

FILE

FirstEnergy

RECEIVED-DOCKETING DIV

76 South Main St.
Akron, Ohio 44308

2009 MAY 18 PM 4:52

1-800-646-0400

PUCO

May 18, 2009

Ms. Renee J. Jenkins
Director, Administration Department
Secretary to the Commission
Docketing Division
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Dear Ms. Jenkins:

Re: Case No. 08-888-EL-ORD
FirstEnergy Companies Application for Rehearing

Enclosed for filing, please find the original and twelve (12) copies of the table of contents of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company that was inadvertently omitted from the filing of Friday, May 15, 2009. Please file the enclosed in the above-referenced docket, time-stamping the two extras and returning them to the undersigned.

Thank you for your assistance in this matter. Please contact me if you have any questions concerning this matter.

Very truly yours,

Kathy J. Kolich/jms

kag
Enclosures

cc: Parties of Record

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Sm Date Processed MAY 19 2009

TABLE OF CONTENTS

	<u>Page</u>
Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Rehearing	1
Memorandum in Support of the Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company	4
I. Introduction	4
II. Arguments	5
A. New Chapter 4901:1-39	7
1. Through the adoption of Rule 49091:1-29-05(D), the Order unreasonably and unlawfully excludes energy-related projects put in place to comply with performance standards established by law, regulation or building code.	7
2. Through the adoption of Rule 4901:1-39-08(B)(4) the Order unreasonably and unlawfully excludes the amount of energy savings and peak demand reduction arising from mercantile customer on-site generation projects.	10
3. Through the adoption of Rule 49901:1-29-08(B)(4), the Order unreasonably and unlawfully understates the effects of an energy related project or program by requiring that such effects be determined based on a comparison to industry standard new equipment or practices, rather than the actual situation existing prior to the implementation o f the project or program.	11
4. The Commission unreasonably and unlawfully exceeded its administrative authority by requiring adjustments to baseline calculations for energy efficiency and peak demand reductions during a “negative economic growth” period.	12

5.	The Commission unreasonably and unlawfully exceeded its statutory authority by requiring the use of a three year rolling average that does not factor out a compounding effect that increases compliance requirements beyond those contemplated in the law.	14
6.	The Companies request clarification on the requirements for compliance with the demand reduction benchmarks set forth in R.C. 4928.66(A)(1)(b).	15
B.	New Chapter 4901:1-40, "Alternative Energy Portfolio Standard."	18
7.	The Order unreasonably and unlawfully fails to recognize the deliverability of energy transmitted through regional transmission organizations when defining energy "deliverable into this state" as used in Rules 4901:1-20-01(I) and 4901:1-40-04(D)	18
8.	The Commission unreasonably and unlawfully exceeded its statutory authority and imposed standards not supported by law by establishing a definition of "double counting" in Rule 4901:1-40-01(M) that unreasonably precludes the use of a single resource to meet multiple energy related benchmarks set forth in S.B. 221.	20
9.	The Commission unreasonably and unlawfully exceeded its statutory authority and imposed standards not supported by law by establishing a burdensome requirement in Rule 4901:1-40-03(C) for filing a 10-year compliance plan that will be highly speculative and provide no public benefit.	21
10.	The Commission unreasonably and unlawfully exceeded its statutory authority and imposed standards not supported by law by establishing a definition of "qualified resources" in Rule 4901:1-40-04(A)(8) that improperly: (a) limits the use of storage facilities to satisfy the statutory requirements; and (b) imposes geographic and temporal limitations on eligible RECs that are arbitrary and contrary to law.	22
11.	In adopting Rule 4901:1-40-07, the Commission unreasonably and unlawfully exceeded its statutory authority and imposed standards not supported by law by: (a) establishing a cost cap that directly conflicts with R.C. 4928.64(C)(3); and (b) reserving for the Commission the authority to impose a "catch up" upon application of the cost cap that is not authorized by R.C. 4928.64.	25

12.	The Rules related to alternative energy resources unreasonably and unlawfully fail to reflect the amendments to R.C. 4928.64 and R.C. 4928.65, as signed into law by the Governor on April 1, 2009.	28
C.	Chapter 4901:5 – Long Term Forecast Report	30
13.	In adopting Rule 4901:5-5-06, the Commission unreasonably and unlawfully exceeded its statutory authority and imposed requirements not supported by law and that conflict with R.C. 4935.04 by mandating that electric utilities must file an annual integrated resource plan as part of a long term forecast report.	30
14.	Rule 4901:1-39-07(A) unreasonably and unlawfully ties recovery of properly incurred costs to the approval of an ECU’s portfolio plan.	32
15.	It is unreasonable and unlawful for the Commission to Establish a process that places the EDU at risk of penalties for non-compliance in 2009 when the Commission has yet to provide final rules as guidance for such compliance as of the date of this filing.	33
16.	The Commission unreasonably and unlawfully created the definition of “substantial change” in Rule 4901:5-1-01(L) that is inconsistent with that included in the statutory definition for the same term as set forth in R.C. 4935.04(D)(3)(c).	34
17.	The Companies seek clarification on the use of the work “Plan” in Rule 4901:5-1-01(M), believing that the word should be “Plant.”	34
18.	The Companies seek clarification on the reference to Rule 4901:1-39-09 in Rule 4901:1-39-07(A)(2), believing that such reference should be to Rule 4901:1-39-08.	34
19.	The Companies seek clarification on the reference to Rule 4901:1-39-08 included in Rules 4901:1-39-08(B), believing that such reference should be to Rule 49901:1-39-07.	35
	Conclusion	35