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 through 2015	))))))	Case Nos.	12-2190-EL-POR 12-2191-EL-POR 12-2192-EL-POR

OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA APPLICATIONS FOR REHEARING

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I. INTRODUCTION

The Ohio Consumers' Counsel ("OCC"), The Environmental Law & Policy Center, Ohio Environmental Council, Sierra Club and Natural Resources Defense Council (collectively, "Environmental Group") and The Ohio Manufacturers' Association Energy Group ("OMAEG") request that this Commission grant rehearing because they are not happy that the Commission, with one exception,[1] followed the express provisions and intent of S.B. 310 and approved Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's (collectively "Companies") application ("Application") to amend their energy efficiency and peak demand reduction ("EEPDR") portfolio plans ("Amended Plan") to meet revised statutory benchmarks for 2015 and 2016. First, in an effort to negate the Commission's order issued on November 20, 2014 ("Order"), the Environmental Group argues that the Commission unreasonably and unlawfully failed to review (or waive review of) the Companies' Amended Plan in accordance with Commission rules – that pre-existed the enactment of S.B. 310. As discussed below, not only has the Environmental Group failed to make any new arguments in support of this proposition, substantively the Commission correctly reviewed the Companies' Application in accordance with S.B. 310 and its rules.

Second, OCC seems to argue that the Commission should grant rehearing because it unreasonably and unlawfully failed to require the Companies to demonstrate the cost

[1] The Companies have requested, among other things, rehearing on one discrete aspect of S.B. 310 that they believe the Commission did not follow – namely to allow the Companies to count savings from customers who opt out.

effectiveness of their Amended Plan. As discussed below, however, the Commission did precisely that and therefore, rehearing is not warranted.

Third, in a complete lack of understanding of the Companies' cost recovery mechanism for EEPDR compliance costs, OMAEG again incorrectly argues that the Commission's order was unreasonable and unlawful because it did not reduce the Companies' budget. OMAEG's argument is not new and was already considered and rejected by the Commission.[2] Moreover, as discussed below, OMAEG's argument that the Companies' recent Rider DSE2 filing should change the rationale behind the Commission's Order is misplaced.

Fourth, the Environmental Group argues that the Commission improperly modified its previous March 20, 2013 order ("Initial Order")[3] by ordering the Companies to bid only installed energy efficiency resources, rather than both installed and planned energy efficiency resources into the PJM capacity auction. As discussed below, the Commission did not amend its Initial Order. On the contrary, the Initial Order specifically contemplated that this issue was subject to further consideration and modification[4], so the Commission acted in accordance with its Initial Order after taking into consideration S.B. 310 and the Companies' Amended Plan. But even if the Commission had not specifically reserved the right to subsequently address this issue, the Commission sufficiently supported the findings made in its Order.

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[2] Order at 10-12.

[3] See, *Opinion and Order, In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Case Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015, Case No. 12-2192-EL-POR*, March 20, 2013 ("Initial Order").

[4] Initial Order at 20-21 ("The Commission will require the Companies to bid into the upcoming May 2013 PJM BRA…Thereafter, the Commission may issue an order addressing the Companies' bids for the remaining two planning years").

Last, the Environmental Group and OCC argue that the Commission's Order allowing the Companies to recover costs related to any shortfall from the Companies' bids into the PJM capacity auctions was unreasonable and unlawful. As discussed below, the Companies previously presented ample evidence that offering into the PJM capacity auctions energy efficiency resources that the Companies have not achieved at the time of the auctions was a risky endeavor. Recognizing the risks, the Commission already ruled on this issue when it clarified in its July 17, 2013 Entry on Rehearing[5] that prudently incurred replacement capacity or penalty costs associated with PJM bidding of energy efficiency resources are fully recoverable costs under the Companies' Rider DSE. Thus, there is nothing unreasonable or unlawful in this decision.

For all of those reasons, the Commission should deny OCC, OMAEG and the Environmental Group's applications for rehearing ("AFRs").

II. THE COMMISSION'S ORDER APPROVING THE COMPANIES' AMENDED PLAN WAS IN ACCORDANCE WITH S.B. 310.

The Environmental Group argues that the Commission's Order is unreasonable or unlawful because the Commission failed to waive its rules related to: i) "public comment procedures"[6]; and 2) substantive requirements. The Environmental Group repeats their comments raised earlier in "memorandum contra" the Companies' Application filed October 9, 2014 that were expressly rejected by the Commission:

> The Commission finds that the arguments of OCC and ELPC/Sierra Club regarding the application should be denied, as FirstEnergy has provided further details regarding program budget and cost-effectiveness in its reply

[5] See, *Entry on Rehearing, In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Case Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Plans for 2013 through 2015, Case No. 12-2192-EL-POR*, July 17, 2013 at 7.
[6] Environmental Group's AFR at 7.

> comments. The Commission finds that, for purposes of the review - required by Section 6 of S.B. 310, the application is complete and contains sufficient information for our review pursuant to Section 6 of S.B. 310. Consequently, no waiver of the Commission's rules is necessary.[7]

As the Commission has held on countless occasions, a party's mere repetition of an argument that was previously thoroughly considered is not grounds for granting rehearing.[8]

The repetitive arguments of the Environmental Group must fail again for the same reasons. Most importantly, they have not shown that any of the energy efficiency rules upon which they rely govern the Commission's review of plan amendments filed under Section 6 of S.B. 310. The Commission's review of plan amendments "in accordance with its rules" necessarily means in accordance with its procedural rules so that parties have the opportunity to comment in an open, transparent proceeding during the sixty-day review period required by S.B. 310. That is exactly the process the Commission has afforded the Environmental Group.[9] It is unreasonable to assume that energy efficiency rules written specifically to apply to a much more prolonged process would apply here,

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[7] Order at 5.

[8] *E.g., Wiley v. Duke Energy Ohio, Inc.*, Case No. 10-2463-GE-CSS, 2011 Ohio PUC LEXIS 1276, *6-7 (Nov. 29, 2011) (rejecting an application for rehearing where "the application for rehearing simply reiterates arguments that were considered and rejected by the Commission"); *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, 2011 Ohio PUC LEXIS 543, *15-16 (May 4, 2011) (rejecting an application for rehearing that "raises nothing new"); *City of Reynoldsburg v. Columbus Southern Power Co.*, Case No. 08-846-EL-CSS, 2011 Ohio PUC LEXIS 680, *19-20 (June 1, 2011) (holding that no grounds for rehearing existed where no new arguments had been raised); *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, No. 08-1344-GA-EXM, 2011 Ohio PUC LEXIS 1184, *9-10 (Nov. 1, 2011) (denying application for rehearing because applicant "raised nothing new on rehearing that was not thoroughly considered" in the Commission order at issue).

[9] The Environmental Group spends a large portion of its AFR complaining that the process was not robust or public enough. However, it is the Commission's role to regulate the Companies – not the Environmental Group – and the Commission was more than capable of ruling on the Companies' Application consistent with statutory requirements.

and attempting to do so would undermine and be in conflict with the express provisions of S.B. 310, which is not permitted.

The Commission's review must also take into account the fact that the amended benchmarks in R.C. 4928.66 were triggered by the Companies' filing of the Application.[10] Because those amended benchmarks now apply for 2015 and 2016, and because the Companies met all 2014 benchmarks as of August 31, 2014,[11] it is indisputable that the Companies will satisfy R.C. 4928.66's requirements through 2016. As such, the Commission need not consider, as it typically would when reviewing a new portfolio plan, whether the Companies' programs are sufficient to satisfy annually-increasing benchmarks.

The Commission's review also must take into account that the Application does not propose a new portfolio plan but, instead, is an amendment to the existing plan and thereby relies upon and is part of the existing plan previously approved by the Commission in this docket. Thus, the Commission's review should rely fully upon the extensive record previously developed in this docket, including the detailed evidence[12] regarding compliance with each of the rules referenced. The Commission already has determined that the existing plan is cost-effective on a portfolio basis[13] and already has

[10] *See* S.B. 310, Section 6(B)(2) ("Section 4928.66 of the Revised Code, as amended by this act, shall apply to an electric distribution utility that applies to amend its portfolio plan under Division (B) of this section").
[11] Application, Attachment 1.
[12] Such detailed evidence included fifteen witnesses and six days of hearing.
[13] Notably, the Low-Income Program and the Residential Direct Load Control Program were projected to not be cost-effective as measured by the Total Resource Cost test. *See* Existing Plan, Appendix C-3, PUCO 7A-B. However, in approving these programs as elements of the Existing Plan, the Commission found their funding levels and inclusion in the Existing Plan to be appropriate. Opinion & Order, pp. 26, 43 (Mar. 20, 2013). The Commission's rules also permit utilities to include programs in their plans that are not individually cost effective when the programs provide "substantial nonenergy benefits." O.A.C. 4901:1-39-04(B).

approved the portfolio budget.[14] The Companies filed the Application in this docket so that the Commission may, within the sixty-day period mandated by S.B. 310, review the Amended Plan as if it were for a new portfolio plan.

The Environmental Group's claim that the Commission's approval of the Companies' Customer Action Program is somehow unreasonable is also unwarranted. The fact that this new program has not previously been reviewed and approved by the Commission does not make the Amended Plan unlawful or unreasonable. The Companies expressly included this program in their filing in the interest of transparency, instead of merely proceeding to directly implement this new statutory authority without notice. No additional information was necessary, and no additional detailed Commission review was necessary, for the Companies to do what the statute expressly authorizes them to do.

As discussed in the Application, the Commission's rules in their entirety associated with the Commission's review of portfolio plans cannot reasonably be applied to the expedited review period required by S.B. 310.[15] The General Assembly understood this, as it did not require that an application to amend an existing plan comply with all existing Commission rules. Instead, S.B. 310 simply directs the Commission to review an application "in accordance with" its rules. It is left to the Commission to decide which rules are applicable to an expedited filing such as required under S.B. 310 to amend an existing plan. And, as the Companies discussed in their Application, several

[14] As the Companies indicated in their Application, the Companies will rely upon their approved Existing Plan budget by sector to achieve benchmark compliance through December 31, 2016 and support the programs and activities contemplated by the Amended Plan unless otherwise noted. Application at ¶ 26.
[15] Application at ¶¶ 28-29.

of the rules are not applicable given the intent behind S.B. 310.[16] Indeed, there is no requirement that the Commission apply any of its Energy Efficiency Program Rules in Chapter 4901:1-39, as the General Assembly likely was referring in S.B. 310 to the Commission's Administrative Rules in Chapter 4901-1 given the expedited review period which would have made it impossible for the Commission to amend its rules to comply with the amended plan application process included in S.B. 310.

Last, the Environmental Group relies heavily on language in S.B. 310 directing the Commission to review any proposed application "as if the application were for a new portfolio plan." Of course, the Commission's review must also take into account the mandated 60-day review period required by S.B. 310.[17] The Commission recognized this obvious point in its Order: "given the time constraints of this proceeding, the Commission finds that this program may be included in the Amended Plan, subject to the TRC test as part of future audits."[18] For all of those reasons, the Environmental Group's AFR must be denied.

III. THE COMMISSION DID NOT ERR IN NOT CLARIFYING IN ITS ORDER THAT THE COMPANIES MUST DEMONSTRATE THAT THEIR AMENDED PLAN IS COST-EFFECTIVE.

It is difficult to understand precisely what OCC is requesting the Commission to do as it relates to its third assignment of error. OCC states that "the Utility should also be required to demonstrate the cost-effectiveness of its entire modified energy efficiency portfolio, in accordance with Ohio Admin. Code 4901:1-39-04(B)." However, the Commission expressly rejected OCC's argument that the Companies should be required

[16] Application at ¶¶ 27-29.
[17] The initial approval of the Companies' Existing Plan on March 20, 2013 was 232 days after the Application on July 31, 2012. Such a procedural process is clearly outside the intent of SB 310 language.
[18] Order at 13.

to demonstrate cost-effectiveness under Ohio Admin Code 4901:1-39-04(B) because of "the time constraints of the proceeding."[19] This determination is reasonable because, as discussed in the Application, the Commission's rules in their entirety cannot reasonably be applied to the expedited filing required by S.B. 310.[20]

However, the Commission did require that the Companies provide TRC results for the Customer Action Program in "future audits."[21] Rule 4901:1-35-5(C)(2)(b) already requires the Companies in their annual reports to provide:

> An evaluation, measurement, and verification 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 portfolio status report. Such report shall include documentation of any process evaluations and expenditures, measured and verified savings, and cost-effectiveness of each program.[22]

At that time, as the Companies have done in the past, the Companies will provide cost-effectiveness information. However, the Companies note that the Commission's rules also permit utilities to include programs in their plans that are not individually cost effective when the programs provide "substantial nonenergy benefits."[23] For those reasons, the Commission should deny rehearing on OCC's third assignment of error.

IV. THE COMMISSION SHOULD DENY OMAEG'S APPLICATION FOR REHEARING.

Admitting that it has made the same arguments that the Commission previously thoroughly considered and rejected, OMAEG nevertheless again argues that the Commission's Order unreasonably and unlawfully failed to limit the Companies'

[19] Order at 13.
[20] Application at ¶¶ 28-29.
[21] Order at 13.
[22] *See e,g.* Case Nos. 14-0859-EL-EEC, 14-0860-EL-EEC and 14-861-EL-EEC.
[23] Rule 4901:1-39-04(B).

portfolio plan budget "to reflect the costs of the Companies' amended plan offerings."[24] OMAEG raises the same objections to the Amended Plan Budget in its AFR that it did in its comments and reply comments.[25] Namely, OMAEG again incorrectly argues that by not limiting the Companies' portfolio plan budget, the Commission is somehow allowing the Companies to over-collect. As OMAEG admits the Commission considered OMAEG's comments and found that modification of the Companies' budget was not necessary, OMAEG has not raised anything new to support its argument. As discussed above, the Commission should deny OMAEG's AFR on these grounds.

OMAEG attempts to construct a "new" argument by pointing to language from the Commission's Order whereby the Commission "noted" that it is the Commission's "expectation that the next rider adjustment will reflect lower costs to customers resulting from the implementation of the Amended Portfolio."[26] OMAEG argues that because, in the December 1, 2014 Rider DSE filing, some of the customer classes costs did not reduce, then the Commission's "expectation" has somehow not been met.[27] However, OMAEG is mistaken and such an argument reflects a fundamental misunderstanding of the Companies' proposal in its Application, the rider adjustment process, and the timing of the implementation of the Amended Plan.

The "next rider adjustment" that was made on December 1, 2014 for DSE rates effective January 1, 2015 was developed in November and reflects true up costs from the previous six months (still under the existing plan) and a forecast for the subsequent months of November 2014-June 2015 (which includes costs from both the existing plan

[24] OMAEG AFR at 5.
[25] OMAEG Comments at 5-6.
[26] Order at 11-12.
[27] OMAEG AFR at 6-7.

and the Amended Plan). This forecast includes costs incurred in transitioning from the existing plan to the Amended Plan, as discussed in the Companies' Application and comments, because, for several of the Companies' programs under the previous plan, the Companies are continuing to honor their commitments under those programs. These commitments will include costs for projects committed to in 2014, but not completed until the first quarter of 2015. Therefore, the January 1, 2015 rider does not yet reflect lower rates for all customer classes because the rates are not based solely on program costs related to the Amended Plan.

As the Companies' stated in their Application, the Companies are relying upon their approved existing plan budget by sector to achieve benchmark compliance through December 31, 2016 – i.e., will use the remaining existing plan budget by sector to cover all costs for 2015 and 2016, one year longer than the budget was originally authorized for.[28] Indeed, the Companies stated in the Application that they anticipate that the costs of implementing the Amended Plan over two years will be less than the cost of implementing the existing plan over one year.[29] Simply because the rider adjustment made less than two weeks after the approval of the Amended Plan does not reflect this decrease in costs does not mean that the Companies are unnecessarily spending or over collecting.[30] OMAEG's "concern" and supposition that "this circumstance may be an unintended effect of the decision not to limit FirstEnergy's portfolio plan budget"[31] is

[28] *See* Application at ¶ 26.
[29] Application at ¶ 26.
[30] Indeed, in the years that Rider DSE2 has been in place, the Commission has not found that the Companies are unnecessarily spending or over collecting.
[31] OMAEG AFR at 7.

wholly insufficient to demonstrate unreasonableness or unlawfulness with the Commission's Order. For those reasons, the Commission should deny OMAEG's AFR.

V. THE COMMISSION CORRECTLY REAFFIRMED ITS PREVIOUS ORDER RELATED TO THE RECOVERY OF PRUDENTLY INCURRED COSTS OF ANY STEPS TAKEN TO ELIMINATE ANY SHORTFALLS FOR PJM BIDDING.

A. The Commission did not need to outline facts and reasoning when it reiterated its previous order related to the recovery of prudently incurred costs of any steps taken to eliminate any shortfalls for PJM bidding.

In its first assignment of error, OCC argues that the Commission did not provide sufficient explanation for "authorizing the FirstEnergy utilities to charge customers for capacity shortfalls that may result from the Utility's decision to eliminate over 60 percent of its energy efficiency programs."[32] As an initial matter, as it relates to the recoverability of costs taken to eliminate any shortfalls for PJM bidding, the Commission has not authorized the Companies to do anything in this case that is different than what it previously found in its March 20, 2013 order approving the Companies' existing plan and reaffirmed in the July 17, 2013 Entry on Rehearing. The Amended Plan did not propose to alter any of the provisions of the existing plan relating to the bidding of energy efficiency resources into the PJM Base Residual Auction ("BRA"). Indeed, the Commission found in its Order that the Companies do "not seek to alter the balance established by the Commission regarding the bidding of energy efficiency resources into PJM capacity auctions and that the Companies will continue to comply with that directive in the Commission's March 20 2013 Opinion and Order."[33] The Commission also reiterated, rather than authorize anything new, that "consistent with our ruling in the

[32] OCC AFR at 5.
[33] Order at 21.

Opinion and Order issued in this proceeding, the Commission finds that FirstEnergy shall be entitled to recover from ratepayers the prudently incurred costs of any steps taken to eliminate any shortfalls."[34] Because the Commission did not order anything new in this proceeding as it relates to the recoverability of prudently incurred costs of eliminating shortfalls, the Commission need not outline any facts and reasoning as OCC alleges. The Commission should deny rehearing.

B. The Commission provided sufficient explanation and did not err in reiterating its previous Order in allowing the Companies to recover from ratepayers the prudently incurred costs of any steps taken to eliminate any shortfalls.

As discussed above, the Commission reiterated its previous orders allowing the Companies to recover any prudently incurred costs for shortfalls. In its first assignment of error, OCC argued that the Commission did not provide sufficient explanation and both OCC and the Environmental Group assert that the Commission erred in reiterating this decision. As it relates to the requirements of Section 4903.09, Revised Code, the Commission must only provide the court "with sufficient details to enable [it] to determine, upon appeal, how the commission reached its decision" and "enough evidence and discussion in order to enable the PUCO's reasoning to be readily discerned."[35] In other words, the Commission has to provide the court "with an adequate record to understand the commission's rationale underlying it decision on appeal."[36] The Commission did so here. As discussed above, the Commission's Initial Order outlined its rationale for allowing the Companies' to recover the costs of any shortfalls.[37]

[34] Order at 22.
[35] *Cleveland Electric Illuminating Co v. PUCO*, 4 Ohio St. 3d 107, 110 (1983).
[36] *Elyria Foundry Co. v. PUCO*, 118 Ohio St. 3d 269, 276.
[37] Initial Order at 20-21.

Moreover, as the Companies explained previously in this proceeding,[38] there was always a risk that the General Assembly would alter the form or level of energy efficiency mandates.[39] Commissioners Slaby and Porter, in their concurring opinion to the Commission's March 20, 2013 Order, recognized the risk:

> We recognize that bidding in planned energy efficiency may reduce capacity costs in the future. However, this brings in a future risk of unknown costs of energy efficiency that may end up a burden born[e] by consumers, the company or both. Due to rapid changes taking place in today's marketplace, a plan today to bid unknown energy efficiency resources might not be met in the future without additional costs having to be absorbed by someone.

Because of this known risk, the Commission authorized the Companies to fully recover all PJM costs and applicable penalties associated with PJM auctions, including the cost of purchasing replacement capacity from incremental auctions, to the extent such costs or penalties are prudently incurred.[40]

The Commission also recognized in its Order, with regard to the Companies' obligation to PJM for the 2016/2017 and 2017/2018 delivery years, the Companies expect to meet a substantial portion of this obligation with energy efficiency programs that will have been implemented by the delivery years.[41]

The Companies believe that penalty costs, if any, for any potential shortfalls (or replacement capacity if less than penalties) will be more than offset by revenues received for the obligations committed by the Companies when implementing the Commission's directive. Under PJM's current capacity auction design, the Companies will be paid for

[38] *See* Mikkelsen Testimony at 4-6.
[39] Companies' App. for Rehearing at 1 (April 19, 2013).
[40] July 17, 2013 Entry at 7.
[41] Order at 21-22.

100% of the resources that cleared the auction prior to incurring any PJM penalty or capacity costs. Thus, the Companies' fully expect customers will see a net positive benefit from the Companies' actions associated with complying with the Commission's directives for those delivery years, even to the extent that any shortfall occurs.

The Commission properly rejected the attempt by some parties to revise the historical record and now impose the risk on the Companies of PJM bidding.[42] Indeed, had OCC and Environmental Group's position on PJM bidding been adopted by the Commission – i.e., bidding 100% of all planned resources, the expectation that customers would still see a positive net benefit would be much less certain. Instead, the Companies have prudently implemented the bidding strategy ordered by the Commission and are entitled to recover in full all costs and penalties associated with the PJM auctions.

Neither the Environmental Group nor OCC have demonstrated that the Commission's order is unreasonable or unlawful. The Environmental Group argues that the *potential* (but not certain or definite), shortfalls, if any, that could occur as a result of the Amended Plan are not the result of uncertainty – but rather somehow the fault of the Companies.[43] But, the Environmental Group seems to forget that the Companies demonstrated previously in this Proceeding that changes to the energy efficiency mandates were a likely possibility, but yet the parties still insisted, and the Commission ordered, that the Companies bid into the PJM capacity auctions planned and installed energy efficiency attributes.[44] The Companies also demonstrated that planned energy efficiency attributes do not always come into fruition for reasons beyond the Companies

[42] *See* OCC Comments at 16-17; OMAEG Comments at 7.
[43] Environmental Group's AFR at 20.
[44] Entry on Rehearing at 2.

control.[45] Moreover, the Companies also demonstrated while the Companies' previous EE/PDR plan may contain many measures allowable under state law to be counted for compliance, those same resources may not be equally valued by PJM or translate into PJM eligible resources. As Ms. Mikkelsen testified on behalf of the Companies "I have a high degree of certainty that we will reach the statutory mandates in the years 2013 through 2015. I have less certainty, as I've discussed here in my testimony, about how we'll achieve those mandates."[46] She further testified:

> The plans include assumptions of all participation in our various programs. But I think experience would suggest that what our expectations are going into the plan are not necessarily how that plan will be implemented or how customers will choose to participate at those exact same levels throughout the plan period, and there are a number of resources built in our plan that simply aren't eligible for participation in the PJM process. And so to the extent that participation in those programs exceeds the level that was included in the forecast, you could find yourself in harm's way.[47]

Also, in response to the Attorney Examiner:

> Q. What your testimony is, because the company has a substantial amount of flexibility in the implementation plan on meeting annual targets versus bidding into a PJM capacity auction three years in advance, you are not certain that the individual capacity resources will be eligible for the PJM auction, although you are certain you will hit your statutory benchmarks?
>
> A. Yes, sir.[48]

Nevertheless, the Commission found that "to create a reasonable balance between the uncertainty and potentially substantial benefits" the Companies should offer 75% of

[45] Initial Order at 19.
[46] Tr. Vol. VI at .
[47] Tr. Vol VI at 1154-1155.
[48] Tr. Vol. at 1156.

planned energy efficiency resources into the May 2013 PJM BRA capacity auction.[49] The Companies demonstrated that bidding "planned resources" into the May 2013 PJM BRA auction was a risky endeavor. Simply because the Commission ordered the Companies to do so does not mean that the Commission's subsequent order approving the Amended Plan is unreasonable or unlawful.

OCC alleges that customers would be negatively affected because they potentially would have to pay for any needed replacement capacity.[50] However, OCC fails to recognize that customers would likewise receive any revenue derived from the original offer even if replacement capacity is purchased. Moreover, both OCC and the Environmental Groups conveniently forget to mention that they both argued that purchasing replacement capacity was a sufficient mitigation of any risks.[51]

Put simply, the Companies should not be punished for following a Commission Order especially when they sufficiently alerted the Commission and all other parties to the risks associated with bidding planned energy efficiency resources into the PJM capacity auction. For all of those reasons, the Commission sufficiently outlined the facts and reasoning behind its decision and did not err. Therefore, the Commission should deny OCC and the Environmental Group's AFRs.

VI. THE COMMISSION DID NOT UNREASONABLY OR UNLAWFULLY MODIFY ITS PREVIOUS ORDER RELATED TO PJM BIDDING.

The Environmental Advocates claim that the Commission lacks record support for ordering the Companies to "bid only installed energy efficiency resources into future

[49] Initial Order at 20.
[50] OCC AFR at 9.
[51] Initial Order at 17-18.

PJM capacity auctions."[52] The Environmental Advocates are mistaken. Indeed, the Environmental Advocates' citation to *Office of Consumers' Counsel v. PUCO,*[53] supports the Commission's Order, as the Commission has not "changed its position"[54] as it relates to any order. The Environmental Group ignores the fact that in its Initial Order, the Commission only required the Companies to bid into the "May 2013 PJM BRA 75 percent of the planned energy efficiency resources for the 2016/2017 planning year under their program portfolio."[55] The Commission explicitly reserved the right to make a different order as it relates to future PJM BRA auctions: "[t]hereafter, the Commission may issue an order addressing the Companies' bids for the remaining two planning years."[56] The Environmental Group's argument that the Commission somehow changed its earlier position is not correct.

Moreover, even if the Commission had not explicitly reserved this right (not that it needed to), there is reasonable justification for the Commission's Order. First, the Companies demonstrated in this proceeding that bidding only all eligible, installed energy efficiency resources for which they have ownership rights at the time of the auction was the prudent way to manage any risks associated with bidding into PJM capacity auctions. As the Companies' witness Mikkelsen testified:

> I think there is an element, as I say here in my testimony, particularly with respect to bidding energy efficiency resources that don't exist, to the extent that those are bid into the market and they are, in fact, not installed

[52] Order at 22; Environmental Advocates' AFR at 17.
[53] 10 Ohio St. 3d 49, 50-51 (1984).
[54] *Id.* ("Although the Commission should be willing to change its position when the needed therefor is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law")
[55] Initial Order at 20.
[56] Initial Order at 21.

> downstream, that does not provide for, you know, certainty with respect to the system reliability.
>
> * * *
>
> I think it would be incumbent upon any bidder to have a great degree of certainty that the planned resources they are bidding into a base residual auction will be delivered in advance of the delivery year.[57]

This bidding strategy has the associated risk level most appropriate to an electric distribution utility. As Ms. Mikkelsen further testified:

> I do not believe it is appropriate for regulated electric utilities to take speculative future positions that could subject either the utility or its customers to severe financial harm. This is especially true given that there is not a statewide directive providing consistent requirements for electric utilities. There also is no risk protection mechanism in place to insulate each of the Companies (or their customers) from such financial harm.[58]

The Companies also demonstrated how bidding "planned resources" into the PJM auctions require a level of certainty.[59] Last, the Companies established that bidding in "planned resources" was unreasonable:

> Essentially, the parties advocating this risk exposure are suggesting that the Companies utilize the PJM capacity market as a financial arbitrage opportunity. Betting on future incremental auctions, as some parties have suggested, to mitigate risks creates its own set of risks which are not controllable by the Companies. I believe that the primary purpose of the EE/PDR Portfolio Plan is to achieve the statutory energy efficiency and peak demand reduction goals, not to take speculative market positions that could pass financial risk onto customers or the Companies' shareholders.
>
> Third, given that the PJM BRAs are for delivery years three years into the future, there are too many unknowns and uncertainties associated with attempting to guess what future energy efficiency or load management resources will be installed, which of those will qualify to meet the

[57] Tr. Col. VI at 1129:7-21.
[58] Mikkelsen Rebuttal at 4.
[59] IEU-Ohio Exh. 2, PJM Manual 18 §4.4; IEU-Ohio Exh. 3, PJM Manual 18B §5.1.1; Mikkelsen Rebuttal, p. 5.

> projected commitments and meet M&V standards, and which of those resources the Companies will have ownership rights to.[60]

There is sufficient record evidence in this proceeding supporting the Commission's decision to require the Companies to only bid installed resources into future PJM BRA auctions. Therefore, the Commission should deny the Environmental Groups' AFR.

VII. CONCLUSION

For all of the foregoing reasons, the Commission should deny OMAEG, OCC and the Environmental Group's AFRs.

Respectfully submitted,

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[60] Mikkelsen Rebuttal at 4-5.

CERTIFICATE OF SERVICE

I certify that this Application for Rehearing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 2nd day of January, 2015. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record.

/s/ *Carrie M. Dunn*
One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

Summary: Memorandum Contra Applications for Rehearing electronically filed by Ms. Carrie M Dunn on behalf of The Toledo Edison Company and The Cleveland Electric Illuminating Company and Ohio Edison Company