

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	:	
Edison Company, The Cleveland Electric	:	Case Nos. 12-2190-EL-POR
Illuminating Company, and The Toledo	:	12-2191-EL-POR
Edison Company for Approval of Their	:	12-2192-EL-POR
Energy Efficiency and Peak Demand	:	
Reduction Program Portfolio Plans for	:	
2013 to 2015.	:	

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**AMENDED REPLY BRIEF**  
**SUBMITTED ON**  
**BEHALF OF THE STAFF OF**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**Michael DeWine**  
Attorney General

**William L. Wright**, Section Chief  
Public Utilities Section

**Devin D. Parram**  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
614.644.8599 (telephone)  
614.644.8764 (fax)  
[devin.parram@puc.state.oh.us](mailto:devin.parram@puc.state.oh.us)

## INTRODUCTION

Staff, like the majority of the parties in this case, disagrees with Ohio Edison Company's ("OE"), The Cleveland Electric Illuminating Company's ("CEI"), and The Toledo Edison Company's ("TE") (collectively, "FE" or "Companies") proposed PJM bidding strategy. FE's proposed PJM bidding strategy is unreasonably limited in scope and inconsistent with the Commission's July 18, 2012, Order in FE's most recent ESP case ("ESP III Order"). More importantly, this proposed strategy will unduly limit the amount of savings customers will obtain from the PJM auctions. The Commission should order FE to take a broader approach to bidding planned resources into the PJM auctions.

In addition, the Commission should deny FE's request to count self-direct mercantile customers' demand response activities that have not been committed to FE. This request is contrary to R.C. 4928.66(A)(2)(c) and the Commission's rules.

## ARGUMENT

### **I. FE's PJM bidding strategy is unreasonable because FE proposes bidding only installed resources into PJM auctions.**

#### **a. By bidding only installed resources into PJM auctions, FE is not bidding all "qualifying energy resources" as required by the ESP III Order.**

In its Initial Brief, FE states that it intends to bid in the PJM auctions "all eligible, **installed** energy efficiency resources for which [the Companies] have ownership rights at

the time of auction...” (emphasis added)<sup>1</sup>. This proposal is unreasonable. By bidding only installed resources into the PJM auctions, FE will substantially limit the amount of energy efficiency resources bid into the auctions. This narrow approach will reduce the savings that can be derived from these auctions, which will lead to customers paying higher capacity costs or a higher DSE rider charge. FE claims, however, that it must take this narrow approach because it is too risky to bid planned resources into the PJM auctions. This claim by FE is not new.

In Case No. 12-814-EL-UNC, FE indicated that it would not bid planned resources into the PJM BRA because it may not have ownership rights of energy efficiency resources at the time of the bid.<sup>2</sup> To address this issue, the Commission instructed FE to take steps to ensure that it obtains ownership rights of energy efficiency resources.<sup>3</sup> The Commission presumably thought that if FE is able to obtain ownership rights over energy efficiency resources, then FE will be more willing to bid these resources into PJM auctions. Staff agrees that it is prudent for FE to only bid energy efficiency resources that it either currently owns or expects to own in the future.<sup>4</sup> And Staff believes FE

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<sup>1</sup> FE’s Initial Brief at 28.

<sup>2</sup> *In the Matter of the Commission's Review of the Participation of The Cleveland Electric Illuminating Company, the Ohio Edison Company, and The Toledo Edison Company in the May 2012 PJM Reliability Pricing Model Auction*, Case 12-814-EL-UNC (Report of FE) (March 29, 2012) at 4.

<sup>3</sup> *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO (Opinion and Order at 38) (July 18, 2012).

<sup>4</sup> Tr. Vol. IV, at 807.

should be taking steps to obtain ownership rights in order to increase the amount of energy efficiency resources bid into PJM auctions. Such actions would be consistent with the ESP III Order.<sup>5</sup>

Staff does not believe, however, that FE's decision to bid only **installed** resources is reasonable or consistent with the ESP III Order. FE's strategy will severely limit the amount of energy efficiency resources that FE will be able to bid into the PJM BRA. The Commission instructed FE to take "the necessary steps to verify [its] energy savings... qualify for participation in the base residual auctions" and "**bid qualifying energy resources in the [PJM] auctions.**"<sup>6</sup> (emphasis added). Despite the Commission's ESP III Order, FE continues avoid bidding planned resources into PJM auctions because it claims "there are too many unknowns and uncertainties" associated with bidding planned resources.<sup>7</sup> This argument ignores PJM's rules and the mitigation strategy proposed by Staff. PJM Manual 18 states that the purpose of the "PJM Capacity Market is...to ensure the reliability of the grid."<sup>8</sup> PJM Manual 18 indicates that this purpose can be met by allowing resource providers to bid planned resources into the PJM auctions.<sup>9</sup> FE Witness Mikkelsen acknowledged that generation providers, including FE's affiliate, bid planned

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> FE's Initial Brief at 30.

<sup>8</sup> IEU-Ohio Ex. 2, PJM Manual 18 at 3.

<sup>9</sup> IEU-Ohio Ex. 2, PJM Manual 18 at 4.

generation into the PJM BRA.<sup>10</sup> More importantly, PJM’s rules specifically permit planned energy efficiency resources to be bid into the BRA. PJM Manual 18(B) specifically states that “[p]lanned energy efficiency projects will be allowed to offer into Reliability Pricing Model (RPM) Auctions.”<sup>11</sup> FE does not dispute that planned resources “qualify for participation in the base residual auction” under the PJM rules. FE Witness Mikkelsen admitted this during the hearing.<sup>12</sup> Furthermore, AEP-Ohio currently bids planned resources into PJM auctions.<sup>13</sup>

The ESP III Order and the PJM rules make it clear that FE’s extremely narrow approach to bidding into the PJM auctions is unreasonable. Almost every intervenor in this case agrees that FE needs to bid planned resources into the PJM auctions. If a planned resource meets the initial PJM Measurement and Verification (“M&V”) requirements, it constitutes a “qualifying energy resource” that should be bid into the BRA pursuant to the ESP III Order. Thus, the Commission should direct FE to bid planned resources that meet the initial M&V requirements into the PJM BRA. Moreover, Staff Witness Scheck proposed a reasonable method of the mitigating potential risk,

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<sup>10</sup> Tr. Vol. VI, at 1189-1190.

<sup>11</sup> IEU-Ohio Ex. 3, PJM Manual 18B at 5.

<sup>12</sup> Tr. Vol. VI, at pages 1128-1129.

<sup>13</sup> Tr. Vol. IV, at pages 832-833.

which is supported by a number of the intervenors.<sup>14</sup> FE should be ordered to adopt this mitigation strategy to reduce the risk of bidding planned resources.

**b. FE should not limit its PJM bidding options to only those resources that are under contract.**

In its Initial Brief, FE states that Staff Witness Scheck agrees that FE “should bid only owned resources” into the PJM BRA. This statement is not entirely correct. Although Staff Witness Scheck agrees that FE should bid resources it has under contract, he also stated that FE should bid resources that it believes it will be able to acquire by the delivery year.<sup>15</sup> Staff understands FE’s concerns regarding obtaining actual ownership of resources it bids into the PJM BRA and believes, in light of the ESP III Order, that FE should be taking steps to obtain ownership of these resources. Staff does not believe, however, that FE should limit its BRA bidding options to only those resources that it actually has under contract.

FE can to determine what resources it will probably own prior to the PJM delivery year. While Staff does not expect FE to take unreasonable risk when bidding resources, Staff is concerned FE may potentially reduce the amount of capacity associated with energy efficiency savings that can be derived from PJM auctions by not bidding all “qualifying energy resources.”

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<sup>14</sup> Staff Ex. 1, Scheck Direct at 11-12.

<sup>15</sup> Tr. Vol. IV, at 807.

**II. FE’s proposal to count self-direct mercantile customers’ demand response activities although these customers have not committed these resources to FE is contrary R.C. 4928.66(A)(2)(c).**

FE proposes counting, for purposes of meeting the PDR benchmark, “demand response resources generated by customers who are participating in the PJM market for the applicable delivery year but are not under contract with the Companies.”<sup>16</sup> In essence, FE wants to count these self-directed efforts, even though FE has done nothing to influence these customers to install the demand response resources and even though these customers have not committed these resources to FE. Staff does not believe this proposal is allowed under Ohio law. Staff Witness Scheck testified that he does not believe R.C. 4928.66 allows FE to count demand responses resources that have not been committed to FE.<sup>17</sup> FE indicated in its initial brief that Mr. Scheck believes it might be a good policy to allow FE to count all demand reduction in its service territory. While it is true that Staff Witness Scheck may believe this, Staff cannot support a proposal that appears to be contrary to the law.

To support its position, FE focuses much attention on the first sentence of R.C. 4928.66(A)(2)(c) to support its position.<sup>18</sup> But FE’s argument fails once the entire provision is read. The second sentence of R.C. 4928.66(A)(2)(c) states that “[a]ny mechanism designed to recover the cost of energy efficiency...and peak demand

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<sup>16</sup> FE’s Initial Brief at 36.

<sup>17</sup> Staff Ex. 1, Scheck Direct at 13.

<sup>18</sup> FE’s Initial Brief at 37.

reduction programs ...may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency...or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs.” This second sentence discusses mercantile customers’ ability to commit resources to EDU’s. While the sentence discusses “commitments” of customers, FE is correct that this second sentence primarily addresses an exemption from paying the EE/PDR riders.

The third sentence of R.C. 4928.66 A)(2)(c) is critical for this case. This sentence indicates that baseline for the statutory benchmarks can be adjusted “[i]f a mercantile customer makes such existing or new demand-response, energy efficiency,...or peak demand reduction capability available to an electric distribution utility.” FE has the right to count mercantile customers’ EE/PDR measures *if* these customers commit these measures to FE. If, however, these customers do not commit these EE/PDR measures to FE, it has no statutory right to count these self-directed efforts towards its statutory benchmark.

Not only is FE’s proposal contrary to R.C. 4928.66(A)(2)(c), but it is also contrary to the Commission’s Green Rules. The Green Rules state that EDU’s can only use EE/PDR programs that were implemented on mercantile customers’ sites to meet statutory peak-demand benchmarks if these customers commit these programs to the utility:



An electric utility may satisfy its peak-demand reduction benchmarks through a combination of energy efficiency and peak-demand response programs implemented by electric utilities and/or programs implemented on mercantile customer sites *where the mercantile program is committed to the electric utility*. (emphasis added)<sup>19</sup>

While FE may disagree with it, Staff's reading of the R.C. 4928.66(A)(2)(c) makes sense. The General Assembly apparently intended for EDU's to only count demand response resources (1) if the EDU implemented these resources itself or (2) if a customer implemented the resource itself and then willingly committed the resource to the EDU. By structuring the statute in this fashion, the General Assembly presumably wanted to force EDU's to be more proactive in meeting the statutory benchmarks and reducing electricity usage and demand. Regardless of the General Assembly's intent, Staff believes FE's request runs contrary to R.C. 4928.66(A)(2)(c) and should be denied.

## **CONCLUSION**

Staff respectfully requests that the Staff's recommendations in this case be adopted by the Commission.

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O.A.C. 4901:1-39-05(E).

Respectfully Submitted,

**Michael DeWine**  
Attorney General

**William L. Wright**, Section Chief  
Public Utilities Section

/s/ Devin D. Parram

**Devin D. Parram**  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
614.644.8599 (telephone)  
614.644.8764 (fax)  
[devin.parram@puc.state.oh.us](mailto:devin.parram@puc.state.oh.us)

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the forgoing **Amended Reply Brief** submitted on by the Staff of the Public Utilities Commission of Ohio was served via electronic mail upon the following parties of record, this 3rd day of December, 2012.

/s/ Devin D. Parram

**Devin D. Parram**  
Assistant Attorney General

**Parties of Record:**

Kathy J. Kolich  
Carrie M. Dunn  
FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308  
[kjkolich@firstenergycor.com](mailto:kjkolich@firstenergycor.com)  
[cdunn@firstenergycor.com](mailto:cdunn@firstenergycor.com)

Cathryn N. Loucas  
Trent A. Dougherty  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
[cathy@theoec.org](mailto:cathy@theoec.org)  
[trent@theOEC.org](mailto:trent@theOEC.org)

Kyle L. Kern  
Associate Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
[kern@occ.state.oh.us](mailto:kern@occ.state.oh.us)  
[allwein@occ.state.oh.us](mailto:allwein@occ.state.oh.us)

Justin M. Vickers  
Staff Attorney  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, IL 60601  
[jvickers@elpc.org](mailto:jvickers@elpc.org)

Todd M. Williams  
Williams Allwein and Moser, LLC  
Two Maritime Plaza, 3rd Floor  
Toledo, OH 43604  
[toddm@wamenergylaw.com](mailto:toddm@wamenergylaw.com)

Michael L. Kurtz  
Kurt J. Boehm  
Jody M. Kyler  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[jkyler@BKLawfirm.com](mailto:jkyler@BKLawfirm.com)

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
P.O. Box 1793  
Findlay, OH 45839-1793  
[drinebolt@ohiopartners.org](mailto:drinebolt@ohiopartners.org)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

J. Thomas Siwo  
Thomas J. O'Brien  
Bricker & Eckler, LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tsiwo@bricker.com](mailto:tsiwo@bricker.com)  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

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