recognized capacity bidding attributed in circumstances in which the mercantile customer was committing measures to FE for the purpose of counting compliance towards FE's Ohio mandates:

[I]n exchange for exemption from Rider DSE2, the Commission finds, in the interest of fairness, that mercantile customers may seek exemption from Rider DSE2 or other rebates in lieu of exemption from Rider DSE2 pursuant to Section 4928.66(A)(2)(c), Revised Code, without being required to transfer ownership of energy attributes to FirstEnergy.<sup>11</sup>

Thus, OMAEG's arguments are contrary to current law, Commission precedent, and FE's currently-approved EE/PDR program plan. Accordingly, the Commission should reject OMAEG's recommendation to exclude the Customer Action Plan.

**B. The cost recovery process addresses the budget concerns raised by OMAEG and the Ohio Consumers' Counsel.**

OMAEG and the Ohio Consumers' Counsel ("OCC") urge the Commission to require FE to provide annual budget estimates for the programs it is proposing to continue.<sup>12</sup> It is not necessary as a basis for approving the Amended Application. The Commission has previously approved the budget, and costs are adjusted through EE/PDR proceedings to true-up costs to revenue requirements. These reviews will afford the Commission the opportunity to address the costs of compliance.

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<sup>11</sup> *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*, Entry on Rehearing at 11, (July 17, 2013).

<sup>12</sup> OMAEG Comments at 6; Comments by the Office of the Ohio Consumers' Counsel at 11 (Oct. 20, 2014") ("OCC Comments").

**C. The Commission should not impose additional costs of compliance.**

OHA urges the Commission to “modify” the Amended Application by maintaining the current plan. As a legal matter, imposing the current plan as a modification of the Amended Application would effectively operate as a denial of the application. The Commission does not have authority to deny the Amended Application under Section 6 of SB 310. Therefore, OHA’s recommendation should be rejected.

Further, there is no practical reason for the Commission to adopt OHA’s recommendation. FE already is in full compliance (actually over-compliance) with the 2014 requirements and will remain so in 2015 and 2016. As a result of FE’s current over-compliance, maintaining the current programs would impose unnecessary and additional costs on customers.

**III. TIMELY APPROVAL OF THE AMENDED APPLICATION IS REASONABLE.**

As noted above, the Commission should reject the attempts by some intervenors to delay or frustrate implementation of FE’s amended portfolio plan. Under SB 310, the plans must be approved or modified and approved within sixty (60) days. Beginning January 1, 2015, the energy-intensive customers may opt out of the opportunity and ability to obtain direct benefits and pay the recovery mechanism associated with the amended plans.<sup>13</sup> To afford energy-intensive customers the opportunity to make a timely exercise of their statutory options, the Commission should promptly approve or amend and approve the Amended Application.

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<sup>13</sup> SB 310, § 8.

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## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Reply Comments of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 27<sup>th</sup> day of October 2014, via electronic transmission.

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Summary: Reply Industrial Energy Users-Ohio's Reply Comments electronically filed by Ms. Vicki L. Leach-Payne on behalf of Darr, Frank P. Mr.