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 For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms.	)	Case Nos. 09-1947-EL-POR 09-1948-EL-POR 09-1949-EL-POR
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Initial Benchmark Reports.	)	Case Nos. 09-1942-EL-EEC 09-1943-EL-EEC 09-1944-EL-EEC
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 Nos. 09-580-EL-EEC 09-581-EL-EEC 09-582-EL-EEC

APPLICATION FOR REHEARING OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY AND SUPPORTING MEMORANDUM IN SUPPORT

Date: April 22, 2011

TABLE OF CONTENTS

76018 v1

APPLICATION FOR REHEARING

Pursuant to R.C. § 4903.10 and Rule 4901-1-35, O.A.C., Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison"),(collectively, the "Companies"), hereby apply for rehearing of the Commission's March 23, 2011 Opinion and Order ("Order") issued in the above-captioned case, because it is unreasonable and unlawful in the following respects:

1. The Commission's finding that the Companies' Three Year Energy Efficiency ("EE") and Peak Demand Reduction ("PDR") Program Portfolio Plans ("EEPDR Plans" or "Plans") were not designed to achieve 2010 statutory EE and PDR benchmarks is against the manifest weight of the evidence.

2. The Commission's adoption of a pro rata accounting methodology for determining EE savings violates the Companies' substantive due process rights and ignores the evidence of record.

3. The Commission's mandate to incorporate a yet-to-be approved template when submitting the Companies' next three year EE and PDR plans violates the Companies' due process rights, not only by requiring compliance with templates that have yet to be defined and rules that have yet to become effective, but by also failing to provide the Companies with sufficient advance notice as to what is required prior to such mandatory compliance.

4. The Commission's decision not to approve the Companies' proposed street lighting program and the energy efficient products program as it relates to water heaters for customers with access to natural gas has no basis and is against the manifest weight of the evidence.

5. The Commission's failure to explain its rationale for not approving the Companies' street lighting program and the energy efficient products program as it relates to water heaters for customers with access to natural gas violates R.C. § 4903.09.

6. The Companies seek clarification on the intent underlying the Commission's limitations regarding the Energy Efficient Products Program as it relates to water heaters for customers with access to natural gas.

7. The Companies seek clarification of the Commission's intent to defer judgment not only on the Companies' 2009 transmission and distribution ("T&D") filing, but also on their 2010 T&D filing.

For these reasons, and as set forth in greater detail in the Companies' Memorandum in Support, which is attached hereto and incorporated herein by reference, the Companies respectfully request that the Commission grant rehearing and issue an Entry on Rehearng consistent with this filing.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("Toledo Edison"), (collectively, the "Companies"), respectfully request a rehearing on the issues discussed herein and ask that the Commission modify its March 23, 2011 Opinion and Order ("Order") in this proceeding consistent with the following comments.

II. ARGUMENT

A. The Commission's finding that the Companies' Three Year Energy Efficiency ("EE") and Peak Demand Reduction ("PDR") Program Portfolio Plans ("EEPDR Plans") were not designed to achieve 2010 statutory EE and PDR benchmarks is against the manifest weight of the evidence.

In its Order (at 9), the Commission concluded that "as proposed, the Companies' program portfolio plans were not designed to achieve the statutory benchmarks for 2010." As a preliminary matter, given that the Commission did not issue its Order in this proceeding until March 23, 2011, the design for program compliance in 2010 has been rendered moot. Moreover, as more fully discussed below, time has proven the Commission's finding to be incorrect.

The EEPDR Plans, as proposed, included for purposes of compliance with R.C. § 4928.66(A)(1) both a program that accumulated historic mercantile customer projects for commitment towards the Companies' statutory benchmarks and Transmission and Distribution ("T&D") projects. Because both of these programs were authorized by statute, no separate Commission approval of these programs was necessary.[1] Accordingly, the Companies launched these programs while approval of the overall EEPDR Plans was pending.

[1] R.C. § 4928.66(A)(2)(c), (d).

As indicated in a recent filing, the implementation during 2010 of these two programs allowed both CEI and Toledo Edison to exceed their respective 2010 EE and PDR benchmarks, assuming that all EE and PDR related filings currently pending before the Commission are approved as filed.[2] Ohio Edison's slight shortfall of achieving the same[3] could have been avoided through an earlier ruling on Ohio Edison's Plan.

Indeed, a timely ruling from the Commission in March, 2010 – as expressly requested by the Companies in their Application[4] – would have provided the Companies a fair opportunity to comply with the 2010 statutory benchmarks using ***all*** programs included in their EEPDR Plans. The one-year delay in approving the Companies' EEPDR Plans deprived the Companies of that opportunity. The Commission's newly-approved rules required that 2010-12 plans be filed by December 31, 2009,[5] and the Companies filed their EEPDR Plans fifteen days early. Given the Commission's ruling to utilize a pro rata, rather than annualized accounting methodology[6] for purposes of determining energy savings results[7], it was reasonable for the Companies to expect that the Commission would act quickly to approve those plans early in 2010 so that they could have substantial impact on 2010 EEPDR efforts. As the Commission noted, the record is not at all clear that extraordinary relief was necessary in the form of fast track approval in order for the

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[2] *See In re 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, Application,* Case No. 11-126-EL-EEC (Jan. 11, 2011).

[3] Id.

[4] Application, p. 11.

[5] OAC 4901:1-39-04(A) ("An electric utility's first program portfolio plan filed pursuant to this rule, shall be filed with supporting testimony prior to January 1, 2010. Each electric utility shall file an updated program portfolio plan by April 15, 2013, and by the fifteenth of April every third year thereafter, unless otherwise directed by the commission").

[6] The pro rata accounting methodology calculates energy savings based on the date on which a measure was implemented, pro rating projected energy savings based on the portion of the year during which said measure was in effect. The annualized accounting methodology, on the other hand, includes for purposes of compliance an entire year of projected savings, irrespective of when the measure was implemented.

[7] *In re Adoption of Rules for Alternative and Renewable Energy Technology, Resources and Climate Regulations,* Case No. 08-888-EL-ORD, Entry on Rehearing (June 17, 2009) at 9.

Companies to achieve their 2010 benchmarks.[8] To the contrary, all that was required was a timely Commission order approving the Companies' programs included in their EEPDR Plans.

In light of the foregoing, the Commission's finding that the Companies' Plans were not designed to achieve 2010 statutory EE and PDR benchmarks is incorrect and contrary to both the evidence of record and reality and should, therefore, be modified accordingly.

B. The Commission's adoption of a pro rata accounting methodology for determining EE savings violates the Companies' substantive due process rights and ignores the evidence of record that demonstrates the impracticality of the policy.

In its Order (at 21) the Commission reaffirmed its decision to utilize the pro rata, rather than the annualized, accounting methodology when determining energy savings results, saying that the Companies "pointed to no evidence in the record of this proceeding that this decision was incorrect or impractical." The Companies submit that the law and the evidentiary record demonstrate that the use of a pro rata methodology is both impractical and in violation of the law.

1. <u>The Commission ignored evidence of record that demonstrated the impracticality of using the pro rata accounting methodology when determining annual energy savings.</u>

The Commission stated that the Companies presented no evidence that the use of the pro rata accounting methodology was impractical. This is not correct. As Company Witness Fitzpatrick testified, the use of the pro rata, rather than the annualized accounting methodology when determining savings arising from the programs proposed in the EEPDR Plans increases compliance costs for customers by approximately $51 million.[9] He further testified that the Companies' Pennsylvania affiliates are subject to annualized savings, and that the annualized

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[8] Order, p. 9.

[9] Tr. Vol. II, pp. 258-59; Fitzpatrick Testimony, pp. 11-12.

approach "is a cost-effective way to look at the long-term savings."[10] Further evidence indicated that 22 states (out of approximately 27 states with energy efficiency mandates) utilize the annualized savings methodology when calculating savings results.[11] Thus, Mr. Fitzpatrick recommended that the Commission "reconsider their decision requiring pro-rated savings for partial year participation and recognize the extent to which 'persistence' of the Energy Efficiency ethic will be initiated and fostered by the Companies' programs and portfolios."[12] No party contested any of this evidence.

From a purely practical standpoint, the additional costs of using the pro rata methodology far outweigh any incremental benefits obtained through the use of this methodology. First, because all measures incorporated into a project are not always implemented at the same time, multiple savings calculations and tracking mechanisms may be necessary, thus increasing administrative as well as evaluation, measurement and verification ("EM&V") costs. Second, because most states utilize the annualized methodology, EM&V vendors may have to modify otherwise widely accepted systems and procedures to accommodate a pro rata approach to savings determination, again, potentially increasing EM&V costs. And finally, because a full year of savings cannot be counted under the pro rata methodology unless the measure is in place on the first day of the year in which the measure is implemented, Electric Distribution Utilities ("EDUs") are required to implement additional measures/programs to make up for this differential caused by pro rating the savings. This requires EDUs to accelerate spending on programs/measures that otherwise would not be necessary until later in the process. Indeed, when preparing their initial three year plans, the Companies modeled them based on both an annualized and pro rata approach, assuming a mid-year program launch date. A comparison of

[10] Tr. Vol. II, pp. 258-59.
[11] Cos. Reply Br., p. 6, fn. 20.
[12] Fitzpatrick Testimony, p. 24.

the two scenarios resulted in the need to spend an additional $51 million during the first three years in order to comply under the pro rata approach[13] – an increase that does nothing to improve overall results in the long run but simply costs customers more money. [14] While it is never desirable to burden customers with unnecessary costs, it is even more impractical to do so during these difficult economic times.

In light of the foregoing, the evidentiary record supports a finding that the use of the pro rata accounting methodology for purposes of determining energy savings is impractical both from an administrative and financial perspective. Accordingly, it should be abandoned in favor of the annualize method.

2. <u>The adoption of a pro rata accounting methodology for purposes of determining EE savings violates the Companies' due process rights.</u>

As part of implementing Ohio Rev. Code § 4928.66, Rule 4901:1-39-04(A), O.A.C, requires the Companies to submit a three-year program portfolio plan, with the first plan being filed prior to January 1, 2010 and every three years thereafter by April 15th. The plans must contain a range of energy efficiency programs designed to meet certain established energy savings benchmarks in each year, including the first. The Companies' ability to comply with the statutory benchmarks depends on three variables: 1) identifying the right mix of energy savings programs; 2) accurately predicting the savings these programs can achieve; and 3) knowing the start date for the implementation of each program. The Companies have greater control over the first two variables, as they can utilize their knowledge and expertise to pick the right programs and predict their expected results. However, under the pro rata accounting methodology for

[13] It is expected that the actual increase will be approximately one half of this amount due to the fact that the Commission approved the Companies' EEPDR Plans at the end of the first, rather than second quarter of 2011, thus reducing the number of additional programs that must be implemented based on the remaining time left in the year. However, this does not factor in shortfalls that may arise because the Plans were not approved at *any* point in 2010.

[14] Unless an EDU voluntarily elects to over comply with statutory mandates, the acceleration of programs does not improve final results simply because subsequent plans will adjust downward the number and nature of the programs to factor in the results from those that were accelerated.

determining energy savings, the Companies have no control over the third variable because the launch date for any program depends on the date on which the Commission approves the Companies' plans. It is incumbent upon the Commission to adopt rules or orders that ensure that the Companies have a fair opportunity to comply with the law.

The Commission had two alternatives that could provide the Companies with a fair opportunity to meet their statutory benchmarks. The Commission could have adopted procedures to assure that it would always act upon the Companies' application for approval of a program portfolio plan sufficiently in advance of the start of the first year in any three-year cycle so as to provide the Companies with an opportunity to launch their programs on January 1. It did not do so. Indeed, in this case the Commission did not act timely on the Companies' application, even though the Companies and other stakeholders implored it to do so in various letters of concern submitted in this case in the summer of 2010.[15]

Alternatively, the Commission could have committed to using an annualized accounting methodology to measure the Companies' energy savings against the statutory benchmark for any year in which the Commission did not act on the Companies' application in a time frame sufficient to allow the Companies to launch their approved programs on the first day of the first year of each three year plan cycle. Again, the Commission did not do so. To the contrary, the Commission has adopted a pro rata accounting methodology for use in those years in which the Companies' programs are not authorized to begin until after the start of the year. The adoption of this methodology virtually assures that the Companies will be unable, without resorting to speculation and luck, to design the right mix of programs to meet the statutory benchmarks in the first year of any three-year cycle despite their best efforts.

[15] *See e.g.,* A.J. Alexander Letter of Concern (June 6, 2010); OEC Letter of Concern (June 15, 2010); OCC Letter in Response to Alexander Letter (June 17, 2010).

The Commission's decision to use the pro rata methodology as part of its current review process deprives the Companies of due process of law. Due process requires, in the first instance, that laws and regulations give fair notice of what is required so that the regulated parties can conform their conduct accordingly and need not guess as to whether their actions will comply with the law. *Columbia Natural Resources, Inc. v. Tatum*, 58 F.3d 1101, 1104 (6th Cir. 1995). Governmental action which "forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application, violates the first essential of due process of law." *Id.* at 1105 (citing *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L.Ed 322 (1926)).

The Commission's decision to use the pro rata accounting methodology violates this principle. The Companies cannot reasonably determine whether their programs will achieve the required level of energy savings in a single year if they cannot control the date on which the Commission will approve the plans and thereby fix the launch date of approved programs. In any year in which the Commission does not approve the Companies' application sufficiently in advance of the start of the first year, the Companies are left to guess whether their EEPDR Plans will comply with the law. Even if the Companies have taken appropriate steps to design the right program mix and accurately predict the savings they can achieve in a twelve-month period, the Companies are forced to speculate as to when the Commission will authorize program commencement. This very proceeding is an example of the extreme guesswork required, since few would have bet that the Commission's approval of a 2010 plan would have come in 2011. The pro rata method, when combined with the review process followed by the Commission, has rendered Rule 4901:1-39-04(A) O.A.C. unconstitutionally vague.

In sum, the adoption of the pro rata accounting methodology is unlawful because of the arbitrary and capricious nature of the approval process that leaves an EDU guessing when trying to develop an EEPDR plan that complies with Commission rules, mandates and regulations and the requirements set forth in R.C. § 4928.66. It also is unreasonable because, as demonstrated by record evidence ignored by the Commission, it is impractical and increases compliance, administrative and EM&V costs with very little incremental benefit for customers. Accordingly, the Commission should adopt an annualized accounting methodology for purposes of determining program savings.

C. The Commission's mandate to incorporate a yet-to-be approved template when submitting the Companies' next three-year EEPDR Plans violates the Companies' right to due process.

As part of its Application in this proceeding, the Companies requested a waiver to the extent the customer sectors used in the EEPDR Plans conflicted with the Commission's order adopting a portfolio plan template in Case No. 09-714-EL-UNC ("Template Docket"). The Companies incorrectly assumed at the time that the Commission's order in the Template Docket would be issued prior to the Commission's order in this docket. Because the Commission has yet to issue an order in the Template Docket or to approve customer sectors for an EEPDR plan template, there was no need for the Commission to grant the Companies' waiver request. There was no rule to waive.

Regardless, the Commission erred by ordering the Companies to "take the necessary steps to implement the portfolio plan template in its next portfolio plan."[16] The plan template and customer segmentation issues are the subject of the Template Docket, and the Commission has yet to issue a final order regarding customer sectors in that docket. Until such an order is issued, there is nothing to mandate. Indeed, if such a mandate stands, it in essence circumvents

[16] Order, p. 22.

the Companies' due process rights to be heard and to challenge the lawfulness and validity of any such ruling. Moreover, as the Companies explained in their comments in the Template Docket: (i) the sectors being proposed in the Template Docket have no rational relationship to the Companies' Commission-approved rate schedules; (ii) the Companies' customer data does not track with the proposed sectors, thus making it virtually impossible to accurately assign customers to the proposed sectors; (iii) the Companies' customer accounting systems do not track customer data consistent with the proposed sectors, and would have to be reconfigured; and (iv) the proposed sectors would significantly reduce the accuracy of the Market Potential Study results on which the Companies EEPDR Plans are based.[17] The Commission's adoption of the customer sectors as proposed in the Template Docket would require unduly burdensome modifications to the Companies' accounting and billing systems, as well as possibly their rate schedules. Even if these modifications were completed, the Companies still would be unable to use the proposed sectors without first, as one example, surveying all customers to determine which ones are government or nonprofit entities. Until the sectors are known, the Companies cannot reasonably be expected to "take the necessary steps to implement the portfolio plan template in [their] next portfolio plan." And depending on the timing of any final order from the Commission in the Template Docket, there may not be sufficient time to comply with the mandate prior to commencing the development of their next three-year EEPDR Plans.

In light of the foregoing, the Commission erred by mandating in this proceeding the implementation of a yet-to-be defined plan template that is the subject of another docket. Accordingly, this mandate should be removed, with clarification that any issues involving the plan template (as well as customer segmentation) will be addressed in the Template Docket.

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[17] *In re the Adoption of a Portfolio Template*, Case No. 09-714-EL-UNC, Comments of the Companies (Sept. 11, 2009).

D. The Commission's decision not to approve the Companies' proposed street lighting program and its energy efficient products program as it relates to water heaters for customers with access to natural gas has no basis and is against the manifest weight of the evidence.

The Companies' EEPDR Plans are comprised of numerous programs, including both an energy efficient products program that includes a water heater component and a government lighting program that includes a street lighting component. Like all of the other programs included in the Plans, these programs were summarized, describing (i) the program objectives and metrics; (ii) target markets; (iii) program approach, rationale and description; (iv) implementation strategy; (v) program issues, risks and risk strategies; (vi) marketing strategy; (vii) market transformation strategy; and (viii) eligible measures and incentives.[18] Each of the Plans in their entirety, including the summaries described above, was made a part of the evidentiary record.[19] Like many of the other programs included in the Plans, no party raised any issues with regard to either the street lighting or water heating aspects of these programs or the program particulars. Without any discussion, the Commission concluded that "the evidence in the record of this proceeding does not support approval of the street lighting program and the residential energy efficient products program as it relates to water heaters for customers who have access to natural gas. Therefore, further proceedings are necessary regarding [these aspects of the programs.]"[20]

Not only is such a finding against the manifest weight of the evidence, but it is contrary to *all* of the record evidence. *See, e.g., In re Application of Columbus S. Power Co.*, 2011-Ohio-1788, ¶ 29 ("Ruling on an issue without record support is an abuse of discretion and reversible error"). Further, because many other programs included similar information as that presented for

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[18] For a description of the EE products program and governmental lighting program, *see* Section 3.2 and 3.5, respectively, in each of the Companies' EEPDR Plans.
[19] Co Exh. 6 (OE), 7 (CEI) and 8 (TE).
[20] Order, p. 22.

these two programs, again without opposition, the Commission's arbitrary singling out of these programs is unlawful and unreasonable, especially when, as discussed below, the Commission provided no explanation as to its rationale.

E. The Commission's failure to explain its rationale for failing to approve the Companies' street lighting program and the energy efficient products program as it pertains to water heaters for customers with access to natural gas violates R.C. § 4903.09.

The Commission violated R.C. § 4903.09 by rejecting two EEPDR programs without explanation or justification. R.C. § 4903.09 provides in pertinent part:

> In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made … and the commission shall file, with the records of such cases, **findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.** [Emphasis added.]

As the Ohio Supreme Court has explained, the purpose of R.C. § 4903.09 is to "inform interested parties of the reasons for the commission's action and to provide [the Ohio Supreme Court] with an adequate record in order to determine whether the decision is lawful and reasonable." *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St. 3d 451, 455, 2004-Ohio-3924, ¶ 17 (2004). A Commission order "must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion." *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St. 3d 306, 312 (1987).

As discussed in Section II(D) above, the Commission did not proffer ***any*** reason – let alone a legitimate reason based on record evidence – for rejecting the street lighting program and the energy efficient products program as it pertains to water heaters for customers with access to natural gas. The Commission did offer its opinion that the record did not support adoption of these programs, but this opinion would necessarily lead to the rejection of all programs proposed by the Companies that were equally supported by record evidence and by all parties. No distinction exists in the record between these two programs mysteriously found by the Commission to be lacking in evidence and the many other programs that gained the Commission's approval. The Commission made no findings of fact as to why these programs were unreasonable or unlawful, and it provided nothing more than a generic statement to explain its rationale for refusing to approve them. Accordingly, its rejection of the street lighting program and the energy efficient products program as it relates to water heaters is unlawful and unreasonable in violation of R.C. § 4903.09. Both of these programs should be approved as filed.

F. The Companies alternatively seek clarification on the intent underlying the Commission's limitations regarding the Energy Efficient Products Program as it relates to water heaters for customers with access to natural gas.

Based on the assignments of error set forth in Section II (D) and (E) above, the Companies believe that both the energy efficient products program and the street lighting program should be approved as filed. Should the Commission deny the Companies' application for rehearing on these particular assignments of error, the Companies alternatively request clarification of the Commission's intent surrounding the stated limitations on water heating measures vis-à-vis access to natural gas.

In its Order, the Commission approved the EEPDR Plans with certain exceptions. One of those exceptions deals with the water heating component of the Energy Efficient Products Program, where the Commission stated: "although the Commission will approve the residential energy efficient products program as it relates to water heaters for customers who do not have access to natural gas, the Commission will not approve the residential energy efficient products program as it relates to water heaters for all other customers."[21] While the Companies believe that the water heating measures should be approved as proposed based on the assignments of error discussed in Section II (D) and (E) above, should their request for rehearing be denied, they alternatively seek clarification of the Commission's intent with regard to this aspect of the energy efficient products program. Based on the above, it appears that the Commission is precluding rebates or incentives for upgrades by any customer with either an electric or natural gas water heater if that customer has access to natural gas. As a practical matter, it will be difficult to determine with certainty which of its customers has such access. The Companies discussed this issue with their residential subcommittee within their collaborative group, which concluded that the limitation should be limited only to those customers who already have gas water heaters, or new customers with access to a natural gas supply, but not to those customers who currently have electric water heaters.

Without any explanation from the Commission on its concerns with the program, it is difficult to ascertain the Commission's intent and, accordingly, in addition to the assignment of errors discussed above in Sections II (D) and (E), the Companies seek clarification surrounding the scope of the limitation on the water heater incentives offered through the energy efficient products program. Should their application for rehearing of the assignments of error described in Sections D and E be rejected, the Companies urge the Commission to follow the recommendation of the collaborative and make clear that the Companies may offer rebates or incentives to customers who wish to upgrade an existing, inefficient, electric water heater.

[21] Order, p. 22.

G. The Companies seek clarification of the Commission's intent to defer judgment not only on the Companies' 2009 T&D filing, but also on its 2010 T&D filing.

In the Order, the Commission noted that, "[w]ith respect to the transmission and distribution programs, the Commission will address [the Companies'] proposed programs in Case Nos. 09-951-EL-EEC, et al."[22] The Companies seek clarification that in addition to the proposed T&D projects included in Case No. 09-951-EL-EEC, the Commission also intends to address similar projects included in a filing seeking approval of 2010 T&D projects submitted in Case No. 10-3023-EL-EEC, et al., which is also pending before the Commission.

III. CONCLUSION

In light of the foregoing, the Companies respectfully ask the Commission to grant rehearing and modify the Order consistent with the comments set forth above.

Respectfully submitted,

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[22] Order, p. 23.

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CERTIFICATE OF SERVICE

I hereby certify that this Application for Rehearing and related Memorandum in Support submitted by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company was filed electronically this 22nd day of April, 2011, with the Public Utilities Commission of Ohio Docketing Information System. Notice of this filing and a courtesy electronic copy will be sent via e-mail to the attached list.

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