

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric ) Case No. 11-126-EL-EEC  
Illuminating Company, and The Toledo ) Case No. 11-127-EL-EEC  
Edison Company to Amend Their Energy ) Case No. 11-128-EL-EEC  
Efficiency and Peak Demand Reduction )  
Benchmarks. )

ENTRY ON REHEARING

The Commission finds:

- (1) Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (TE) (collectively, FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) Section 4928.66, Revised Code, requires electric utilities to meet certain annual energy efficiency and peak demand reduction (EE/PDR) benchmarks specified in the statute.
- (3) On January 11, 2011, FirstEnergy filed an application, pursuant to Section 4928.66(A)(2)(b), Revised Code, to amend its 2010 EE/PDR benchmarks. On May 19, 2011, the Commission issued its second Finding and Order in this proceeding (May 19, 2011, Finding and Order).

In the May 19, 2011, Finding and Order, the Commission granted the request of OE to amend its energy efficiency benchmark for 2010 and its peak demand reduction benchmark for 2010 (May 19, 2011, Finding and Order at 5). However, the Commission denied the requests of CEI and TE to amend their energy efficiency benchmarks for 2010. In denying the requests for amendment of the benchmarks, the Commission noted that FirstEnergy had represented that both CEI and TE had met their respective statutory 2010 energy efficiency benchmarks and that the request to amend the

benchmarks was only necessary if the Commission amended the Companies' 2010 statutory benchmarks in its final decision in FirstEnergy's program portfolio case, *In re FirstEnergy*, Case No. 09-1947-EL-POR, et al. (*Portfolio Case*). Since CEI's and TE's 2010 statutory benchmarks were not amended by the Commission in the *Portfolio Case*, the Commission found that it was unnecessary to grant the request for an amendment of CEI's and TE's 2010 energy efficiency benchmarks (May 19, 2011, Finding and Order at 4-5).

- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.
- (5) On June 2, 2011, FirstEnergy filed an application for rehearing, alleging that the May 19, 2011, Finding and Order was unreasonable and unlawful because the Commission's determination that the request of CEI and TE for an amendment to their respective 2010 statutory energy efficiency and/or peak demand reduction benchmarks was moot, contrary to law, and ignored relevant facts.
- (6) On June 29, 2011, the Commission granted FirstEnergy's application for rehearing for further consideration.
- (7) In its application for rehearing, FirstEnergy argues that CEI's and TE's compliance with the statutory benchmarks was based on both actual and projected results included in applications still pending before the Commission. FirstEnergy claims that, if the Commission issues adverse rulings in any or all of the cases involving pending applications submitted in 2009 or 2010 and if such adverse rulings impact the energy savings that CEI or TE can count towards 2010 compliance with the statutory benchmarks, there is a possibility that either CEI or TE, or both, may be found to be in non compliance with the statutory benchmarks. Therefore, FirstEnergy requests that the Commission modify the May 19, 2011, Finding and Order to automatically adjust CEI's and TE's 2010 benchmarks to actual energy savings

achieved should future Commission rulings negatively impact the Companies' actual EE/PDR results to levels which are in non-compliance with the 2010 statutory benchmarks. In the alternative, the Companies seek permission to submit another request for amendment of their 2010 EE/PDR benchmarks should the need arise.

- (8) As a preliminary matter, the Commission notes that, on rehearing, FirstEnergy appears to seek to expand the scope of the relief requested from the Commission. In its application for rehearing, FirstEnergy refers to the request of CEI and TE for an amendment to their respective 2010 statutory energy efficiency and peak demand reduction benchmarks. However, in its application filed on January 11, 2011, in this proceeding, FirstEnergy specified that "both CEI and Toledo Edison further request an amendment to their 2010 EE [energy efficiency] benchmarks if and only to the degree one is necessary to comply with their yet-to-be-defined 2010 EE [energy efficiency] benchmarks" (Application at 2)(emphasis in the original). Therefore, the Commission finds that the 2010 peak demand reduction benchmarks for CEI and TE are not, and never were, at issue in this proceeding.

With respect to the energy efficiency benchmarks, the Commission finds that the Companies now seek, on rehearing, an open-ended amendment of CEI's and TE's 2010 energy efficiency benchmarks. The Companies claim that both CEI and TE will meet the 2010 statutory energy efficiency benchmarks only if the Commission approves certain applications pending before the Commission. The Companies, however, do not specify which pending applications they are relying upon or distinguish between those applications which were pending before the Commission when the application in this case was filed and those applications which were pending when the application for rehearing was filed. Nonetheless, FirstEnergy claims that, if the Commission issues an adverse ruling on any of these pending applications, there is a possibility that either CEI or TE, or both, will not meet their respective 2010 statutory energy efficiency benchmarks.

The Commission notes that we have approved the Companies' EE/PDR program portfolio and the Companies' 2009 transmission and distribution energy efficiency projects. See the *Portfolio Case*, Finding and Order (March 23, 2011); *In re FirstEnergy*, Case Nos. 09-951-EL-EEC, et al., Finding and Order (June 8, 2011). Further, the Commission has approved numerous applications filed by the Companies to commit mercantile customers' EE/PDR programs for integration with the Companies' EE/PDR programs. See *In re Progressive Casualty Insurance Co.*, and *The Cleveland Electric Illuminating Co.*, Case No. 09-595-EL-EEC, Finding and Order (February 11, 2010); *In re Worthington Industries and The Toledo Edison Company*, Case Nos. 09-1301-EL-EEC, et al., Finding and Order (June 16, 2010). However, the Commission cannot approve an open-ended request to amend CEI's and TE's energy efficiency benchmarks to a level which is contingent upon the approval of an unspecified number of applications pending before the Commission, irrespective of the merits such applications. Even if the Commission were to deny approval of one or more of such applications, an adverse ruling on the merits of an application would not constitute "regulatory, economic, or technological reasons beyond the electric utility's reasonable control," as contemplated by Section 4928.66(A)(2)(b), Revised Code. Accordingly, the Commission finds that rehearing on this assignment of error should be denied.

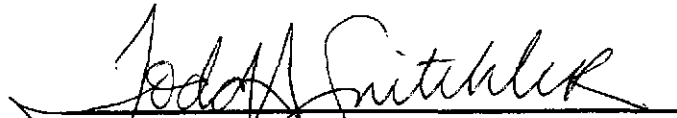
- (9) However, the Commission notes that nothing in this Entry on Rehearing, or in the May 19, 2011, Finding and Order, precludes CEI or TE from filing a more definite request to amend their 2010 statutory energy efficiency and peak demand reduction benchmarks, depending on the outcome of the cases pending before the Commission.

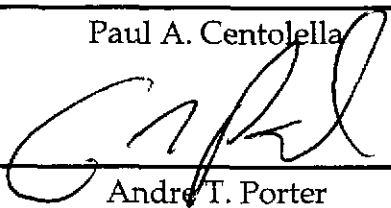
It is, therefore,

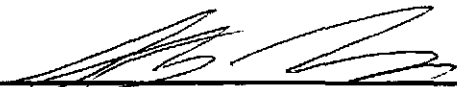

ORDERED, That the application for rehearing filed by CEI and TE be denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Todd A. Snitchler, Chairman

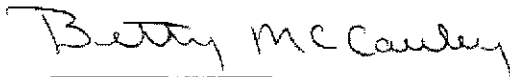
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GAP/sc

Entered in the Journal

JUL 27 2011

  
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Betty McCauley  
Secretary