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February 25, 2011

Via Federal Express
and Facsimile (614-466-0313)

Ms. Renee J. Jenkins
Director, Administration Department
Secretary to the Commission
Docketing Division
The Public Utilities Commission of Ohio
180 Broad Street
Columbus, OH 43215-3793

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PUCO

Dear Ms. Jenkins:

Re: **Memorandum Contra to Office of the Ohio Consumers' Counsel
Motion for a Comment Period
Case Nos. 11-126-EL-EEC, 11-127-EL-EEC and 11-128-EL-EEC**

Enclosed for filing, please find the original and twelve (12) copies of the *Memorandum Contra to Office of the Ohio Consumers' Counsel Motion for a Comment Period* regarding the above-referenced case. Please file the enclosed *Memorandum*, time-stamping the two extras and returning them to the undersigned in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions concerning this matter.

Very truly yours,

Carrie M. Dunn

CMD/jhp
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)	Case No. 11-126-EL-EEC
Electric Illuminating Company and The)	Case No. 11-127-EL-EEC
Toledo Edison Company to Amend Their)	Case No. 11-128-EL-EEC
Energy Efficiency and Peak Demand)	
Reduction Benchmarks)	

**Memorandum Contra to Office of the Ohio Consumers' Counsel
Motion for a Comment Period**

Pursuant to 4901-1-12 Ohio Administrative Code ("O.A.C."), Ohio Edison Company, The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company (collectively, "the Companies") submit their Memorandum Contra Office of the Ohio Consumers' Counsel ("OCC") Motion for a Comment Period in this proceeding. In support of its request, OCC claims that "[a] comment period is needed to provide interested parties an opportunity to present issues relevant to [the Companies'] request."¹ OCC provides no hint as to what issues it intends to present, nor does it offer a procedural rule or statute that would allow for such comments. The reason is simple. There is no such provision. Neither R.C. 4928.66(A)(2)(b) nor Rule 4901:1-39-05(I) provides for a comment period. Indeed, R.C. 4928.66(A)(2)(b) allows the Commission to amend an Electric Distribution Utility's ["EDU"] statutory energy efficiency and/or peak demand reduction benchmarks "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."

¹ OCC Motion, Feb. 10, 2011, at pp 1-2.

It is unclear as to the purpose the comments submitted by OCC would serve. There are no material issues of fact that must be resolved. And even if there were, comments are not evidence upon which the Commission could base its ruling. The issue presented is a question of law, which the Commission is well within its discretion to determine without the benefit of OCC's insight. Further, if OCC believes that the Commission erred in its finding of law, it has recourse through an application for rehearing. And finally, the Companies are required to submit their annual report by March 15, 2011, including a statement as to whether they have met their 2010 benchmarks. If the Commission were to provide a comment period, the resolution of this matter would be unduly delayed to the prejudice of the Companies.

Therefore, based upon the foregoing, the Companies respectfully request that the Commission deny OCC's Motion for a Comment Period and approve the Companies' Application for an amendment to their benchmarks consistent with their Application.

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra to Office of the Ohio Consumers' Counsel Motion for a Comment Period was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 25th day of February, 2011.



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