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**

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY TO THE COMMENTS SUBMITTED BY THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES

I. INTRODUCTION

On January 11, 2011, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("Toledo Edison") (collectively "Companies") submitted in this docket an application for an amendment to their respective 2010 energy efficiency ("EE") and peak demand reduction ("PDR") benchmarks, if and only to the extent one is necessary for the Companies to be in compliance with their obligations ("Application"). On February 10, 2011, the Ohio Environmental Council, Environmental Law & Policy Center, the Office of the Ohio Consumers' Counsel and the Natural Resource Defense Council (collectively referred to as "OCEA") filed a request to establish a comment period in this proceeding. Rather than wait for a ruling from the Commission on such a request, the OCEA submitted comments on February 25, 2011, asking the Commission to deny the Companies' Application. In support of their request, OCEA claims that (i) the Companies do not consistently seek approval from the Commission prior to launching

EE and PDR programs;[1] and (ii) unlike other Ohio electric distribution utilities ("EDUs"), the Companies refuse to launch programs prior to obtaining authority from the Commission to do so.[2] Neither is true.

Inasmuch as there is no statutory provision for such comments the Companies urge the Commission either to strike OCEA's comments, ignore them as being misplaced, or recognize them for the half truths and misrepresentations that they are.

II. COMMENTS

A. OCEA misrepresents the nature of the Companies' Application.

OCEA asserts that the Companies asked for "an amendment to [their] 2010 energy efficiency and peak demand ... benchmarks"[3] and claims that "the Companies have not demonstrated a good faith effort to comply with the benchmarks."[4] It is unclear whether OCEA simply does not understand the nature of the Companies' Application or if it is intentionally trying to mislead this Commission. Regardless of its motivation, neither is acceptable. Had OCEA taken the time to review the Application it would have discovered that *both* CEI and Toledo Edison *exceed* their statutory 2010 energy efficiency and peak demand reduction benchmarks, thus negating OCEA's claim of any bad faith efforts on the part of either of these companies. Because the Commission indicated that it would modify the Companies' 2010 benchmarks when addressing the Companies' three year energy efficiency and peak demand reduction plans ("EEPDR Plans") in Case No. 09-1947-EL-POR et al ("EEPDR Case"), and this

---

[1] OCEA Comments, pp. 5-14 (Feb. 25, 2011).

[2] Id. at 2, 14-15.

[3] Id. at 1.

[4] Id. at 2.

has yet to be done, neither of these companies knows for certain what their modified 2010 EE and PDR benchmarks might be. As a result and in an abundance of caution, they too joined in the request for an amendment, but made it clear that such a request was being made *if and only to the degree necessary* for them to meet their yet-to-be defined 2010 actual EE benchmarks.[5] Moreover, as also demonstrated in the exhibits attached to the Application, Ohio Edison achieved approximately 85 percent of its energy efficiency target even without the benefit of the programs included in its EEPDR Plan. And assuming the programs in the EEPDR Plan had been approved in a timely manner, and the results from these programs resembled those estimated in the plan, it would have achieved almost 120% of its 2010 statutory energy efficiency target. Similarly, Ohio Edison achieved 92% of its statutory 2010 PDR benchmark and would have achieved approximately 129% had its EEPDR Plan been timely approved. Ohio Edison's results, especially under current conditions, can be construed as nothing less than a good faith effort.

If there was ever a demonstration of bad faith, it is OCEA that is guilty. Not only does OCEA blatantly misrepresent the facts surrounding the nature of the Companies' Application, but it has also modified or omitted facts that are inconvenient to the arguments made in its comments. Moreover, members of OCEA have participated in every collaborative meeting held since the filing of the EEPDR Plans, never once attempting to resolve these issues in a collaborative fashion. And even more outrageous is OCEA's claim that the Companies are "in breach of the Commission's *conditional* 2009 waiver"[6] which, if OCEA's interpretation is

---

[5] Application for Amendment, p. 2 (Jan, 11, 2011).

[6] OCEA Comments, p. 4 (emphasis in original).

adopted, would require the Companies to become clairvoyant and achieve benchmarks that have yet to be defined.

OCEA's attempts to paint a picture that simply does not exist does not stop here, however. OCEA also claims that the Companies have selectively applied the prerequisite for approval prior to launch of programs, and their actions are contrary to other Ohio EDUs who supposedly launched their EE and PDR programs prior to Commission approval. As explained below, neither assertion is accurate.

B. OCEA misinterprets the Companies actions with regard to the mercantile customer program.

OCEA recognizes that a stipulation in the Companies' ESP Case approved by the Commission indicates that EE and PDR programs pursued by the Companies should be "pre-approved by the Commission for statutory compliance and cost recovery."[7] OCEA then claims that the Companies "have effectively waived the argument that Commission pre-approval is a prerequisite to launching programs" because the Companies' "chose to pursue certain mercantile customer programs that are a part of the pending [EEPDR Plans] prior to Commission approval.[8] OCEA's argument is flawed in at least two material respects. First, the Companies are not at liberty to uniformly modify or ignore the above stipulated provision; nor can any other signatory party, which in the ESP Case includes most of the members comprising OCEA. Second, there are significant distinctions between the mercantile customer program and the other programs included in the EEPDR Plans. Unlike virtually all of the other programs included in the Plans, the inclusion of EE and PDR projects carried out by mercantile customers is authorized by

---

[7] OCEA Comments, p. 7, citing Section E.6.f of the Stipulation and Recommendation approved in *In re [Companies'] Application for Authority to Establish a Standard Service Offer*, Case No. 08-935-EL-SSO (Feb. 19, 2009) ("ESP Case").

statute.[9] Therefore Commission approval of a program to include these projects is unnecessary. Second, Commission Rule 4901:1-39-05(G) allows applications for approval of mercantile customer projects to be submitted *solely* by customers if they so desire, regardless of the status of a utility's three year EE and PDR plan. Therefore, it stands to reason that approval of the Companies' EEPDR Plans is not a prerequisite to submit jointly that which the customer can do independently. Third, each of the mercantile customer project applications are filed under separate applications, independent of the application that seeks approval of the EEPDR Plans. Therefore, each of these applications stand on their own for individual approval. And finally, had OCEA bothered to review the joint applications submitted to the Commission for approval, it would have discovered that these applications seek approval to include the savings resulting from such projects in the Companies' benchmark results, and authority to pay customers either a cash rebate or exempt them from paying the amounts included in the Companies' Riders DSE. Therefore, contrary to OCEA's assertions, the Companies continue to seek both authorization to include the results from these projects in their annual EE and PDR results prior to reporting them, as well as pre-approval of cost recovery prior to paying any such incentives. There is no inconsistency with the ESP Stipulation, nor has there been a waiver of any stipulated provision.

In a variation of the above argument, OCEA somehow tries to equate the independent actions of administrators as actions of the Companies, arguing that "[p]rogram administrators noted on several occasions that the work toward achieving the Companies' benchmarks had already begun *before* any PUCO approval [of the administrator compensation], modified or

---

[8] OCEA Comments, pp. 5, 7.

[9] R.C. § 4928.66(A)(2)(c).

otherwise, was granted."[10] OCEA erroneously makes a leap in logic concluding that "the Companies sought Commission approval of the Administrator agreement (and by extension, the [mercantile] program itself) …." [11] However, as has already been discussed, the mercantile customer program is authorized by statute, thus negating the need to seek approval of such a program. Instead, the application to which OCEA refers seeks authority for the Companies to pay the administrators for their efforts consistent with the contract that was the subject of the application. And, again, had OCEA bothered to check, that contract expressly states that "[p]ayment of the monthly administration fee, as well as any additional compensation set forth in [the attached exhibit], *is contingent upon the Commission approving the Companies' full and timely recovery of such payments*, through its Demand Side Management and Energy Efficiency Rider, or its equivalent ("DSE Rider.")".[12] In light of the above, there is no inconsistency with the ESP Stipulation. In fact it demonstrates the exact opposite, again showing that the Companies seek approval for recovery of program costs prior to incurring them. Clearly administrators were assuming all risk of payment for their efforts prior to Commission approval of the fees – actions that cannot be attributed to the Companies.

OCEA also tries to tie the fact that the Companies did not launch the "Fast Track" programs[13] to the Companies' participation in mercantile customer applications.[14] The

---

[10] OCEA Comments, p. 8 (emphasis in original).

[11] Id. at 8.

[12] *In re Application of [the Companies] for Approval of Administrator Agreements and Statements of Work,* Case No. 09-535-EL-EEC (June 30, 2009), citing Paragraph 6 of the agreement (emphasis added).

[13] The Companies included in their EEPDR Plans four programs -- Appliance Turn-In Program, CFL (and CFL Low Income) Program, C/I Equipment Program (Lighting), and C/I Equipment Program (Industrial Motors) – and asked for expedited approval to launch these programs, a request that was unopposed by all parties in the EEPDR Case.

[14] OCEA Comments, p. 10.

Companies are at a loss to find the connection, especially given the distinctions described above. OCEA however also claims that "because all parties expressed support for the [launch of the] Fast Track programs, [the Companies] could have begun implementing these programs with little risk."[15] What OCEA apparently fails to grasp, however, is that, irrespective of the fact that no party opposed, there is neither a requirement nor a guarantee that the Commission will agree with the parties on either the design of the programs or approval of recovery of the costs incurred to launch them. The fact that a request for approval of these *unopposed* programs was submitted over a year ago and the Commission has yet to rule on the request sheds light on the uncertainty and risks of proceeding without such approval.

C. OCEA misrepresents the facts surrounding the implementation of EE and PDR programs by other Ohio EDUs.

OCEA also argues that the Companies' insistence on obtaining approval for cost recovery prior to implementing the programs included in their EEPDR Plans is contrary to the actions of other Ohio EDUs. This simply is not true; nor is it relevant. As a preliminary matter, and as already discussed, unlike the other Ohio EDUs, the Companies, along with most of the members that comprise OCEA, are signatory parties to a stipulation in the Companies' ESP Case – a stipulation that requires EE and PDR programs pursued by the Companies to be "pre-approved by the Commission for statutory compliance and cost recovery." As already discussed, the Companies cannot and have not waived or modified this provision of the stipulation.

While this should be dispositive of the issue, it should also be noted that irrespective of the above provision, OCEA's claims are wrong. While OCEA cites to testimony in AEP's EEPDR case to demonstrate that certain programs were launched prior to approval of AEP's EE

---

[15] Id. at 12.

and PDR three year plan,[16] OCEA apparently forgot to review AEP's ESP case. As the Commission indicated in its March 18, 2009 Opinion and Order in that case, the AEP Companies "should proceed with the proposed energy efficiency and peak demand reduction programs proposed in its ESP…."[17] It is interesting that OCEA did not cite any supporting authority for its assertions with respect to Dayton Power and Light Company ("DP&L") or Duke Energy – Ohio. Perhaps this is because they too received authority prior to proceeding with their EE and PDR programs. DP&L entered into a Stipulation on Feb. 24, 2009, which was approved by the Commission without modification by Opinion and Order dated June 24, 2009 in Case No. 08-1094-EL-SSO. Paragraph 5 of that stipulation provided for recovery of actual costs incurred through December 31, 2008, plus the estimated costs to be incurred through March 31, 2011 for energy efficiency and peak demand reduction programs presented during the case.[18] Similarly, the Commission approved a stipulation submitted in Duke Energy – Ohio's ESP Case in which energy efficiency and peak demand reduction programs were presented.[19] Like the Companies, each of the other Ohio EDUs obtained approval for their EE and PDR programs prior to launching them.

III. CONCLUSION

There is no provision that allows for the Comments submitted by OCEA and, accordingly they should be summarily dismissed. Nevertheless, if the Commission entertains OCEA's

---

[16] OCEA Comments, p. 14, fn. 32

[17] *In re Application of [the AEP Companies] for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets,* Case No. 08-917-EL-SSO et al, Opinion and Order, p. 45 (Mar. 18, 2009).

[18] *In re Application of the Dayton Power and Light Company for Approval of Its Electric Security Plan,* Case No. 08-1094-EL-SSO, Opinion and Order (June 24, 2009)

[19] *In re Duke Energy – Ohio Application for Approval of an Electric Security Plan,* Case No. 08-920-EL-SSO et al, Opinion and Order (Dec. 18, 2008)

comments then, in light of the above, they should be rejected. There is no evidence that the Companies' have been inconsistent in their application of the stipulated provision that requires pre-approval by the Commission of EE and PDR programs pursued by the Companies, nor is there evidence that the Companies' prerequisite for approval prior to launching EE and PDR programs is any different than that of the other Ohio EDUs. Quite the contrary, as discussed above, the evidence supports the exact opposite. Moreover, even without the benefit of most of the programs included in the Companies' EEPDR Plans, both CEI and Toledo Edison exceeded their statutory 2010 EE and PDR benchmarks; and Ohio Edison fell slightly short -- a result that would have been different had its EEPDR Plan been timely approved. And finally, absent a crystal ball, the Companies cannot determine if they met any modified benchmarks that may occur when the Commission issues its ruling in the EEPDR Case. Therefore, OCEA's claim of a breach of the Commission's 2009 conditional waiver is nonsense.

Based upon the foregoing, the Companies respectfully ask that the Commission reject the comments of OCEA and approve the Companies' application to amend their EE and PDR benchmarks to the degree necessary to bring them into compliance with 2010 requirements.

Respectfully submitted,

Kathy J. Kolich

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

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 the Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company were served on the persons set forth below via electronic mail and regular U.S. Mail Service, postage prepaid, this 8th day of March, 2011.

Kathy J. Kolich

Kathy J. Kolich, Esq.

William Wright
Assistant Attorney General
Chief, Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793
william.wright@puc.state.oh.us

William T. Reisinger
Nolan Moser
Trent A. Dougherty
Elizabeth Camille Yancey
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
will@theoec.org
nolan@theoec.org
trent@theoec.org
camille@theoec.org

Christopher J. Allwein
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215
allwein@occ.state.oh.us

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
Cmooney2@columbus.rr.com

Henry W. Eckhart
50 West Broad Street, #2117
Columbus, OH 43215
henryeckhart@aol.com

Attorney for The NRDC

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
tsantarelli@elpc.org

Owen J. Kopon
Brickfield, Burchette, Ritts & Stone, P.C.
8th Floor, West Tower
1025 Thomas Jefferson Street, N.W.
Washington, DC 20007
ojk@bbrslaw.com