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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 ) Case No. 09-512-GE-UNC  
Reduction Measures )**

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**APPLICATION OF OHIO EDISON COMPANY,  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND  
THE TOLEDO EDISON COMPANY FOR REHEARING**

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Pursuant to R.C. § 4903.10 and Rule 4901-1-35, O.A.C., Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "Companies") hereby apply for a rehearing of certain issues arising from the Commission's October 15, 2009 Finding and Order ("Order") in the above captioned case on the basis that:

- A. The Commission's prohibition against the development of incentives for projects that have a payback of one year or less is unreasonable and unlawful as being contrary to R.C. 4928.66, inconsistent with other Commission findings, arbitrary and unsupported by any evidence, and unnecessarily costly.**

Accordingly, for the reasons more fully discussed in the attached Memorandum in Support, the Companies respectfully ask the Commission to grant the Companies'

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application for rehearing and issue an Entry on Rehearing consistent with this filing.

Respectfully submitted,

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On behalf of Ohio Edison Company, The  
Cleveland Electric Illuminating Company  
and The Toledo Edison Company

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**MEMORANDUM IN SUPPORT  
OF THE APPLICATION FOR REHEARING**

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**II. INTRODUCTION**

On June 24, 2009, the Commission issued an entry in the instant proceeding, seeking comments on various issues related to measurement and verification of energy efficiency/demand reduction (“EEDR”) programs. Based on comments from various parties, including Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the “Companies”), the Commission, in its October 15, 2009 Finding and Order (“Order”), issued certain policy statements related to (among other things) issues involving measurement and verification and the technical resource manual -- which were set forth in “Appendix A.” of the Commission’s June 24<sup>th</sup> Entry. One such statement addresses the evaluation of various utility programs and whether program performance should be measured on a gross or net basis. It is this issue that is the focus of this Application for Rehearing.

**III. ARGUMENTS**

While addressing the issue of whether to evaluate performance of utility programs

on a gross or net savings basis<sup>1</sup>, the Commission indicated that it would initially do so on a gross savings basis. (Order, p. 5.) It further explained its intention “to address the issue of moving toward program evaluation on a net savings basis as experience with energy efficiency program implementation and evaluation is gained.” (Id.) The Companies agree with these positions taken by the Commission. However, the Commission did not stop here.

While the Commission indicated that it would initially measure program savings on a gross basis, it immediately created a blanket prohibition against program designs that include incentives for projects with no greater than a one year payback based on an assumption that such limitation would reduce free-ridership – a net savings issue. (Id. at 6.) While the Commission indicated that it would not address net savings issues until it gained more experience in program implementation and evaluation (id.), it then did the exact opposite, creating an arbitrary limitation on program design with absolutely no experience, research or other evidence to support its assumption. And while the Commission is charged with ensuring reasonably priced electricity for Ohioans (R.C. 4928.02(A)), the Commission has summarily prohibited the development of what more than likely would be low cost programs, thus requiring utilities to substitute such programs with more costly options. As more fully discussed below, it is for these reasons, as well as the fact that the Commission’s actions are contrary to statute, that the Companies seek rehearing.

R.C. 4928.66(A)(2)(c) provides in pertinent part:

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<sup>1</sup> The Commission defines “gross savings” as “the change in energy consumption that results directly from program-related actions taken by consumers, regardless of the extent that their behavior is actually influenced by the program.” (Order, p. 4, fn. 1.) “Net savings”, on the other hand, is defined as “the change in energy use directly attributable to program-related actions, taking into account free-riders and spill over. (Id. at fn. 2.)

Compliance with divisions (A)(1)(a) and (b) of this section shall be measured by including the effects of *all* demand-response programs for mercantile customers of the subject electric distribution utility and *all* such mercantile customer-sited energy efficiency and peak demand reduction programs ....[Emphasis added.]

Nothing in the statute limits the types of programs that a utility can develop in order to comply with the EEDR benchmarks and therefore, as a creature of statute, it is unlawful for the Commission to do so, *Canton Storage and Transfer Co. v. Pub. Util. Comm.* (1995), 72 Ohio St. 3d 1,5 -- especially if a utility can demonstrate that the programs are cost effective. Although projects with paybacks of one year or less are generally considered attractive to customers, there is absolutely no evidence that would indicate that customers will automatically implement all such projects without additional incentives. Moreover, because of the attractive payback period, it is quite likely that such incentives, if deemed necessary, would be relatively nominal. Thus, by creating an absolute prohibition against program designs with incentives for projects with paybacks of one year or less, the Commission is eliminating what could otherwise be a very cost effective way to contribute to EEDR benchmark compliance. And for each low cost program that the Commission prohibits, a utility must find a more costly replacement program. Rather than create such a blanket prohibition at this point in the process, the Companies urge the Commission to heed its own advice and gather more information and gain more experience before resolving this issue. Anything less is irresponsible.

#### IV. CONCLUSION

In light of the foregoing, the Companies ask the Commission to grant rehearing

and modify its policy statement so as to defer its decision on whether to preclude incentives for projects with no greater than a one year payback until it has gained more experience with program evaluation, free ridership and other issues that affect net savings.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that a copy of the foregoing has been served via first class U.S. mail, postage prepaid, this 13<sup>th</sup> day of November, 2009, upon the individuals or companies set forth in the service list below:

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