

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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|---|----------|--------------------------------|
| In the Matter of the Energy Efficiency |) | |
| and Peak Demand Reduction Program |) | Case No. 10-3023-EL-EEC |
| Portfolio of Ohio Edison Company, The |) | 10-3024-EL-EEC |
| Cleveland Electric Illuminating |) | 10-3025-EL-EEC |
| Company, and The Toledo Edison |) | |
| Company |) | |

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY'S MEMORANDUM CONTRA
MOTION FOR HEARING OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
THE NATURAL RESOURCES DEFENSE COUNCIL AND CITIZEN POWER, INC.**

I. Introduction

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("Companies") ask that the Commission deny the June 2, 2011 Motion for Hearing (the "Motion") filed by the Office of the Ohio Consumers' Counsel, The Natural Resources Defense Council and Citizens Power, Inc. (collectively, the "Movants").

On December 15, 2010, the Companies filed an Application requesting approval of certain transmission and distribution ("T&D") infrastructure improvement projects for inclusion towards their compliance with the 2010 energy efficiency benchmarks mandated in R.C. § 4928.66(A)(1)(a). The Application seeks approval of T&D projects completed by the Companies from January 1, 2010 through December 31, 2010, which resulted in a 2010 projected incremental energy efficiency savings of 6,524 megawatt hours for the Companies. Attached to the Application is a description of the methodologies used by the Companies to determine these savings.

Movants filed the instant Motion arguing that the Commission should set a hearing in this matter basically for two reasons. First, they argue that since some of the improvements may

have been made to facilities owned by the Companies' affiliated transmission provider, the improvements do not satisfy the requirements of R.C. § 4928.66.¹ However, as the Commission recognized when responding to this same argument in its April 15, 2009 Finding and Order in Case No. 08-888-EL-ORD ("April 15 888 Order") "[t]ransmission infrastructure improvements count."² Second, Movants argue that the methodology used by the Companies to calculate line losses is "problematic" and suffers from "technical difficulties" because the Companies (i) failed to comply with an as-yet unapproved Technical Resource Manual ("TRM");³ and (ii) utilized the "as found" methodology when determining energy savings results.⁴ Inasmuch as both issues raised by Movants involve questions of law – the interpretation of provisions dealing with T&D projects and whether they count for purposes of R.C. § 4928.66 compliance – there is no need for an evidentiary hearing. There are no significant issues of fact to be resolved. However, as more fully discussed below, even if the Commission disagrees with the above assessment, none of Movants' arguments have merit and, again, their Motion should be denied.⁵

¹ Memorandum in Support of Motion (hereinafter, "Memo"), pp. 2-4.

² *In re the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill No. 221*, Case No. 08-888-EL-ORD, Opinion and Order at p. 8 (April 15, 2009).

³ In their Memo, Movants' allege that that (i) "[t]he measurement of programs to satisfy the requirements under R.C. Chapter 4928 should be consistent with *[TRM] Protocols* that reflect standard measurement practices" (italics added) (Memo, pp. 4-10); and (ii) "[m]easurements consistent with the approach taken *in the TRM* should be applied to projects at various levels in the electricity delivery system" (italics added) (*Id.* at 10-15).

⁴ Memo, pp. 4-15.

⁵ It should be noted that while reviewing Movants' arguments, the Companies discovered a clerical error regarding the system-wide loss factor, which is discussed *infra* and which will be corrected.

II. Argument

A. The issues raised by Movants involve questions of law and therefore no evidentiary hearing is necessary.

In their memorandum in support of the Motion, Movants set forth two arguments. As Movants acknowledge, the first deals with whether the Companies' Application violates Ohio law;⁶ more specifically whether the Companies can include results from transmission projects that involve facilities owned by an affiliate company, American Transmission Systems Incorporated ("ATSI"). Given that this issue involves the interpretation of R.C. § 4928.66, the resolution of which does not involve material questions of fact, no evidentiary hearing is necessary in order to resolve this issue.

Movants' second argument is based on allegations that the Companies' calculations of savings are flawed because they utilized the "as found" methodology, contrary to some of the protocols included in the draft TRM, currently pending before the Commission for consideration. This issue surely does not require a hearing in order to determine that there is nothing in the law that requires the Companies to comply with a document that has yet to be approved by the Commission. Further, R.C. § 4928.66(A)(1)(d) allows for the inclusion of T&D projects that reduce line losses. The statutory and policy issues involving the question of whether T&D projects based on a savings methodology different from that desired by Movants are properly included for purposes of compliance with R.C. § 4928.66 are not dependent on the resolution of questions of fact. Thus, no hearing is necessary and the Motion should be denied.

⁶ Memo, p. 2.

If, however, the Commission does not agree with the above assessment, then as discussed below, the Motion should still be rejected because Movants' arguments are without merit.⁷

B. Movants' Arguments are Without Merit.

1. Transmission Infrastructure Improvements on Facilities Owned by ATSI Count Towards the Companies' Energy Efficiency Benchmarks.

Movants are correct that some of the projects for which the Companies are seeking approval through the Application were undertaken by ATSI, their transmission affiliate. However, the inclusion of work performed on ATSI facilities is not a violation of Ohio law as Movants suggest. In fact, in the April 15, 888 Order, the Commission stated that improvements to transmission infrastructure owned by an electric utility affiliate do, indeed, count towards compliance with the benchmarks in R.C. § 4928.66. The Commission Staff concurs.⁸

At the request of the Companies for clarification on this specific point, the Commission noted that R.C. § 4928.66(A)(2)(d) "specifically includes transmission infrastructure improvements as appropriate means of achieving energy efficiency benchmarks."⁹ Because all transmission facilities in the Companies' respective service areas are owned by ATSI, the

⁷ While the Companies will briefly address Movants' arguments herein, should the Commission seek to address the issues raised by Movants through legal briefs, the Companies reserve the right to supplement their comments.

⁸ *In re [Companies] Energy Efficiency and Peak Demand Reduction Program Portfolio*, Case No. 09-951-EL-EEC et al., Staff Report at p. 2 (Sept. 1, 2010) ("09-951 Staff Report"). "Although the energy projects in the Companies' application include projects that were conducted by an affiliate of the Companies, rather than by the Companies themselves, Staff believes that it is appropriate to include the results of these projects in each Companies' compliance plan. It is not unusual for entities other than EDUs to conduct acceptable energy projects on non-EDU property. In fact, most projects are completed by parties other than the EDU on non-EDU property. Further, Section 4928.66(A)(2)(d) of the Ohio Revised Code clearly states that programs implemented by a utility may include transmission and distribution infrastructure improvements that reduce line losses. There is no concomitant requirement that the EDU must plan, develop, or even pay for, such transmission and distribution infrastructure improvements. The transmission and distribution projects under consideration in this application have been shown to reduce line losses and improve the efficiency of utilization of electricity by the EDUs, and should properly be included in each EDU's compliance plan."

⁹ April 15 888 Order, p. 8.

Companies' transmission projects necessarily must be implemented on ATSI-owned facilities. Contrary to Movants' argument, R.C. § 4928.66 does not condition or tie eligible energy efficiency programs to ownership or control of the assets involved in achieving energy efficiency goals. R.C. § 4928.66(A)(2)(d) provides that demand-response programs and customer-sited programs also are eligible, and Movants certainly can't claim that these programs are limited to utility-owned facilities. Indeed, although ATSI was the owner of all transmission facilities in the Companies' service territories at the time S.B. 221 was enacted, the General Assembly made no effort to exclude from the scope of R.C. § 4928.66(A)(2)(a) transmission facilities owned by utility affiliates.¹⁰ The General Assembly clearly intended that all projects that reduce line losses on transmission facilities, regardless of the ownership of those facilities, count toward the energy efficiency benchmarks. Ownership of such facilities by an affiliate does not preclude a utility from counting energy savings arising from energy efficiency efforts on those facilities.

An objective of R.C. § 4928.66 is to encourage the implementation of *cost-effective* energy efficiency programs, and Movants' attempt to disqualify improvements to ATSI transmission assets directly conflicts with this objective. EDUs should be encouraged to implement energy efficiency programs designed to decrease transmission line losses regardless of ownership. Line loss reductions represent one of the best values for energy efficiency savings. These loss reductions also benefit customers both through lower transmission rates and potentially lower plant emissions. Movants apparently would have the Companies ignore all potential transmission infrastructure improvements and, instead, pass through to their customers,

¹⁰ Such an exclusion would have been unreasonable and discriminatory to the extent the General Assembly would have excluded programs improving the transmission system serving the Companies but permitted such programs for all other Electric Distribution Utilities ("EDUs") in the state.

including customers Movants claim to represent, higher charges for implementing more-costly energy efficiency programs.

Movants' argument is contrary to Ohio law and sound public policy and should be rejected. Thus, the Commission correctly found in the April 15 888 Order that all transmission infrastructure improvements count, regardless of whether an EDU's affiliate holds title to the facilities.

2. The TRM Protocols are Not Binding on the Companies.

Movants correctly note that the Companies relied upon the same methodologies that were applied in their application for approval of their 2009 T&D Projects submitted in Case No. 09-951-EL-EEC, et al¹¹ – a case in which the Commission Staff issued a staff report approving the Companies' methodologies.¹² In making their second argument, Movants base all of their arguments on TRM protocols, alleging that (i) "[t]he measurement of programs to satisfy the requirements under R.C. Chapter 4928 should be consistent *with [TRM] Protocols* that reflect standard measurement practices" (italics added);¹³ and (ii) "[m]easurements consistent with the approach taken *in the TRM* should be applied to projects at various levels in the electricity delivery system" (italics added).¹⁴ As Movants should be aware, the TRM is the subject of a separate hearing in Case No. 09-512-GE-UNC¹⁵ – a case that has yet to be concluded – thus

¹¹ Memo, p. 4.

¹² 09-951 Staff Report at p. 2.

¹³ Memo, pp. 4-10.

¹⁴ *Id.* at 10-15.

¹⁵ *In re Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC.

rendering the *draft* TRM non-binding both today and certainly when the Companies' application was filed in 2010. Indeed, given that numerous parties submitted both initial and reply comments in November, 2010, and the Commission is still considering them seven months later, it is extremely unlikely that the *draft* TRM will be identical to the version that is ultimately *approved*.

3. The "As-Found" Method is a Proper Measure of Energy Efficiency Savings.

Movants argue against the Companies' use of the "as found" methodology when determining energy savings results.¹⁶ Under the "as found" method, energy savings are calculated by comparing the new equipment that the Companies installed to the old equipment that was replaced. Instead of utilizing the "as found" method, Movants propose that the baseline should be based on "standard" equipment that would be installed under the Companies' "standard practice."¹⁷

Movants prefer a baseline that would only count energy savings above a hypothetical "standard utility practice." However, there is simply no authority delegated to the Commission to redefine the statutory mandate that the effects of "all" energy efficiency programs be counted towards an EDU's compliance with its statutory benchmarks to mean only the increment above some hypothetical industry standard. The General Assembly has mandated that "transmission and distribution infrastructure improvements that reduce line losses" qualify as energy efficiency programs.¹⁸ This mandate is not limited to reduction of line losses only above a standard acceptable to Movants.

¹⁶ *Id.* at 4-7. Movants misleadingly refer to the "as found" methodology as the "do nothing" approach.

¹⁷ *Id.* at 3-4.

¹⁸ R.C. 4928.66(A)(2)(d).

Indeed, adoption of Movants' position would have serious negative consequences. First, it would require much more expensive programs to meet benchmarks that would become harder to achieve each time a governmental entity or the "industry standards" established a standard or policy that would reset the baseline from which compliance should be measured. Second, it would decrease the Commission's ability to balance costs and policy objectives by giving other entities the power to reset the baseline. The Companies' Application properly measures efficiency savings using the "as found" method.

4. A Proxy System-Wide Loss Factor is an Appropriate Methodology to Calculate Losses.

Movants next argue that the Companies should not use a proxy system-wide loss factor to determine annual losses associated with a T&D project.¹⁹ Instead, Movants suggest that the Companies should measure losses using an annualized load duration curve applied at or near a new piece of equipment and that the Companies should utilize hourly real-time data in their calculations.²⁰ However, load duration curves and hourly real time data are not necessarily available in every application. Also, some T&D projects are better measured at the system level because improvements or changes made on one site can affect loading on other sites. Real time historical data does not provide accurate projections of future energy flows because the load on a power system fluctuates based on (1) customer use patterns; (2) temperature variations; (3) addition of distributed generation; (4) bulk power transfers; and (5) transmission and generation outages. Therefore, traditional estimating methods like those employed in the Companies'

¹⁹ Memo at 8-10.

²⁰ *Id.* at 10.

Application have been used successfully to determine the reduction in losses associated with a T&D project.

Movants also noted that the Companies used the same loss factor in 2009 and 2010.²¹ The Companies acknowledge that this is an accurate statement that highlights an oversight by the Companies when submitting their Application in this proceeding. In 2010, the Midwest Independent System Operator (“MISO”) provided the loss factor of .359, which the Companies failed to incorporate into their 2010 calculations, instead using the 2009 loss factor of .423. Once the Commission issues a ruling on the Companies’ application, they will submit revised calculations for this and any other changes the Commission might order and incorporate them into any compliance reports.²²

5. The Companies Measure the Energy Savings Associated With Transmission Projects Consistently and Correctly.

Movants argue that the Companies do not measure the savings associated with their projects consistently, because the projects were implemented in order to meet the planning criteria of the Companies or NERC.²³ But the Companies do calculate the energy savings associated with their T&D projects consistently – they just use a method that the Movants do not like – the “as found” methodology. Movants claim that because these specific projects were mandatory, as being required in order to meet the planning criteria of the Companies and NERC, they should not be included for purposes of complying with energy efficiency benchmarks. As

²¹ *Id.* at 8.

²² The Companies have already submitted their 2010 Energy Efficiency and Peak Demand Reduction Status Report in Case No. 11-2956, et al. While results will change, given that Ohio Edison Company’s benchmarks were amended to actual levels achieved during 2010, such a correction will not affect compliance in 2010 for that company. Moreover, both CEI and Toledo Edison exceeded their 2010 statutory benchmarks by more than the amount impacted by this correction. Therefore, this oversight should not, in and of itself, affect compliance with their respective energy efficiency benchmarks for 2010.

²³ Memo at 10-12.

already discussed, R.C. § 4928.66 does not limit inclusion of only those projects that were done at the discretion of the Companies, but rather allows *all* such projects to count. Further, Movants ignore the fact that there were less energy efficient alternatives which could have been implemented to address loading concerns and which may have resulted in minimal or negative impacts on energy efficiency and reliability. As an example, transformer loading concerns may be addressed by: 1) increased cooling on a transformer to increase thermal capacity of the existing transformer; 2) expansion of an existing substation to add another transformer (adding capacity and redundancy to the substation); or 3) creating a new substation with transformation at a new location (adding capacity and redundancy for the transformer condition and potentially improving line loading).

As in the projects cited by Movants, planning engineers use judgment in determining the preferred alternative to pursue while considering system impacts and costs. An energy efficiency program which considers loss reduction impacts may provide further incentive to pursue projects which provide broader reliability improvements and energy efficiency in either the project's scope or its timing. The scope impact would, in the example above, further support pursuing alternative 2 versus 1 (which would have a lower capital cost) and may support pursuing alternative 3 (which would have a higher capital cost but likely even broader system impacts). Further, with regard to project timing, the program may incentivize marginal acceleration of reliability improvement projects to realize the energy efficiency impacts earlier than otherwise needed strictly for reliability. This would also provide improved operating margins for the system.

The Companies continue to support a flexible consideration of transmission system loss reduction as part of their energy efficiency programs to provide transmission planners with the

ability to continue to pursue “preferred” transmission project solutions to reliability concerns, and to possibly also justify projects with even broader impacts.

6. The Companies Measure the Energy Savings Associated With Distribution Projects Consistently and Correctly.

Movants argue that a hearing is necessary because the Companies do not employ consistent measures to measure the energy savings associated with the Companies’ distribution projects.²⁴ In support of this assertion, they refer to five specific distribution projects.²⁵ Again, however, Movants’ true problem is not with consistency because they never cite inconsistencies in the Companies’ approach to calculating results for any of these projects. Rather, they simply claim that the baseline for all five projects should be “the standard practice of the utility.”²⁶ In sum, Movants simply do not accept the “as found” method for calculating savings. And for reasons already discussed, Movants’ position is contrary to law and, therefore, should be rejected.

While Movants refer to five distribution projects, they only specifically challenged two – the Jefferson Substation Project²⁷ and Weston Substation Project.²⁸ Movants’ argument surrounding the Weston Substation Project is simply a variation of their failure to accept the “as found” method, arguing that the energy savings from the distribution improvements resulting from this project should not count because the Companies did not select a low loss transformer

²⁴ *Id.* at 12-15.

²⁵ *Id.* at 12-13. The five projects are North Street Reconductoring Project, Jefferson Substation Project, Weston Substation Project, St. Charles Hospital Substation Project, and Clifford Line Reconductoring Project.

²⁶ *Id.* at 13-14.

²⁷ *Id.* at 14.

²⁸ *Id.* at 14-15.

and instead installed a standard impedance unit.²⁹ Again, however, this is not grounds for disallowance.

With regard to the Jefferson Substation Project, Movants speculate that this project “may not have been complete in 2010” because “the Companies did not know the actual impedance of the transformer.”³⁰ The Companies re-checked and re-confirm herein that this transformer was energized on October 26, 2010, as stated in the Application, and remains in-service to this day. Further, the discovery response on which Movants rely when making such a speculative conclusion simply states that information on actual impedance was not available.³¹ This was because of the timing of the installation and the fact that actual testing had not yet been done.³²

7. Reliance on a Yet to be Final TRM for Mass Projects Is Inappropriate.

Movants claim that recognition of savings from the Transformer Replacement Project is not permitted because the information filed with the Companies’ Application does not conform to a TRM that has not yet been approved³³ and is the subject of numerous suggestions for modification.³⁴ Yet, as noted above, the fact that the TRM has been under review since August

²⁹ *Id.* at 15.

³⁰ *Id.* at 14.

³¹ Response to OCC’s First Set of Discovery, DR-14. attached to Memo.

³² For purposes of any calculations, when actual data is not available, the Companies utilize assumed values as set forth in the specifications of a unit. In this instance, the Companies did just that and, therefore, actual data was not yet available. This, however, does not justify a leap to the conclusion that the project was not energized on the date as specified in the Application.

³³ Memo, p. 15.

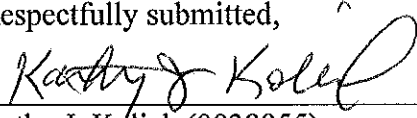
³⁴ See generally, *In re Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC (Comments of various parties, November 3, 2010).

6, 2010, is an indication that the information included in the *draft* TRM may not be identical to that included in the *approved* TRM.

III. Conclusion

Movants have failed to demonstrate a legitimate need for a hearing. The resolution of the issues raised by Movants involves questions of law, not material facts. Movants have simply demonstrated a disagreement with the methodologies implemented by the Companies and approved by the Commission Staff. This, however, does not warrant a need for an evidentiary hearing and, accordingly, the Companies ask that Movants' Motion for a Hearing be denied.

Respectfully submitted,


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CERTIFICATE OF SERVICE

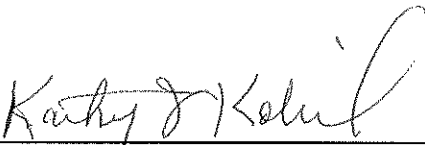
I hereby certify that a copy of this *Memorandum Contra to Motion for Hearing* was served on the persons stated below via the Commission's electronic filing system with a courtesy electronic copy of the same served by email on this 8th day of June, 2011.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/8/2011 11:23:01 AM

in

Case No(s). 10-3023-EL-EEC, 10-3024-EL-EEC, 10-3025-EL-EEC

Summary: Memorandum Contra Motion for Hearing electronically filed by Ms. Kathy J Kolich on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company