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July 24, 2009

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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: Comments of Ohio Edison Company, The Cleveland Electric
Illuminating Company and The Toledo Edison Company on
Appendix A
Case No. 09-512-GE-UNC*

Enclosed for filing, please find the original and seventeen (17) copies of the Comments of Ohio Edison Company, The Cleveland Electric Company and The Toledo Edison Company on Appendix A regarding the above-referenced case. Please file the enclosed Comments, time-stamping the two extras and returning them to me in the enclosed envelope.

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

Very truly yours,

kag
Enclosures

cc: Parties of Record

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Protocols for the)
Measurement and Verification of Energy)
Efficiency and Peak Demand Reduction) CASE NO. 09-512-GE-UNC
Measures.)
)

COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY
ON APPENDIX A

Introduction

In Appendix A of its June 24, 2009 Entry ("Entry"), the Commission requested comments from interested parties on five separate policy issues that may affect the approach and scope of a Technical Reference Manual ("TRM"). Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "Companies") thank the Commission for the opportunity to submit the following comments on these important issues.

Comments

The goal of any TRM should be to provide standard measurement values for standard energy efficiency and demand response ("EEDR") technologies and measures so as to streamline the measurement and verification ("M&V") process. In order to achieve this goal, the development of the TRM should be based on several basic principles:

- Assumptions should be reasonable and reflect, to the degree practical and cost effectively possible, actual events and results;
- Calculations related to the deemed measures set forth in a TRM should be basic, with underlying documentation and data retention kept to a minimum;
- M&V should be viewed for what it is -- an estimate -- and, therefore, the cost to achieve a relative state of certainty should not outweigh the benefits of such perceived certainty;

- Deemed values should mean exactly that – the values will be deemed to be valid until they are modified based on empirical evidence that supports such modifications;
- Certainty is critical to an Electric Distribution Utility's ("EDUs") EEDR compliance strategy. Therefore, any modifications to the deemed values should be applied to new installations on a prospective basis only; and
- There must be some certainty surrounding benchmarks, TRM values and calculations. The target cannot continuously move, each time a variable changes.

Further, EDUs will be contracting with vendors and other organizations to assist in the delivery of programs and will have contractually binding agreements for the achievement of targets. Any changes to assumptions and savings values will require alteration of contracts, further underscoring the need for predictability and consistency so as to contain costs. Adoption of straightforward and reasonable M&V protocols and approaches will ensure that the maximum proportion of program resources are devoted to the delivery of services to customers and the achievement of targets, rather than sophisticated and costly measure techniques that often add minor incremental value to the accuracy of findings.

With these principles in mind, the Companies submit the following comments.

Q 1: Should the Commission evaluate performance of utility programs on the basis of achieved gross or net savings, or both?

Answer: The Companies believe that performance of utility programs should be evaluated based on gross savings only – both now and in the future.¹

¹ The Companies generally agree with the Staff's provisional recommendation, except to the extent that Staff believes that this issue should be revisited in the future. (Appdx A, p. 2.) If, however, the Commission desires such additional review in the future, the Companies urge the Commission to seek additional comments from interested parties prior to making any decision, with such decision based on actual program assessments and a thorough understanding of exactly what would be necessary in order to determine the actual impact of free riders and spillovers, including the costs to do so.

The Companies agree with the Commission Staff that "Ohio does not have a history of significant ratepayer-funded energy efficiency programs and because electricity prices have been relatively low in Ohio, there is a high probability that energy efficiency programs proposed by utilities in their first three-year plan will have a high net to gross savings ratio if these programs are well-designed." (Appdx. A, p. 2.) The Companies also agree with Staff that "quantifying attribution of energy savings and demand reductions, and thus net savings and reductions, can be a complex and a non-exact process" id.; and will require the analysis of sales or market share data. (Id. at pp. 1-2.)

While such analysis will provide general information, if an EDU is to truly understand the motivating factors underlying a customer's decision to participate in a program, customer surveys will also be necessary. Net to gross surveying techniques typically require a telephone survey approach since the questioning involves skip patterns. Based on recent survey supplier quotations, residential telephone surveys can range from \$25 per completed interview to approximately \$100 per interview, depending on the complexity, while non-residential surveys cost between \$60 and \$185 for data collection alone (excluding data entry, verification and analysis). In order for such techniques to have statistical validity, sampling must be done on a per technology or end use basis, which drives costs even higher. The survey must inquire of individual participants the specific measures they adopted and ask about each measure, the motivation for its adoption and other questions related to attribution. As Staff recognized, attribution is an inexact science which, according to at least one survey provider, is due to the limitations of conducting surveys post implementation when a

customer has a limited ability to recall sources of information, the variety of sources that were available and other similar underlying information. This is one reason why the industry trend has been toward adoption of deemed savings values based on an assumption that free rider effects, when netted against spillovers, tend to net to zero. (See e.g., New Jersey protocols.) Further, such adjustments are highly dependent on program and measure specifics, such as distribution and installation processes, and can vary widely.

Given that the TRM values are nothing more than estimates based on numerous assumptions and variables, incurring the costs necessary to improve the accuracy surrounding only one of these many factors does very little to provide exactness to the listed TRM values. Instead, the Companies suggest that, absent empirical evidence to the contrary, there should be a rebuttable presumption that free riders will be offset by spillovers, with the net impact being zero.

Q 2: How should baseline efficiency and market penetration be defined for determining energy savings and demand reductions?

Answer: The Companies believe that the baseline should be determined based on assumptions that most closely reflect conditions that existed at the time the customer implemented the EBDR program(s).

The purpose of a TRM is to reflect an estimate of EBDR results that can be used in lieu of actual M&V. As previously discussed, these TRM values are based on assumptions. These assumptions should reflect, to the degree practical and cost effectively possible, actual conditions before the program is implemented. Therefore, the baseline should not be determined through the use of some hypothetical industry standard, as required in Rule 4901:1-39-08(B), O.A.C. Instead, equipment that was

actually in place should be the basis for determining EEDR results.² Nor should it be adjusted (downward) as required in Rule 4901:1-39-05(D) simply because a benchmark has been adopted through other laws, regulations or building codes.³

Inasmuch as the Staff's Provisional Recommendation mirrors the aforesaid rules as adopted by the Commission, the Staff's recommendation suffers the same defects as those of the rules. Not only does Staff's position fly in the face of the underlying reason for developing a TRM, but for all of the reasons set forth in the Companies' first and second Applications for Rehearing, filed in Docket No. 08-888-EL-ORD on May 28, 2009 and July 17, 2009, respectively, it also violates Senate Bill 221, the Ohio Constitution and the United States Constitution.⁴ Therefore, EEDR results should be determined based on conditions as they existed both before and after implementation of a program.

Q 3: Should reported energy savings and demand reduction use retroactive or prospective TRM values?

Answer: The Companies believe that revisions to the TRM should be applied on a prospective basis only.

An EDU's compliance with Senate Bill 221's multi-year EEDR benchmarks is comprised of a portfolio of programs, each of which is based on information known at the time the program is developed. These programs, as well as an

² Notwithstanding, the Companies recognize that in situations involving new equipment or equipment that has reached the end of its service life, the baseline may have to be based on industry standards.

³ While the Companies recognize the Commission's goal to avoid the need for customers to pay for programs that would be implemented regardless of an EDU's actions, the cost savings to customers through the Commission's actions to achieve this goal will more than likely be dwarfed by the costs incurred by EDUs to replace the cost effective programs that will no longer qualify as a result of the arbitrary conditions placed on programs through the Commission's recently adopted rules.

⁴ Rather than reiterate these arguments herein, the Companies incorporate pages 7-9 and 11-12 of its first Application for Rehearing and pages 11-16 of its second Application for Rehearing, as if fully rewritten above.

EDU's overall compliance strategy, require months of planning and, therefore, none can be modified at a moment's notice. Moreover, as more fully discussed in the Companies' second Application for Rehearing, which was filed in Docket No. 08-888-EL-ORD on July 17, 2009, and which is incorporated herein by reference, it is unlawful, unreasonable and unconstitutional for the Commission to retroactively apply modified measures, values and standards. There must be some level of certainty upon which the EDUs can rely – certainty that would be seriously lacking if values and measures were retroactively adjusted. While the Companies do not object to the use of revised values and measures on a prospective basis, they should not be applied retroactively to programs already approved.

Although not part of the specific question presented for comment, the Companies urge the Commission to estimate costs and savings from energy efficiency measures or programs at the time of measure installation or program implementation (*ex ante*.) Not only does this provide some semblance of certainty for the EDU, which, as discussed above is so critical to the development of its programs and compliance strategies, but it also minimizes program costs by eliminating redundant M&V tasks.

As part of their due diligence during the program design phase, an EDU will have to perform certain M&V tasks. All of the EDU assumptions, projections and results should be available for review by Commission Staff and their experts. It is at this time, and not after the program is implemented, that Staff should voice its concerns. Otherwise, these concerns should be the subject of the TRM revision process for prospective application. Further, given the numerous variables, such as weather conditions, production output, the type and number of equipment and machines in use at

any given time, and fuel mix, just to name a few, there is no guarantee that an *ex post* estimate is any more accurate than that done *ex ante*. Absent a clear indication of such improved accuracy, the Commission should opt for the lesser cost approach – *ex ante*.

Q 4: Should the cost-effectiveness test be applied at the measure, project, program or portfolio level?

Answer: The Companies believe that a determination as to whether an EDU's three-year plan is deemed cost effective should be evaluated by applying the TRC or cost-effectiveness test at the portfolio level, taking into consideration all of its programs in their entirety. This approach provides EDUs with the flexibility to experiment with different implementation strategies and to encourage the deployment of emerging technologies and market transformation programs as well as support low-income programs" as suggested by the Staff. (Appdx. A, p. 7.) The Companies, however, do not necessarily agree with the Staff's statement that "the Commission may approve programs that provide significant non-energy benefits [that] do not pass the TRC test" (*id.*), if this statement is interpreted to allow the Commission to force upon EDUs programs that do not pass the TRC test. In such a situation, the burden is on the EDU to demonstrate why approval of such a program is prudent.

Q 5: What expectations should the Commission establish for energy savings and demand reduction determination certainty?

Answer: As previously discussed, there are too many variables, underlying assumptions and unknowns to provide true certainty when determining BEDR results. Thus the only certainty in this process is the certain fact that all results, regardless of the approach used to determine them, are nothing more than best-guess estimates based on information available at the time. While the Companies do not oppose the Staff's

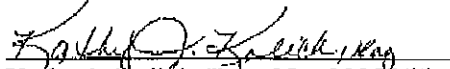
provisional recommendation that requires EDUs “to use ‘best practices’ to establish quality assurance and quality control procedures that include field site inspections, and to provide full documentation of analyses” (id. at 8), the Companies caution the Commission to heed its own words when recognizing in its Entry that there must be a proper balance between the certainty of the values and the costs to achieve such certainty. (June 24, 2009 Entry, para. 9, p. 4) Therefore, regardless of the degree of confidence and precision selected, the Commission should allow sufficient flexibility in its process to deviate from such set standards, when the impracticality of sample size and the costs to achieve such perceived certainty dictate.

Summary

In sum, the TRM must have some semblance of certainty upon which an EDU can rely when developing its compliance strategies and designing its programs. Accordingly, the TRM should be developed based on assumptions that, to the degree practical, most closely reflect actual conditions. It should incorporate information known to date, applying new information that suggests the need for revisions on a prospective basis only. The costs to use the TRM should be less than the benefits the TRM achieves. Therefore, once values are established and deemed for purposes of the TRM, changes should only be made when empirical evidence suggests the need for such changes.

The Companies look forward to working with Commission Staff and interested stakeholders during the development of the TRM.

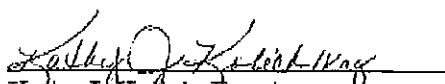
Respectfully submitted,


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On behalf of Ohio Edison Company, The
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and The Toledo Edison Company

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing has been served via first class mail, postage prepaid, this 24th day of July, 2009, upon the individuals or companies listed in the service lists attached hereto:


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