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 and Peak Demand Reduction Benchmarks	))))))	**Case No. 11-126-EL-EEC** **Case No. 11-127-EL-EEC** **Case No. 11-128-EL-EEC**

APPLICATION

I. Introduction

Pursuant to R.C. § 4928.66(A)(2)(b), Ohio Edison Company ("Ohio Edison") hereby asks the Commission to issue by February 15, 2011, an order amending both its 2010 energy efficiency ("EE") and peak demand reduction ("PDR") benchmarks. Based upon estimated results from existing programs and anticipated results from applications currently pending before the Commission, all of which are summarized on attached Exhibits A and B, it appears that Ohio Edison will not achieve its 2010 EE and PDR benchmarks. As more fully explained below, these shortfalls were caused by regulatory, economic, or technological reasons beyond Ohio Edison's reasonable control. As also demonstrated on Exhibits A and B, based on similar results, both The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("Toledo Edison") (collectively with Ohio Edison, "the Companies") will exceed their 2010 *statutory* EE benchmarks. However, because the Commission indicated in Case No. 09-1004-EL-EEC[1] that it would modify each of the Companies' 2010 EE benchmarks when addressing the Companies' three-year Energy Efficiency and Peak Demand Reduction Plan ("EEPDR

[1] *In re Application to Amend Energy Efficiency Benchmarks*, Case No. 09-1004-EL-EEC, *et al* ("2009 Amendment Case"), Finding and Order at 4 (Jan. 7, 2010).

Plan") filed in Case No. 09-1947-EL-POR *et al* ("EEPDR Case")[2], and an Order has yet to be issued in that case, none of the Companies can be certain of their compliance with 2010 EE requirements. Therefore, in addition to Ohio Edison's request for an amendment, both CEI and Toledo Edison further request an amendment to their 2010 EE benchmarks *if and only to the degree* one is necessary to comply with their yet-to-be-defined 2010 EE benchmarks.[3] Inasmuch as the Companies must file by March 15, 2011, a portfolio status report in which they must indicate whether they complied with 2010 benchmarks, the Companies respectfully ask that the Commission grant this request no later than February 15, 2011.

In support of this Application, the Companies state:

II. Background

1. Each of the Companies is an electric distribution utility ("EDU") as that term is defined in R.C. § 4928.01(A).

2. R.C. § 4928.66(A)(1)(a) requires an EDU, beginning in 2009, to "implement energy efficiency programs that achieve energy savings equivalent to at least three tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the [EDU] during the preceding three calendar years to customers in this state. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010…."

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[2] *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*, Case No. 09-1947-EL-POR *et al.*

[3] Based on information currently available, it appears that CEI and Toledo Edison will exceed their statutory 2010 PDR benchmarks. These Companies, however, reserve the right to request an amendment to these benchmarks should certain filings still pending before the Commission affect the levels of PDR that these Companies will be authorized to include for purposes of 2010 compliance.

3. In 2010, the statutory EE benchmarks for the Companies, as reported in the Companies' EEPDR Plan are 200.1 gigawatt hours ("GWhs"), 151.8 GWhs and 81.1 GWhs, for Ohio Edison, CEI and Toledo Edison, respectively.

4. R.C. § 4928.66(A)(1)(b) requires an EDU, beginning in 2009, to "implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018."

5. In 2010 the Companies' statutory PDR benchmarks, as reported in the Companies' EEPDR Plan are 91.0 megawatts ("MWs"), 71.5 MWs, and 34.4 MWs for Ohio Edison, CEI and Toledo Edison, respectively.

6. On October 27, 2009, the Companies requested an amendment to their respective 2009 statutory energy efficiency benchmarks,[4] which the Commission granted on January 7, 2010.[5] In its Finding and Order, the Commission indicated that its approval of the 2009 amendment was contingent upon the Companies meeting revised benchmarks in subsequent years that would be determined as part of the Commission's review of the Companies' EEPDR Plan:

> Although the Commission will amend [the Companies'] 2009 benchmarks to zero, the Commission agrees with [Ohio Partners for Affordable Energy] that [the Companies] should meet the cumulative energy savings mandated by the statute. Therefore, our approval of [the Companies'] application is contingent upon [the Companies] meeting revised benchmarks in a period not longer than three years. *The Commission will*

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[4] *In re Application to Amend Energy Efficiency Benchmarks*, Case No. 09-1004-EL-EEC, *et al*, Application (Oct. 27, 2009). The Companies sought an amendment to their 2009 PDR benchmarks in Case No. 09-535-EL-EEC *et al.*

[5] *In re Application to Amend Energy Efficiency Benchmarks*, Case No. 09-1004-EL-EEC, *et al*; Finding and Order at 4 (Jan. 7, 2010).

> *determine the level of [the Companies'] amended benchmarks for 2010, 2011, and 2012 when we consider [the Companies'] comprehensive energy efficiency program portfolio in [the EEPDR Case].*[6]

7. No similar contingency was placed on the Companies' PDR benchmark requirements.

8. On December 15, 2009, the Companies filed their EEPDR Plan, which as of the date of this filing, has yet to be ruled upon by the Commission.[7]

9. In light of the Commission's intention to amend the Companies' EE benchmarks for 2010 through the EEPDR Case, and the fact the Commission has yet to issue an Opinion and Order in that case, none of the Companies know their respective EE benchmarks that they must achieve in 2010 (or 2011 and 2012 for that matter).

III. Request for an Amendment to 2010 Benchmarks

10. R.C. § 4928.66(A)(2)(b) authorizes the Commission to amend the EE and PDR benchmarks of an EDU "if, after application by the [EDU], the commission 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." Ohio Edison submits that such a situation exists and that amendments to both its 2010 EE and PDR benchmarks are warranted.

11. Included in the EEPDR Plan was a comprehensive strategy for achieving each of the Companies' EE and PDR statutory benchmarks for the years 2010, 2011

[6] *Id.* (emphasis added).

[7] *See generally*, EEPDR Case, Case No. 09-1947-EL-POR *et al*, Application and Related Reports (Dec. 15, 2009).

and 2012.[8] This strategy incorporated a mix of energy efficiency and peak demand reduction programs.

12. Not only did the EEPDR Plan incorporate a comprehensive strategy to comply with statutory benchmarks, but it also provided the Commission with the option to approve four energy efficiency programs -- Appliance Turn-In Program, CFL (and CFL Low Income) Program, C/I Equipment Program (Lighting), and C/I Equipment Program (Industrial Motors) (collectively, "Fast Track Programs") -- no later than March 31, 2010, while the remainder of the EEPDR Plan was under review.

13. On February 22, 2010, a joint motion was filed in the EEPDR Case in which all but one party to that case indicated that they were either joining in, or not opposing, the motion to approve by March 31, 2010, the launch of the Fast Track Programs consistent with the terms outlined in the joint motion;[9] and the lone non-participant also urged the Commission to allow the Fast Track Programs to proceed.[10] To date, the joint motion has yet to be ruled upon by the Commission.

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[8] Because the Commission did not issue its Finding and Order in the 2009 Amendment Case until after the Companies' EEPDR Plan was filed, the Plan is designed to meet the statutory benchmarks established in R.C. 4928.66(A)(1), rather than the Commission's yet-to-be defined modified EE benchmarks.

[9] EEPDR Case, Case No. 09-1947-EL-POR, Joint Motion for Approval of Fast Track Programs and Expedited Ruling (Feb. 22, 2010).

[10] The Office of the Ohio Consumers' Counsel ("OCC") filed a reply to the Joint Motion in which it stated that the Fast Track Programs "should be approved for implementation based upon the conditions and reservation of rights stated in [OCC's] pleading. The conditions and the reservation of rights contained in this pleading appear to be consistent with those stated in the Joint Motion. Near-term implementation of the Identified Programs should proceed in order to provide benefits to Ohioans." EEPDR Case, Case No. 09-1947-EL-POR, OCC's Memorandum in Response to Joint Motion (Feb. 24, 2010).

14. On June 2, 2010, Anthony J. Alexander, FirstEnergy's president and chief executive officer, submitted a letter to the Commission indicating his growing concern over the Commission's inaction on the EEPDR Plan and the Companies' waning ability to meet 2010 statutory benchmarks.[11] On June 15, 2010, Ohio Energy Council ("OEC") submitted a letter echoing Mr. Alexander's concerns, albeit for different reasons[12], and on June 17, 2010, the OCC submitted a letter urging the Commission to act promptly.[13]

15. Because of the Commission's failure to rule on either the joint motion for launch of the Fast Track Programs or the Companies' application for approval of their EEPDR Plan, the Companies cannot be certain that any of the programs included in the Plan will be approved as proposed, thus preventing them from launching these programs prior to receiving approval from the Commission to do so.

16. Based upon EE savings and peak demand reductions resulting from programs already approved by the Commission and anticipated EE savings and peak demand reductions resulting from applications still pending before the Commission, it appears that Ohio Edison will meet neither its 2010 EE nor its 2010 PDR statutory benchmark. However, as demonstrated on attached Exhibits A and B, the expected results from programs in place, applications currently pending before the Commission and the programs included in the

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[11] EEPDR Case, Case No. 09-1947-EL-POR, FirstEnergy Letter of Concern (June 2, 2010).

[12] Id. OEC Letter of Concern (June 15, 2010).

[13] Id., OCC Response to FirstEnergy's Letter of Concern (June 17, 2010).

EEPDR Plan had they been approved and launched in 2010 in a timely manner, would have been sufficient to bring Ohio Edison into compliance with its *statutory* EE and PDR benchmarks.[14]

17. Not only has the delay in issuing an Order in the EEPDR Case caused Ohio Edison to fall short of its 2010 statutory benchmarks, but this delay also jeopardizes *all* of the Companies' abilities to comply with both their EE and PDR benchmark requirements in future years.[15]

18. Because of the Commission's failure to define the Companies' 2010 EE benchmark requirements, Ohio Edison cannot determine the level to which an amendment to its EE benchmark is necessary. For the same reason, neither CEI nor Toledo Edison can be certain of their compliance with 2010 EE requirements. Accordingly, all of the Companies respectfully ask the Commission to issue an amendment if and only to the degree one is necessary in order to bring all of the Companies into compliance with their yet-to-be defined 2010 EE benchmarks. Ohio Edison further asks that its 2010 PDR benchmark be amended to its 2010 actual level of PDR.

19. Because of the Commission's failure to define the Companies' 2010 EE benchmark requirements, as well as its failure to timely issue a ruling on a compliance plan filed over a year ago which was designed to meet or exceed

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[14] Because Ohio Edison's modified 2010 EE benchmark has not yet been defined, it cannot be certain that it will comply with this benchmark.

[15] The delay in the Commission issuing a ruling in the EEPDR Case, when coupled with the program ramp up time and the Commission's pro rated savings policy, will negatively impact results in future years. Moreover, the EEPDR Plan included an option for over-compliance in early years in order to meet ever increasing EE and PDR benchmark requirements in later years. With the delay in launching the 2010 programs included in the EEPDR Plan, the Companies have lost at least one year's opportunity to do so.

2010 statutory requirements, the Companies find themselves in an impossible situation that creates regulatory, economic or technological conditions beyond their reasonable control. The substantive and procedural due process violations that this situation creates is alone sufficient to justify the granting of the Companies' request.[16]

IV. EE and PDR Activities

20. As demonstrated below, the Companies have made a concerted effort to comply with their EE and PDR obligations to the degree possible, implementing programs that have either been allowed by statute or have already been approved by the Commission:

- The Companies have designed OLR and ELR Riders, which were approved by the Commission on May 27, 2009, and became effective on June 1, 2009.[17] Under both the OLR and the ELR Riders customers must reduce or interrupt their load under specified system conditions. During 2010, the customers participating in the interruptible program through Riders OLR and ELR provided PDR of 66 MWs, 48 MWs and 144 MWs for Ohio Edison, CEI and Toledo Edison, respectively.

- On December 15, 2010, consistent with R.C. § 4928.66(A)(2)(d), the Companies filed their application for approval of the transmission and distribution ("T&D") infrastructure improvements completed during 2010.[18] If approved by the Commission as filed, these improvements, when coupled with the energy efficiency savings from completed and filed 2009 T&D

[16] Rather than reiterate a discussion on due process herein, the Companies incorporate by reference pages 6 through 11 of their July 17, 2009 Application for Rehearing submitted in Case No. 08-888-EL-ORD.

[17] *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer*, Case No. 08-935-EL-SSO *et al*, Finding and Order at 2 (May, 27, 2009).

[18] *In re 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. 10-3023-EL-EEC et al, Application (Dec. 15, 2010). The Companies' 2010 T&D application is similar to the T&D application that was filed in 2009 and is still pending before the Commission.

improvements,[19] provide a total annual contribution to energy efficiency savings in 2010 of 22.8 GWhs for the Companies generally, and more specifically, 12.9 GWhs for Ohio Edison; 3.8 GWhs for CEI; and 6.1 GWhs for Toledo Edison. The projects also contribute approximately 3.5, 1.0 and 1.9 MWs towards the 2010 PDR benchmark requirements of Ohio Edison, CEI and Toledo Edison, respectively.

- On September 23, 2009, in Case No. 09-580-EL-EEC, the Commission approved the Companies' home energy analyzer on-line audit program. As of December 31, 2010, approximately 43,500 customers participated in this program. Based on values included in the Companies' EEPDR Plan, this represents 4.6, 3.1 and 1.3 GWhs of energy savings for Ohio Edison, CEI and Toledo Edison, respectively, and 1.1, 0.7 and 0.3 MWs of PDR for these same Companies, respectively.

- Throughout 2010 and consistent with R.C. § 4928.66 (A)(2)(c), the Companies, along with various customers, submitted joint applications for approval of mercantile customer self direct energy efficiency projects. To date 42.0, 13.1 and 10.8 GWhs have been approved for Ohio Edison, CEI, and Toledo Edison, respectively. As of the date of this filing, an additional 107.3, 252.4 and 117.3 GWhs for these Companies, respectively, are currently pending before the Commission.

- Throughout 2010, the Companies, working through Ohio Partners for Affordable Energy, participated in the Community Connections Program. This program has an estimated contribution towards energy efficiency for Ohio Edison, CEI and Toledo Edison of 2.6, 1.8 and 0.9 GWhs, respectively, and 0.8, 0.5 and 0.3 MWs towards PDR for these same Companies, respectively.

21. Throughout 2010, the Companies have met with interested stakeholders through the Companies' collaborative process to discuss strategies for implementing the various programs included in the Companies' EEPDR Plan. The Companies stand ready to launch and ramp up the various programs included in the Plan upon the issuance of an Opinion and Order in the EEPDR Case.

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[19] *See generally, In re 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*, Application (Oct. 14, 2009).

V. Conclusion

In light of the foregoing, it is clear that all of the Companies have attempted to meet their EE and PDR obligations. However due to regulatory, economic or technological reasons beyond its reasonable control, Ohio Edison will not meet its statutory EE and PDR benchmarks. Moreover, while CEI and Toledo Edison will meet their statutory EE and PDR benchmarks, they, along with Ohio Edison, do not yet know their actual 2010 EE benchmark requirements. Therefore, all three Companies seek amendments to their respective 2010 EE benchmarks *if and only to the degree* one is deemed necessary to bring each of them into compliance with their modified EE obligations. Ohio Edison further requests that its 2010 PDR benchmark be amended to actual 2010 PDR levels. Because the Companies must submit their 2010 status report by March 15, 2011, the Companies respectfully ask that the Commission issue its Order approving this Application and granting the amendments as described herein no later than February 15, 2011.

Respectfully submitted,

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Exhibit A

2010 Summary of Cumulative Energy Efficiency Savings

Case No. 11-126-EL-EEC *et al*

	(in GWhs)			
	OE	CEI	TE	Total
Benchmarks as filed in EEPDR Plans	**200.1**	**151.8**	**81.1**	**433.1**
Home Energy Analyzer (a)	4.6	3.1	1.3	9.0
Community Connections (b)	2.6	1.8	0.9	5.3
Transmission and Distribution Projects - As Filed (c)	12.9	3.8	6.1	22.8
Mercantile Projects - Approved	42.0	13.1	10.8	65.9
Mercantile Projects - As Filed (c)	107.3	252.4	117.3	476.9
Total Anticipated Energy Efficiency Savings Achieved (d)	**169.4**	**274.2**	**136.4**	**579.9**
Anticipated Results from Additional Programs Included in EEPDR Plans	69.3	54.7	18.6	142.6
Projected Cumulative Total with EEPDR Plan Approval	**238.7**	**328.9**	**155.0**	**722.6**

(a) Values based on 300 KWh per participant as filed in the EEPDR Plans.

(b) Community Connections savings are based on filed savings in EEPDR Plans, and may vary based on completed Evaluation, Measurement & Verification (EM&V) for this program.

(c) Savings based on annualized values as filed.

(d) Achieved values are preliminary, may not be all inclusive, include adjustments by appropriate loss factors, and are subject to EM&V. Verified results will be included in the Annual Program Portfolio Status Report.

Exhibit B

2010 Summary of Cumulative Peak Demand Reduction

Case No. 11-126-EL-EEC *et al*

(in MWs)	OE	CEI	TE	Total
Benchmarks as filed in EEPDR Plans	**91.0**	**71.5**	**34.4**	**196.9**
Interruptible Demand	66.0	48.0	144.0	258.0
Home Energy Analyzer (a)	1.1	0.7	0.3	2.1
Community Connections (b)	0.8	0.5	0.3	1.5
Transmission and Distribution Projects - As Filed	3.5	1.0	1.9	6.5
Mercantile Projects - Approved	2.6	1.3	1.6	5.4
Mercantile Projects - As Filed	10.1	22.9	25.1	58.2
Total Anticipated Peak Demand Reduction Achieved (c)	**84.1**	**74.5**	**173.2**	**331.7**
Anticipated Results from Additional Programs Included in EEPDR Plans	33.3	31.1	7.6	72.0
Projected Cumulative Total with EEPDR Plan Approval	**117.4**	**105.5**	**180.8**	**403.7**

(a) Values based on 0.0456 KW per participant as filed in the EEPDR Plans.

(b) Community Connections savings are based on filed savings in EEPDR Plans, and may vary based on completed Evaluation, Measurement & Verification (EM&V) for this program.

(c) Achieved values are preliminary, may not be all inclusive, include adjustments by appropriate loss factors, and are subject to EM&V. Verified results will be included in the Annual Program Portfolio Status Report.