

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Status Report)	
Regarding the Status of EE&PDR)	Case No. 10-227-EL-EEC
Programs of Ohio Edison Company,)	Case No. 10-228-EL-EEC
The Cleveland Electric Illuminating)	Case No. 10-228-EL-EEC
Company and The Toledo Edison)	
Company)	

**REPLY OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY
AND THE TOLEDO EDISON COMPANY TO THE COMMENTS SUBMITTED BY THE OFFICE OF THE
OHIO CONSUMERS' COUNSEL AND THE NATURAL RESOURCES DEFENSE COUNCIL**

I. INTRODUCTION

On March 8, 2010, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively "Companies") submitted a report on the status of their various Energy Efficiency and Peak Demand Reduction ("EE&PDR") Programs in effect during 2009 ("Report"). On April 7, 2010, The Office of the Ohio Consumers' Counsel and The Natural Resources Defense Council ("OCC/NRDC") filed comments on the Report requesting that the Commission (i) order the Companies to either supplement or re-file the Report to include certain evaluation, measurement and verification ("EM&V") information; and (ii) deny the Companies' request for certain waivers.¹ Apparently OCC/NRDC either fail to recognize or simply ignore the fact that Section 4901:1-39-05 and other related sections of the Ohio Administrative Code on which they rely to support such a request pertain to *approved* EE&PDR programs *included in the Companies' portfolio plan*. Inasmuch as the Companies' EE&PDR portfolio plans have not yet been approved, there are no

¹ OCC/NRDC Comments, p. 7.

programs that come within the scope of these rules. Accordingly there can be no violations of Section 4901:1-39-(C)(2)(b)² and (c)³ of the Ohio Administrative Code as claimed by OCC/NRDC. Their requests should be denied.

II. REPLY COMMENTS

On January 7, 2010, the Commission amended the Companies' 2009 energy efficiency benchmarks to zero, contingent on the completion of certain requirements between 2010 and 2012.⁴ In essence, OCC/NRDC are asking the Commission to order the Companies to supplement a report that reports compliance with a benchmark of zero. Notwithstanding the obvious, OCC/NRDC's complaints are misplaced. Section 4901:1-39-05(C) provides in pertinent part: "By March fifteenth of each year, each electric utility shall file a portfolio status report addressing the performance of all *approved [EE&PDR] programs in its program portfolio plan....*" (Emphasis added.) On December 15, 2009, the Companies submitted for approval their respective three year EE&PDR Plans ("Plans")⁵ which included a suite of EE&PDR programs that the Companies intend to launch. The Commission, as of the date of this filing, has yet to rule on the Companies' Plans. Therefore, there are *no programs* included in the Companies' Report that come within the scope of Section 4901:1-39-05(C), O.A.C. and its related sections.⁶ As the Report indicates (at page 8), "[t]he Companies have instead presented

² OCC NRDC Comments, pp. 2-4.

³ Id. at 4-6. NOTE: While OCC/NRDC reference Section 4901:1-39-05(C)(2)(B) in support of an argument regarding recommendations for continuation of programs, the cite should be to Section 4901:1-39-05(C)(2)(c), which addresses this issue.

⁴ See *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*, Jan. 7, 2010, Finding and Order, ¶¶ 9, 10.

⁵ See generally, *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms, et al*, Case No. 09-1947-EL-POR et al.

⁶ The request for a waiver of certain of these rules was done in an abundance of caution and should not be construed as the Companies' acceptance of the rules and their applicability to the 2009 Report that has been filed.

the best information available” for programs that were in effect in 2009. While this should be dispositive of the matter, OCC/NRDC also challenge certain aspects of the Community Connections program, attempting to support their position by misinterpreting one rule and ignoring the terms approved by the Commission in two separate dockets.

OCC/NRDC claim that the Companies violated Section 4901:1-39-05(C)(2)(b) (which, based on the section quoted by OCC/NRDC should have been referenced as Section 4901:1-39-05(C)(2)(c)) of the Ohio Administrative Code, because they did not explain “why certain programs did not achieve the planned efficiency savings, or any modifications that will be made to improve the performance of these programs.”⁷ While OCC/NRDC quoted the following provision of the aforementioned rule, they read requirements into this rule that simply are not there. Rule 4901:1-39-05(C)(2)(c) provides in pertinent part that the Companies’ report include:

A recommendation for whether each program should be continued, modified or eliminated. The electric utility may propose alternative programs to replace eliminated programs, taking into account the overall balance of programming in its program portfolio plan. The electric utility *shall describe any alternate program or program modification by providing at least the information required for proposed programs in its program portfolio plan....* [emphasis added.]

As OCC/NRDC acknowledge, the Companies recommended “that the current programs [including the Community Connections program] continue.”⁸ As the above indicates, the rule only requires that such a recommendation be made. No additional information is required to be provided for continuing programs. Such additional information is only required for “any alternate program or program modification.” In light of the foregoing, there is no violation of this rule.

⁷ OCC/NRDC Comments, pp. 4-5.

⁸ Id.

OCC/NRDC also complain about the level of spending in 2009 for the Community Connections program, claiming that “no explanation [was] offered for the [alleged] significantly low savings and spending amounts.”⁹ As OCC/NRDC acknowledge, the 2009 funding for the Community Connections program is governed by a stipulation approved by the Commission in Case No. 08-935-EL-SSO (“ESP Stipulation”).¹⁰ While OCC/NRDC acknowledge the existence of the ESP Stipulation, they apparently failed to read it. Section E(4) of the ESP Stipulation expressly states that the Companies will fund the Community Connections program at the level of \$5 million annually *as ordered* by the Commission in Case No. 07-551-EL-AIR. Therefore, if OCC/NRDC have complaints regarding the funding level of this program, they should have voiced them not in this proceeding, but rather in either the Companies’ 2007 distribution rate case (Case No. 07-551-EL-AIR) or the case involving the Companies’ 2009 Electric Security Plan (Case No. 09-935-EL-SSO).

III. CONCLUSION

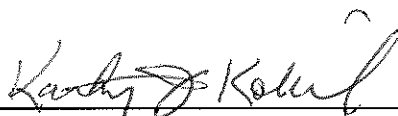
In sum, the Companies 2009 energy efficiency benchmarks were zero, thus making it difficult to fathom how there can be any significant violations of any rules when reporting this fact. Moreover, because the Companies’ 3-year portfolio plans have yet to be approved by the Commission, there are no programs that come within the scope of the reporting requirements set forth in Section 4901:1-39-05(C). Instead, the Companies submitted the 2009 Report for informational purposes, attempting to present information on programs in effect in 2009 in a format that will be required in future reports once the Plans are approved. Inasmuch as no programs included in the Report come within the scope of the reporting requirements, there can

⁹ Id. at 6.

¹⁰ Id. at 5

be no violations of these requirements. Therefore the complaints of OCC/NRDC are misplaced and should be summarily rejected.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathy J. Kolich", is written over a horizontal line.

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CERTIFICATE OF SERVICE


Copies of the foregoing *Reply of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to the Comments of the Office of the Ohio Consumers' Counsel and the Natural Resources Defense Council* were served by first class United States Mail, postage prepaid (with copies also provided electronically), to the persons on the attached Service List on this 26th day of April, 2010.

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Summary: Reply Comments to OCC/NRDC Comments on the Companies' 2009 Status Report electronically filed by Ms. Kathy J Kolich on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company