

Kathy J. Kolich
Senior Attorney

2010 FEB 18 AM 10:22

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

PUCO

*Via Facsimile
and Federal Express*

February 17, 2010

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

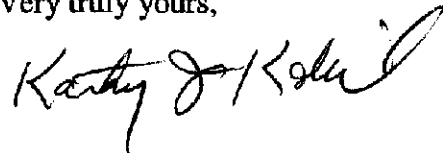
Dear Ms. Jenkins:

**Re: Case No. 09-1004-EL-EEC *et al*
FirstEnergy Ohio Utilities' Memorandum Contra Application for
Rehearing by the Ohio Consumer and Environmental Advocates**

Enclosed for filing, please find the original and twelve (12) copies of FirstEnergy Ohio Utilities' Memorandum Contra Application for Rehearing. 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,



kag
Enclosures

cc: Parties of Record

70759 v1

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 OA Date Processed 2/18/2010

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland)	Case No. 09-1004-EL-EEC
Electric Illuminating Company and The)	09-1005-EL-EEC
Toledo Edison Company to Amend Their)	09-1006-EL-EEC
Energy Efficiency Benchmarks)	

**FIRSTENERGY OHIO UTILITIES' MEMORANDUM CONTRA APPLICATION FOR
REHEARING BY THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

I. INTRODUCTION

Pursuant to Section 4901-1-35(B) of the Ohio Administrative Code, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "the Companies"), hereby submit their Memorandum Contra Application for Rehearing by the Ohio Consumer and Environmental Advocates ("OCEA"). The Application for Rehearing asks the Commission to order the Companies to amend their 3-year Energy Efficiency and Peak Demand Reduction Plans ("Plans") that were filed in Case No. 09-1947-EL-POR *et al* ("Portfolio Case")¹. As explained below, there is nothing unlawful about the Commission's Order *in this proceeding*. OCEA's concerns focus on the Companies' 2010 through 2012 benchmarks -- the period that is addressed in the Companies' Plans -- which are the subject of the Portfolio Case. OCEA has raised its issues in the wrong case. Moreover, until the results from the Companies' 2009 energy efficiency/peak demand activities are known, it cannot be determined *if*, let alone *to what extent*, an adjustment to the benchmarks included in the Plans is necessary. OCEA fails to demonstrate that the Commission's January 7, 2010 Order

¹ OCEA AFR, pp. 1-2.
70759 v1

is unlawful or unreasonable. Moreover, its request is not ripe and is unsupported by evidence. Accordingly, its application for rehearing must be denied.

II. ARGUMENT

R.C. § 4928.66(A)(2)(b) authorizes the Commission to amend the statutory benchmarks set forth in R.C. 4928.66(A)(1)(a) and (b) if it determines “that the amendment is necessary because the utility cannot reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control.” OCEA is not challenging the Commission’s findings in its January 7, 2010 Order as to the lawfulness or reasonableness of the amendment, but rather OCEA is claiming that the Order is unreasonable and unlawful because “the Commission should also order the Compan[ies] to amend the 3-year Energy Efficiency and Peak Demand Reduction Plan[s] [they] filed on December 15 [2009] and identify how [they] will comply with this mandate.”² As is discussed below, there is absolutely no evidence that indicates that an adjustment to the 2010-2012 benchmarks is necessary; nor can there be. The benchmarks for 2010-2012 are the subject of the Portfolio Case, the evidentiary hearing for which is scheduled to commence on March 2, 2010. In light of this, OCEA’s claims are not ripe for review.

Moreover, OCEA incorrectly assumes that the Plans were “not designed to account for the 2009 shortfall.” (OCEA memo in support, p. 3.) Nowhere in its memorandum in support does OCEA cite any evidence to support this assertion. This is not surprising, given that the evidentiary hearing on the benchmarks for the Plan period will take place next month. Indeed, as will become evident in that proceeding, the Plans have been designed to meet the cumulative

² Id.
70759 v1

requirements set forth in R.C. 4928.66(A)(1)(a) and (b), therefore, any shortfall that may exist from 2009 will automatically be "caught up" in the benchmarks set forth in the Plans.³

Finally, as OCEA should be aware, the Companies have several applications pending before the Commission, including (i) an application for approval of their 2009 T&D improvements that account for approximately 8.1 GWhs⁴; and (ii) 39 mercantile customer self directed project applications that represent approximately 320.4 GWhs⁵. The Companies also have several existing programs that were active during 2009, as well as six mercantile customer self directed project applications that represent approximately 19.9 GWhs of energy efficiency savings that were recently approved by the Commission.⁶ Both the existing programs and the approved mercantile customer projects will be included in the Companies' annual status report that will be filed on or before March 15, 2010 pursuant to Section 4901:1-39-05, Ohio Administrative Code. Should the Commission approve the pending applications, OCEA's concerns will become moot. The Companies will have achieved their 2009 statutory benchmarks through 2009 activity.

³ Compare Company Table 4 with PUCO Table 2 in each of the Companies' Plans.

⁴ *In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 09-951-EL-EEC *et al.*

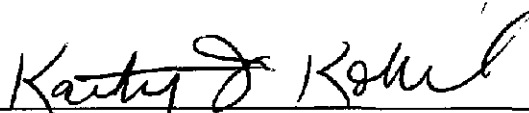
⁵ See Applications filed in Docket Nos. 09-1103-EL-EEC, 09-1117-EL-EEC, 09-1109-EL-EEC, 09-1116-EL-EEC, 09-1120-EL-EEC, 09-1105-EL-EEC, 09-1107-EL-EEC, 09-1118-EL-EEC; 09-1300-EL-EEC, 09-1301-EL-EEC, 09-1302-EL-EEC, 09-1303-EL-EEC, 09-1305-EL-EEC, 09-1306-EL-EEC, 09-1307-EL-EEC, 09-1309-EL-EEC, 09-1315-EL-EEC, 09-1317-EL-EEC, 09-1318-EL-EEC, 09-1320-EL-EEC, 09-1321-EL-EEC, 09-1326-EL-EEC, 09-1202-EL-EEC, 09-1203-EL-EEC, 09-1204-EL-EEC, 09-1205-EL-EEC, 09-1206-EL-EEC, 09-1207-EL-EEC, 09-1208-EL-EEC, 09-1209-EL-EEC, 09-1210-EL-EEC, 09-1212-EL-EEC, 09-1214-EL-EEC, 09-1216-EL-EEC, 09-1217-EL-EEC, 09-1224-EL-EEC, 09-1226-EL-EEC, 09-1228-EL-EEC, 09-1231-EL-EEC.

⁶ See Feb. 11, 2010 Finding and Orders issued in Case Nos. 09-0595-EL-EEC, 09-1100-EL-EEC, 09-1101-EL-EEC, 09-1102-EL-EEC; 09-1200-EL-EEC, 09-1201-EL-EEC

III. SUMMARY

In sum, OCEA does not argue against the granting of the benchmark amendment but instead argues about issues that will be addressed in another proceeding. The Commission's Finding and Order in this proceeding is both lawful and reasonable, being consistent with R.C. 4928.66(A)(2)(b). Further, unless OCEA is clairvoyant, the issues that it raises cannot be resolved at this point in time. Only after the evidentiary hearing in the Portfolio Case has been completed and the applications currently pending before the Commission are addressed can a determination be made as to whether *any* adjustment to the Companies' 2010-2012 benchmarks included in the Plans is necessary. In light of the foregoing, OCEA's Application for Rehearing in this proceeding must be denied.

Respectfully submitted,



Kathy J. Kolich (Attorney No. 0038855)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-4580
Facsimile: (330) 384-3875
kjkolich@firstenergycorp.com

ATTORNEY FOR OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING COMPANY
AND THE TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

Copies of the foregoing Memorandum Contra Application for Rehearing were served by first class United States Mail, postage prepaid, upon the parties of record identified below on this 17th day of February, 2010.

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

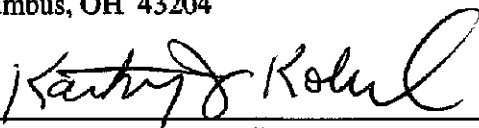
Samuel Randazzo
Lisa G. McAlister
Joseph M. Clark
Industrial Energy Users of Ohio
McNees, Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215-4228

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

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

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

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


Kathy J. Kolich, Esq.