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FirstEnergy.
Via Facsimile
and Federal Express

76 South Main Street
Akron, Ohio 44308

Kathy J. Kolich
Senior Attorney

330-384-4580
Fax: 330-384-3875

FAX

FILE

December 4, 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: Case No. 09-1004-EL-EEC
Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

Enclosed for filing, please find the original and twelve (12) copies of the Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company. 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

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Enclosures

cc: Parties of Record

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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 to Amend Their Energy Efficiency Benchmarks	)))))	**Case No. 09-1004-EL-EEC 09-1005-EL-EEC 09-1006-EL-EEC**

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

Pursuant to the Commission's November 20, 2009 Entry, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively "Companies") hereby submit their reply comments to the comments of The Ohio Consumer and Environmental Advocates ("OCEA") and Ohio Partners for Affordable Energy ("OPAE").[1]

On October 27, 2009, the Companies asked the Commission to amend the statutory energy efficiency benchmarks set forth in R.C. 4928.66 for a number of reasons, including a delay in the launch of a Commission approved program, the delay in the effective date of the Commission's rules set forth in Docket No. 08-888-EL-ORD ("Rules"), and the Commission's delay in ruling on various applications submitted by the Companies throughout the year. (Companies' App, pp. 2-3.) OPAE's claims of finger pointing (OPAE Comments, p. 2) notwithstanding, the Companies' intent was not to place the blame on anyone in particular, but rather to simply set forth the facts leading up to the request. OCEA apparently prefers to ignore these facts and, instead, simply places the blame on the Companies, arguing that the request for amendment is allegedly because the Companies "delayed planning and implementing energy

[1] Other than a passing reference to statements made by OPAE, these comments respond to the arguments presented by OCEA.

efficiency programs, [they] filed applications for 'energy savings' that the law does not recognize, [they] sought significant changes in the PUCO's rules, and [they] changed and then inadequately explained [their] CFL program to the public and the media." (OCEA Comments, p. 3.) While it is easy for OCEA to sit back and criticize, OCEA conveniently ignores several significant factors, the first of which is that OCEA never opposed (at least publicly) the CFL program proposed by the Companies. Only after there was public criticism of the program did members of OCEA publicly claim concerns over the program as launched. Regardless, the fact is that the Commission approved the CFL program as proposed by the Companies.[2] But for the Commission's request to delay the launch of that program, the program would have achieved energy savings of approximately 300 GWhs.[3]

Second, OCEA argues that the Companies filed a transmission and distribution ("T&D") program that it should have known did not comply with statutory requirements. (Id. at 7.) If the events at the Commission over the past year have done nothing else, they have demonstrated that nothing is clear when developing a process for compliance with the EEPDR benchmarks. There are a plethora of issues with which all parties are trying to deal, many of which are interrelated and are affected by changes in other areas. The Commission has the unenviable task of trying to resolve all of these issues and develop a rational process for compliance. The Companies' filed their T&D program on May 8, 2009, a program that achieves approximately 120 GWhs of savings. In light of the fact that the Commission has yet to rule on this application -- a full seven

[2] The Companies originally filed the application for the CFL program on July 9, 2009, and on September 16, 2009 filed a letter setting forth the consensus it had reached with the interested parties in that docket. On September 23, 2009, the Commission approved the application, as modified on September 16, 2009.

[3] OCEA claims that the Companies' estimate of savings is incorrect. (OCEA Comments, p. 8, fn. 17.) While the Companies believe that their estimate is appropriate, even if OCEA's estimate is used instead, the program would have resulted in 75 GWhs of savings in 2009.

months later -- the law can not be quite as clear as OCEA purports. Moreover, OCEA argues that its interpretation as set forth in its memorandum to its motion to dismiss supports its interpretation of the law. (Id. at 7.) However, OCEA offers only a self serving citation to a position paper submitted by the OCEA itself. And finally, in the Companies' T&D application, they asked for a ruling by July 1, 2009, so as to have sufficient time in which to adjust their strategy for compliance if necessary so as to avoid the situation they now find themselves in. Clearly, the fact that the Commission has yet to rule on this application affects the Companies' ability to comply with 2009 benchmarks.

OCEA makes an even more desperate attempt to support its position by trying to create a nexus between the Companies' execution of the ESP Stipulation and the Commission's delay in its ruling on the Companies' application for approval of administrator agreements, arguing: "Given that the fact [sic] that the Companies did sign the stipulation, the Companies should have factored [in] the stipulation's requirements of its application process for administrator agreements." (Id. at 8.) The Companies filed the first set of applications for approval of administrator agreements on June 30, 2009. The agreements allow various administrators to market the Companies' historic mercantile self directed program which, at the time of filing, was estimated to contribute approximately 50 GWhs of savings in 2009. The Commission approved, with modifications, these agreements on December 2, 2009. While the Companies factored in the regulatory process when it filed the agreements in June, they did not (and could not reasonably be expected to) anticipate a delay of more than five months for approval. This delay hamstrung the Companies in their efforts to "market" and effectively utilize a key and low-cost program for compliance with 2009 benchmarks.

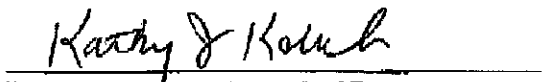
Third, OCEA apparently believes that the Companies should be penalized for exercising their legal rights to comment on the Rules, stating that the Companies' "complaint about the delay in the process is belied by [their] full-throated participation in the process of developing the [Rules]...." (Id. at 6.) This argument has been given more attention than it deserves. It is ridiculous and should be summarily rejected. The Rules are still not effective as of the filing of these Reply Comments, and in each release of the Rules -- which currently stands at four -- changes have been made to filing requirements, qualification criteria and measurement protocols. Contrary to OCEA's beliefs, it is virtually impossible to develop a compliance plan when the target is constantly moving. And, while OCEA claims that "the law is clear as to what is required such that even if the rules were not promulgated, [the Companies] knew what was required of it by law" (id.), it again chooses to ignore the facts. One need only review the comments, applications for rehearing and memoranda contra filed by *numerous* parties to realize that different parties have different interpretations of the law. And while the Companies agree that the law is clear on certain issues, it was those issues that were addressed in the Companies' pleadings based on the Commission's rulings.

And finally, OCEA conveniently ignores the fact that numerous parties – including members of OCEA -- executed a stipulation in the Companies' Electric Security Plan ("ESP") case. (Case No. 08-935-EL-SSO.) In that stipulation, the parties agreed that a market development plan would be developed by September 1, 2009 (ESP Stipulation, Para. E(6)(b)), the Companies would establish a collaborative process (id. at E(6)), and would not initiate programs until approved by the Commission for both inclusion in its compliance with statutory EEPDR benchmarks and cost recovery (Id. at E(6)(a)). This stipulation was approved by the Commission on March 25, 2009. Given the participation by members of OCEA in the development of this stipulation, it is odd that it criticizes the Companies, accusing them of

delaying the initiation of collaborative activities until May, 2009, and whining because the Companies did not hire a consultant to develop the market potential study until April, 2009. (Id. at 5.) Given the timing of the approval of the ESP Stipulation, neither of these activities was unreasonably delayed as OCEA claims.

In sum, OCEA exaggerates the facts that suits it and ignores those that are inconvenient to its arguments. When all the facts are considered, it is clear that an amendment to the Companies' 2009 benchmarks is appropriate. Accordingly, the Companies respectfully ask the Commission to grant their request.

Respectfully submitted,



Kathy J. Kolich (Counsel of Record)
Arthur E. Korkosz
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-4580
Facsimile: (330) 384-3875
kjkolich@firstenergycorp.com
korkosza@firstenergycorp.com

James F. Lang
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
Telephone: (216) 622-8200
Facsimile: (216) 241-0816
jlang@calfee.com

ATTORNEYS FOR APPLICANTS, OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

Copies of the foregoing reply comments were served by first class United States Mail, postage prepaid, upon the parties of record identified below on this 4th day of December, 2009.

Thomas McNamee
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, OH 43215

Henry W. Eckhart
Natural Resources Defense Council
Sierra Club
50 West Broad Street, #2117
Columbus, OH 43215

Duane W. Luckey
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, OH 43215-3793

Joseph P. Meissner
Matthew D. Vincel
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113

David C. Rinebolt
Colleen C. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793

Will Reisinger
Nolan Moser
Trent Dougherty
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449

Samuel Randazzo
Lisa G. McAlister
Joseph M. Clark
Industrial Energy Users of Ohio
McNees, Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215-4228

Todd M. Williams
Ohio Environmental Council
P.O. Box 6885
Toledo, OH 43612

Theodore S. Robinson, Staff Attorney
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

Jeffrey L. Small
Richard C. Reese
Gregory J. Poulos
Deb J. Bingham
Patti Mallamee
Office of the Consumers' Counsel
10 W. Broad Street, 18th Floor
Columbus, OH 43215-3485

Michael E. Heintz
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43204

Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215

Natural Resources Defense Council
50 West Broad Street
Columbus, OH 43215

Brandi Whetstone
Sierra Club Ohio Chapter
131 North High Street, Suite 605
Columbus, OH 43215

Kathy J. Kolich, Esq.