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 2013 through 2015	Case Nos. 12-2190-EL-POR 12-2191-EL-POR 12-2192-EL-POR

APPLICATION FOR REHEARING OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

Pursuant to R.C. § 4903.10 and Rule 4901-1-35, O.A.C., Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies"), hereby apply for rehearing of the Commission's March 20, 2013 Opinion and Order ("Order") issued in the above-captioned case because it is unjust, unreasonable and unlawful in the following respects:

1. The Commission's mandate that the Companies bid planned energy efficiency resources into the 2016/2017 PJM Base Residual Auction ("PJM BRA") is unjust and unreasonable given that the manifest weight of the evidence establishes that bidding planned energy efficiency resources into the PJM BRA poses a significant risk to customers and the Companies especially in light of Senate Bill 58.

2. The Commission's mandate that the Companies bid planned energy efficiency resources into the PJM BRA is unlawful because it is beyond the statutory authority of the Commission.

3. At a minimum, the Commission's Opinion and Order is unlawful and unreasonable because it did not authorize the Companies to recover through Rider DSE or any other mechanism any penalties or costs that the Companies could incur as a result of the Commission's mandate that the Companies bid planned energy efficiency resources into the PJM BRA.

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 Rehearing consistent with this filing.

Respectfully submitted,

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

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I. INTRODUCTION

As recently stated by the Commission in its comments at the Federal Energy Regulatory Commission ("FERC"), "the capacity market cannot be a casino with bets made on credit."[1] Nevertheless, on March 20, 2013, the Commission issued an Opinion and Order ("Order") requiring Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the "Companies") to bid planned energy efficiency resources into the 2016/2017 PJM Base Residual Auction ("PJM BRA"). By doing so, the Commission placed a substantial wager or, more accurately, ordered the Companies to place that bet. The Commission is requiring this wager without consideration of the following basic, but critical information: 1) the type and amount of energy efficiency resources for which the Companies will have ownership rights that actually will be installed and qualify as capacity resources during the 2016/17 Delivery Year under PJM rules;[2] 2) the price of capacity in the PJM BRA and the three incremental auctions that may occur between the PJM BRA and the 2016/17 delivery year; and 3) whether energy efficiency mandates will continue in their current form and at their current level, as is currently being investigated by the General Assembly through Senate Bill 58. This uncertainty was recognized by Commissioners Slaby and Porter in their Concurring Opinion:

> We recognize that bidding in planned energy efficiency may reduce capacity costs in the future. However, this brings in a future risk of unknown costs of energy efficiency that may end up a burden born[e] by consumers, the company or both. Due to rapid changes taking place in today's marketplace, a plan today to bid unknown energy efficiency resources might not be met in the future without additional costs having to be absorbed by someone.[3]

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[1] *Demand Response Coalition v. PJM Interconnection, L.L.C.*, FERC Docket No. EL13-57-000, Comments Submitted on Behalf of the Public Utilities Commission of Ohio, p. 7 (April 11, 2013). Attached hereto as Exhibit A.

[2] *See* IEU Exh. 2 (PJM Manual 18: PJM Capacity Market) and IEU Exh. 3 (PJM Manual 18B: Energy Efficiency Measurement and Verification).

[3] Order, Concurring Opinion.

Despite recognizing this uncertainty, the Commission is determined, with very little record evidence, that this wager is worth the risk.

For the reasons that follow, the Companies believe that the Commission's mandate is both unlawful and unreasonable. The Order lacks a sound basis in record evidence. The Commission's Order exceeded its statutory authority. And, while the Companies assert that the Commission should not have ordered them to bid into the PJM BRA, at a minimum, the Order fails to ensure that the Companies are protected against the risk of loss from the wager required by the Commission. The Companies respectfully request a rehearing on the issues discussed herein and ask that the Commission modify the Order in this proceeding consistent with the following arguments.

II. PROCEDURAL HISTORY/STATEMENT OF FACTS

As part of the Companies' EE&PDR Portfolio Plans ("Portfolio Plan") Application, the Companies advised the Commission that it intended "to bid eligible installed energy efficiency credits for which it has ownership rights at the time of the PJM auctions, provided that these credits are of scale, will meet PJM Measurement and Verification ("M&V") standards and are included in an M&V plan approved by PJM."[4] The requirements that the Companies set forth are appropriate and essential prerequisites to ensure that the Companies would actually have the energy efficiency resources they would commit to provide PJM in the form of capacity to support the reliability of the electric grid in PJM's footprint. Notwithstanding, Staff recommended that the Companies be required to bid any capacity reductions obtained from its

[4] Company Exh. 1, Direct Testimony of John C. Dargie ("Dargie Testimony"), p. 15.

planned energy efficiency and peak demand reduction programs into the PJM BRA to be held in May 2013 and also future BRAs.[5]

To be clear, "planned" energy efficiency resources are just that – planned. These are energy efficiency resources that *may* be installed as a result of the incentives provided in the Companies' Portfolio Plans, but it is unknown today what quantity and type of resources customers will actually install, what coincident peak savings from these installations will result between now and December 31, 2015,[6] and whether these future installations will qualify as energy efficiency resources under PJM rules. In fact, the Companies' Portfolio Plans allow for contracted demand resources to be used to satisfy peak demand reduction goals to the extent that forecasted resources do not materialize.[7] A bidding strategy that assumes that "planned" resources that do not materialize can be offset at minimal costs in subsequent auctions amounts to highly speculative financial arbitrage.[8]

In recognition of Staff's position, the Commission's Order partially adopted Staff's recommendation and ordered the Companies to bid 75% of all planned energy efficiency resources in the PJM BRA to be conducted in May 2013 for the 2016/2017 delivery year:

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[5] Staff Exh. 1, Prefiled Testimony of Gregory C. Scheck ("Scheck Testimony"), p. 12.

[6] Energy Efficiency Resources have a four-year life under PJM rules, which means that resources installed after June 1, 2012 may qualify to be bid into the PJM BRA. For resources to qualify as "planned" for purposes of the PJM BRA, they must be scheduled for completion prior to June 1, 2016. IEU Exh. 2, PJM Manual 18 § 4.4. Given that the Companies' Portfolio Plan extends until December 31, 2015, no resources are currently planned for installation after that date.

[7] *See* Company Exh. 23, Rebuttal Testimony of Eileen M. Mikkelsen ("Mikkelsen Rebuttal"), pp. 5-6. Because contracted demand resources are already committed to PJM by third-parties, the Companies cannot use these resources to satisfy their bid obligation to PJM. *Id.*

[8] *Id.*, p. 4-5; Tr. Vol. IV, p. 866 (OCC Witness Gonzalez agreeing that bidding resources into a PJM auction that a Curtailment Service Provider, in some cases, does not own or have rights to is financial arbitrage).

> The Commission is mindful of the uncertainty of future PJM BRAs, including resources planned, but not yet installed, unknown clearing prices for capacity in incremental auctions, risk of PJM penalties for obligations cleared, but not delivered, and uncertainty whether Riders ELR and OLR will expire. However, the Commission also finds that requiring the Companies to bid all planned savings into future PJM BRAs could substantially benefit ratepayers by lowering capacity auction prices and reducing Rider DSE costs. In order to create a reasonable balance between the uncertainty and potentially substantial benefits, the Commission finds it appropriate to adopt a portion of Staff's recommendation. The Commission will require the Companies to bid into the upcoming May 2013 PJM BRA 75 percent of the planned energy efficiency resources for the 2016/2017 planning year under their program portfolio.[9]

Although the Commission imposed this new mandate on the Companies with its obvious risk, it did not address how the Companies would be indemnified for assuming this risk.

III. ARGUMENT

A. The Commission's Mandate that the Companies Bid Planned Energy Efficiency Resources into the PJM BRA Is Unjust and Unreasonable Given that the Manifest Weight of the Evidence Establishes that there Is Significant Risk to Consumers and the Companies from Bidding Such Resources into the Upcoming Auction.

The Order requires "the Companies to bid into the upcoming May 2013 PJM BRA 75 percent of the planned energy efficiency resources for the 2016/2017 Delivery Year under their program portfolio."[10] This mandate is unjust and unreasonable because, by requiring the Companies to bid planned energy efficiency resources into the upcoming auction – resources that may or may not exist prior to 2016/2017 – it exposes customers and the Companies to significant undue and unnecessary risk.

1. The Commission's mandate is not supported by the record.

The Commission's mandate is against the manifest weight of the record. First, the Companies have demonstrated that the more prudent approach to this issue is voluntarily

[9] Order at pp. 20-21.

[10] Order at p. 20.

committing to bid into the upcoming PJM BRA all eligible, installed energy efficiency resources for which they have ownership rights at the time of the auction, provided that these resources are of sufficient scale, will meet PJM Measurement and Verification ("M&V") standards and are included in an M&V plan approved by PJM.[11] There was very little evidence to the contrary. Indeed, the Companies believe this approach prudently manages risk to the Companies and their customers.[12] As the Companies' witness Mikkelsen testified:

> I think there is an element, as I say here in my testimony, particularly with respect to bidding energy efficiency resources that don't exist, to the extent that those are bid into the market and they are, in fact, not installed downstream, that does not provide for, you know, certainty with respect to the system reliability.
>
> * * *
>
> I think it would be incumbent upon any bidder to have a great degree of certainty that the planned resources they are bidding into a base residual auction will be delivered in advance of the delivery year.[13]

This bidding strategy has the associated risk level most appropriate to an electric distribution utility. As Ms. Mikkelsen further testified:

> I do not believe it is appropriate for regulated electric utilities to take speculative future positions that could subject either the utility or its customers to severe financial harm. This is especially true given that there is not a statewide directive providing consistent requirements for electric utilities. There also is no risk protection mechanism in place to insulate each of the Companies (or their customers) from such financial harm.[14]

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[11] Dargie Testimony, p. 15; Mikkelsen Rebuttal, p. 3.

[12] Tr. Vol. VI, pp. 1149-50.

[13] Tr. Col. VI, p. 1129:7-21.

[14] Mikkelsen Rebuttal, p. 4.

Placing wagers on whether energy efficiency resources will be installed and qualify for delivery prior to 2016, which depends not only on thousands of customer decisions but also on forecasting the decision-making process of the Ohio General Assembly, is not appropriate for electric distribution utilities ("EDUs") such as the Companies. The requirement to also bid planned resources into the PJM BRA is not prudent and could result in substantial penalties being imposed on the Companies and their customers.

Second, under PJM's definition of "planned resources," a level of certainty is required to bid in those energy efficiency resources and the Commission's mandate does not meet that standard. Energy efficiency measures installed between June 2012 and May 2016 may qualify to be bid into the 2016-2017 BRA. To determine what "planned" resources PJM accepts, the following criteria must be met:

- **Energy efficiency installation must be scheduled for completion prior to Delivery Year;**
- Energy efficiency installation is not reflected in peak load forecast posted for the BRA for the Delivery Year initially offered;
- Energy efficiency installation exceeds relevant standards at time of installation as known at time of commitment;
- Energy efficiency installation achieves load reduction during defined energy efficiency Performance Hours; and
- Energy efficiency installation is not dispatchable.[15]

A planned resource must have an Initial M&V Plan submitted to PJM no later than thirty days before an auction and approved by PJM within ten days of receipt.[16] The Initial M&V Plan may cover multiple energy efficiency resources but must clearly document the estimated value of

[15] IEU-Ohio Exh. 2, PJM Manual 18 § 4.4.

[16] IEU-Ohio Exh. 3, PJM Manual 18B § 5.1.1.

each energy efficiency resource covered in the plan.[17] Thus, under PJM's rules, energy efficiency resources that are not installed and verified prior to an auction must, at a minimum, have a documented energy efficiency value during the defined performance hours and be scheduled for completion prior to the applicable delivery year.[18] Given that the scheduling of energy efficiency resources is inherently uncertain and variable, it is a near impossibility for the Companies to estimate which resources will be installed, which of those installed resources will qualify to meet the projected commitments and M&V standards, and which of those the Companies will have ownership rights to for a delivery year at least three years in the future.[19]

Third, the evidence submitted at hearing overwhelmingly establishes that the risks associated with bidding planned resources greatly outweigh any potential benefit. If the Companies offer energy efficiency resources that PJM accepts in a BRA, the Companies are obligated to supply PJM-qualified Capacity Resources in an amount equal to the amount of energy efficiency that was offered by the Companies and taken in the BRA for the specified Delivery Year. If the Companies fail to meet their respective capacity supply obligations for all or part of a Delivery Year, PJM imposes financial penalties and, possibly, other sanctions upon the Companies. In addition, the PJM Market Monitor or FERC enforcement staff may investigate the Companies' activities thereby creating the potential for significant financial and/or legal risk to the Companies and their customers.

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[17] IEU-Ohio Exh. 3, PJM Manual 18B § 2.1. A "nominated value" must be provided, which means "the expected average demand (MW) reduction during the defined EE Performance Hours in the Delivery Year", which must be at least 0.1 MW. IEU-Ohio Exh. 2, PJM Manual 18 § 4.4.1.

[18] ELPC/OEC misrepresents the PJM requirement as "only that they will be available" by the delivery year. ELPC/OEC Brief, p. 4. As a review of the rules reveals, more is involved.

[19] Mikkelsen Rebuttal, p. 5.

Conversely, the Commission's mandated bidding strategy with regard to planned resources requires the Companies to bid resources that are highly uncertain and, accordingly, of high risk for financial penalty to the Companies. Moreover, it places the Companies in the precarious position of making a legally enforceable commitment to PJM over which the Companies may have little or no control. Again, the unjust and unreasonable nature of the planned resources aspect of the Commission's Order is established by the record and, specifically, the testimony of Ms. Mikkelsen:

> Essentially, the parties advocating this risk exposure are suggesting that the Companies utilize the PJM capacity market as a financial arbitrage opportunity. Betting on future incremental auctions, as some parties have suggested, to mitigate risks creates its own set of risks which are not controllable by the Companies. I believe that the primary purpose of the EE/PDR Portfolio Plan is to achieve the statutory energy efficiency and peak demand reduction goals, not to take speculative market positions that could pass financial risk onto customers or the Companies' shareholders.
>
> Third, given that the PJM BRAs are for delivery years three years into the future, there are too many unknowns and uncertainties associated with attempting to guess what future energy efficiency or load management resources will be installed, which of those will qualify to meet the projected commitments and meet M&V standards, and which of those resources the Companies will have ownership rights to.[20]

Arguments by intervenors that the Commission may have relied on as a basis for ordering the Companies to bid planned resourced into the BRA were not accurate and were not supported by the evidentiary record or the law. Intervenor arguments that the Companies can purchase capacity from PJM incremental auctions to cover shortfalls as a risk mitigation strategy are without merit because, as Companies' Witness Mikkelsen explained, "not knowing what future incremental auctions will clear at, to rely on that as a strategy for meeting an open future position creates a situation where the company may end up paying more for that resource than they were

[20] Mikkelsen Rebuttal, pp. 4-5.

compensated for that resource in the BRA."[21] Betting on future incremental auctions to cover shortfalls in energy efficiency resources creates its own set of risks which are not controllable by the Companies.[22]

Last, the EE&PDR programs, by their very nature, have inherent multiple layers of uncertainty. For example, program design and technologies that may be offered are uncertain, as are customer acceptances and participation levels for years well in advance of designated delivery. By including not only existing but planned resources in the Order, the Commission has gone beyond uncertain and into a level of risk the Companies and their customers simply should not be forced to bear. If the Companies fail to meet their obligations to PJM in 2016, they could be faced with significant penalties and scrutiny.

The Commission and some parties may assert that the Companies should be confident in bidding their planned energy efficiency resources as they are utilizing those resources to meet statutory mandates. However, as Ms. Mikkelsen testified on behalf of the Companies "I have a high degree of certainty that we will reach the statutory mandates in the years 2013 through 2015. I have less certainty, as I've discussed here in my testimony, about how we'll achieve those mandates."[23] She further testified:

> The plans include assumptions of all participation in our various programs. But I think experience would suggest that what our expectations are going into the plan are not necessarily how that plan will be implemented or how customers will choose to participate at those exact same levels throughout the plan period, and there are a number of resources built in our plan that simply aren't eligible for participation in the PJM process. And so to the extent that participation in those

[21] Tr. Vol. VI, p. 1131.

[22] Mikkelsen Rebuttal, p. 5.

[23] Tr. Vol. VI, p. 1130.

programs exceeds the level that was included in the forecast, you could find yourself in harm's way.[24]

Also, in response to the Attorney Examiner:

Q. What your testimony is, because the company has a substantial amount of flexibility in the implementation plan on meeting annual targets versus bidding into a PJM capacity auction three years in advance, you are not certain that the individual capacity resources will be eligible for the PJM auction, although you are certain you will hit your statutory benchmarks?

A. Yes, sir.[25]

In other words, while the Companies' Portfolio Plans contain many measures allowable under state law to be counted for compliance, those same resources may not translate into PJM eligible resources. A good example of this is street lighting. The Companies' Portfolio Plans contain a street lighting program, whereby energy efficiency savings would be counted for compliance under state mandates. However, the Companies may not be able to bid these resources into the PJM BRA because there is no coincident peak demand associated with that program. Moreover, should the Companies fail to meet their statutory benchmarks, state law allows for a regulatory process that may allow the Companies to adjust their benchmarks – PJM has no such mechanism. Thus, although the Companies' Portfolio Plans are designed to meet the statutory benchmarks, how the Companies in the end meet those benchmarks could evolve over time or may not qualify as PJM resources, making any "planned" resources highly speculative in nature.

The evidence submitted at hearing overwhelmingly demonstrated that the bidding of planned resources into the PJM BRA is too uncertain and poses a risk to the Companies and its customers of such significance that the Commission's mandate in this regard is unjust and

[24] Tr. Vol VI, pp. 1154-1155.

[25] Tr. Vol. p. 1156.

unreasonable. As such, the Commission's Order imposing this undue risk on the Companies and its customers is unreasonable. Accordingly, the Companies respectfully submit that the Order should be modified to remove this mandate.

2. The Concurring Opinion and the Commission's comments in *Demand Response Coalition v. PJM Interconnection, L.L.C.,* FERC Docket No. EL13- 57-000 demonstrate that the Commission's mandate is unreasonable especially in light of the General Assembly's review of energy efficiency.

Adding to the uncertainty of bidding planned energy efficiency resources into the PJM BRA, and therefore the unreasonableness of the Commission's Order, the General Assembly is currently investigating whether the energy efficiency mandates from Senate Bill 221 should be modified.[26] Senate Bill 58 specifically states that its purpose is "to review and possibly modify the energy efficiency, peak demand reduction, and alternative energy resource provisions established by Ohio law governing competitive retail electric service." Requiring the Companies to bid into the PJM BRA planned energy efficiency resources, when statutory requirements may change, is not reasonable. Indeed, this uncertainty was recognized by Commissioners Slaby and Porter (Order, Concurring Opinion):

> We recognize that bidding in planned energy efficiency may reduce capacity costs in the future. However, this brings in a future risk of unknown costs of energy efficiency that may end up a burden born by consumers, the company or both. Due to rapid changes taking place in today's marketplace, a plan today to bid unknown energy efficiency resources might not be met in the future without additional costs having to be absorbed by someone.

Moreover, through its comments in *Demand Response Coalition v. PJM Interconnection, L.L.C.*[27]., the Commission recognized the speculative nature of bidding into the PJM capacity

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[26] *See* Exhibit B.

[27] *See Demand Response Coalition v. PJM Interconnection, L.L.C.*, FERC Docket No. EL13-57-000, Comments Submitted on Behalf of the Public Utilities Commission of Ohio (April 11, 2013). Attached hereto as Exhibit A.

market resources that are not owned and may never materialize. In that case, the Demand Response Coalition filed a complaint against PJM regarding new rules PJM had set forth requiring a "DR Sell Offer Plan," which would require, among other things that a Curtailment Service Provider ("CSP") company officer attest to the reasonable expectation to physically deliver all megawatts that clear the RPM Auction through Demand Resource registrations. In short, the new PJM Rules are requiring CSPs to demonstrate with greater certainty that the demand response resources[28] that are bid into PJM's capacity auctions will actually be delivered. Specifically, the Commission recognized that "[i]f reliability standards are not realized, the resulting consequences could be deleterious and potentially catastrophic to the PJM region."[29] The Commission also stated:

> Likewise, the Ohio Commission maintains that [it] is perfectly legitimate for PJM to require a CSP's company officer to sign an attestation that the MWs bid into the RPM BRA are physically deliverable to the zone in which they are to receive compensation. Simple logic dictates that if a CSP is unable or unwilling to sign such an attestation, it should not be offering, nor should PJM be bound to accept, that quantity of DR into the BRA for that particular zone. Before one agrees to sell something, it seems axiomatic that one should own or control and be capable to deliver that service or product. The PJM requirement is nothing more than this. *If one cannot attest to owning the item that one is offering, an observer could certainly be excused for questioning the reality of the offer. The greater goal of this enterprise is to ensure the reliability of the grid. This is not a mere financial game. The capacity market cannot be a casino with bets made on credit. If the demand response that clears the market does not appear when needed and contracted for, the lights may go out. This is the stark reality*.[30]

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[28] In its Comments, the Commission attempted to distinguish energy efficiency resources and demand response resources, citing to energy efficiency resources as resources that "can be readily verified." *Id.* at 7. As discussed above, the Companies agree with the Commission that the prudent manner in which to bid resources into the PJM BRA is to only bid eligible installed resources for which it has ownership rights at the time of the PJM auctions. However, as the record demonstrates, the Commission's mandate to bid in *planned* energy efficiency resources is not the same as bidding in resources that "can be readily verified."

[29] *Id.* at 5.

[30] *Id.* at 6-7 (emphasis added).

Requiring the Companies to bid planned energy efficiency resources is not reasonable and the Commission should grant rehearing on that issue.

3. The Commission's determination that it has "reasonably balanced" the risks of auction participation is not supported by the record.

The Commission's Order is contrary to R.C. § 4903.09 because it fails to justify the risks of auction participation. "In order to meet the requirements of R.C. § 4903.09, . . . the PUCO's 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, 513 N.E.2d 337 (1987). Although strict compliance with the terms of R.C. 4903.09 is not required, "'[a] legion of cases establish[es] that the commission abuses its discretion if it renders an opinion on an issue without record support.'" *Tongren v. Pub. Util. Comm*., 85 Ohio St.3d 87, 90, 706 N.E.2d 1255 (1999) (quoting *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 76 Ohio St.3d 163, 166, 666 N.E.2d 1372 (1996). The Commission's conclusion to ameliorate this risk by requiring the Companies to only bid 75% of planned resources does not turn a risky proposition into a sound one. As discussed above, there is no record evidence suggesting that even 75% of what is considered "planned" today will actually be deliverable by the Companies in 2016. The Commission's Order lacks the facts and reasoning that would justify imposing an unknown level of risk on the Companies and their customers. Thus, the Order violates R.C. § 4903.09.

B. The Commission's Mandate that the Companies Bid Planned Resources into the PJM BRA Is Unlawful Because It Is Beyond the Statutory Authority of the Commission.

The Commission lacks jurisdiction to order the Companies to bid planned resources into the PJM BRA to be held for the 2016/2017 Delivery Year. This mandate exceeds the statutory authority of the Commission. Ohio Revised Code Chapter 49 was enacted to regulate the business activities of public utilities. *Kazmaier Supermarket v. Toledo Edison Co.*, 61 Ohio St.3d 147, 150 (1991). The Commission was created to enforce those provisions. *Id.* In particular, R.C. § 4905.26 "confers exclusive jurisdiction upon [the Commission] to determine whether any service provided by a public utility is in any respect unjust, unreasonable, or in violation of the law." *Ayers-Sterrett, Inc. v. American Telecomm. Sys., Inc.*, 162 Ohio App.3d 285, 2005-Ohio-3606, ¶ 9 (3d Dist.) (citing *State ex rel. Columbus Gas of Ohio v. Henson,* 102 Ohio St.3d 349, 2004-Ohio-3208, at ¶ 16. However, the Commission is a creature of statute and may exercise only the authority conferred upon it by the General Assembly. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 88 (1999). It cannot operate outside of those powers specifically enumerated by statute. *See, e.g., In re Application of Columbus S. Power Co.,* 128 Ohio St.3d 512, 2011-Ohio-1788, 31–35 (holding the Commission erred in determining electric security plan could include items not specifically authorized by statute); *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St. 3d 229, 234, 661 N.E.2d 1097 (1996).

Importantly, the Commission lacks authority "to manage utilities or dictate their policies." *Elyria Tel. Co. v. Pub. Util. Comm.*, 158 Ohio St. 441, 448 (1953); *see also Western Ohio Gas Co. v. Public Util. Comm.*, 128 Ohio St. 301, 318 (1934) ("[I]t is a matter of common sense, as well as law, that the members of the [Commission] cannot substitute themselves as managers of the gas company or dictate its policies . . . ."). Although a public utility is "subject to extensive control and regulation . . . it is still an independent corporation and possesses the right to regulate its own affairs and manage its own business, unless in doing so a situation develops which is inimical to the public interest." *Elyria Tel. Co. v. Pub. Util. Comm'n,* 158 Ohio St. 441, 447–48 (1953).

The Commission's mandate that the Companies bid planned resources into the PJM BRA contradicts this overwhelming authority. The PJM BRA is not a utility service and, thus, is not subject to the Commission's authority. Likewise, an EDU's decision to bid demand resources into the PJM BRA is not a retail service provided to Ohio consumers and, thus, does not fall within the scope of electric service as defined in Ohio law. *See* R.C. § 4905.03(C). Even if this bidding could be deemed or proves to be prudent, this potential does not give the Commission the power to exceed its statutory grant of authority and issue orders tantamount to dictating the operations of the Companies. A specific requirement to bid a specific amount of energy efficiency resources into a particular PJM BRA exceeds the authority envisioned by the General Assembly to regulate the provision of retail electric service.

C. At a Minimum, the Commission Erred in Not Authorizing the Companies to Recover through Rider DSE Any Penalties or Costs Resulting From the Companies' Bidding Energy Efficiency Resources Into the PJM BRA for the 2016/2017 Delivery Year in Compliance with the Commission Order.

As referenced in the Order (at 7-8), the Companies recover the cost of their EE/PDR plans through their previously-approved Rider DSE. By mandating that the Companies participate in the PJM BRA, presumably the Commission is hoping that BRA revenues from the cleared resources will benefit customers by being credited back to Rider DSE.[31] However, the Commission's Order does not correspondingly make clear that any costs or penalties incurred by the Companies in adopting the Commission's preferred course of action will also be recovered through Rider DSE.

As discussed above, the Companies believe that the Commission's mandate is unreasonable and contrary to law. Moreover, even if the Commission were to authorize them to recover penalaties incurred by the Companies, that does not eliminate the risk. As Ms.

[31] *See* Scheck Testimony, p. 12.

Mikkelsen testified "[i]t merely transfers the risk to customers."[32] Nevertheless, to the extent that the Commission does not grant rehearing on this issue, the Companies seek clarification that the Commission is authorizing them to recover such costs and penalties through their Rider DSE.

As established by Staff witness Scheck, if the Companies fall short on demand resources in the event planned resources are insufficient, the Companies may replace those resources by buying capacity from PJM incremental auctions.[33] If the cost of capacity in incremental auctions is lower, the cost savings will be credited to Rider DSE. However, if the cost of capacity in incremental auctions is higher than the clearing price in the BRA, this cost differential should be recovered through Rider DSE rather than be absorbed by the Companies. Further, if the Companies are unable to cover any shortfall in the incremental auctions and incur additional costs and penalties from PJM as a result, those costs and penalties should be recovered through Rider DSE.

Recovery of all costs arising out of a shortfall of demand resources should be through Rider DSE or successor rider or recovery mechanism given that such recovery is reasonable. There is no ability to determine, with sufficient certainty, the amount of energy efficiency resources that will result from the Companies' existing Portfolio Plans and their next Portfolio Plans, that will be PJM eligible, and that will be under ownership of the Companies for the 2016/2017 Delivery Year. The risk associated with the Commission's mandate is not something the Companies are in a position to accept and, accordingly, they should not be ordered to do so. However, if the Commission is willing to impose this risk on the Companies' customers, the

[32] Tr. Vol. VI at p. 1192.

[33] Scheck Testimony, p. 12.

Commission must stand behind its decision and make clear that any and all costs arising from this directive will be timely recovered through Rider DSE.

In light of the foregoing, if rehearing is not granted on this issue and the Order changes to not require the Companies to offer energy efficiency resources into the PJM BRA, the Companies request that the Order be modified to clarify that any penalties or costs incurred by the Companies associated with bidding planned energy efficiency resources as mandated by the Commission shall be recoverable through Rider DSE. Both outcomes are supported by the record.

IV. 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,

/s/ Carrie M. Dunn

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company* was served this 19th day of April 2013, via e-mail, upon the parties below.

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EXHIBIT A

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Demand Response Coalition	:	
	:	
v.	:	Docket No. EL13-57-000
	:	
PJM Interconnection, L.L.C.	:	

COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

April 11, 2013

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COMMENTS
SUBMITTED ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

On April 3, 2013, pursuant to sections 206 and 306 of the Federal Power Act ("FPA") and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC") the Demand Response Coalition[1] ("Coalition") filed a complaint against PJM Interconnection, L.L.C. ("PJM"), alleging that certain newly adopted provisions of PJM's Manual 18 ("DR Plan Enhancements") violate section 205 of the FPA and are therefore unenforceable. Specifically, the Demand Response Coalition contends that new provisions are unjust and unreasonable because: (1) they significantly affect jurisdictional rates, terms and conditions of service; (2) they have not been filed in accordance with the Commission's Part 35 rules, and (3) the DR Plan

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[1] The Demand Response Coalition includes Converge, Inc., Viridity Energy and Energy Curtailment Specialists ("ECS").

Enhancements unlawfully restrict demand resources' eligibility to participate in Reliability Pricing Model ("RPM") Base Residual Auction ("BRA").

SUMMARY OF LEGAL ARGUMENTS

On April 5, 2013, the Public Utilities Commission of Ohio ("Ohio Commission" or "PUCO") filed its motion to intervene in this docket and is consequently a party to this investigation. Comments in this proceeding are due on or before April 15, 2013. The Ohio Commission hereby submits its comments responding to the Coalition's request that FERC issue an order finding that the DR Plan Enhancements violate FPA Section 205 and are unenforceable.

The Coalition argues that FERC should take decisive action to preclude new business practices adopted by PJM because they curb the growth of the demand response market in PJM. Further, it contends that the new requirements will significantly restrict the ability of efficient, green demand response resources from participating in its RPM auctions. In addition, the Demand Response Coalition notes that PJM only afforded demand response suppliers with sixteen business days to comply with the new requirements if they wish to participate in the 2016/2017 BRA.

Among other things, the Coalition's complaint maintains that PJM has imposed several new requirements that will significantly restrict the ability of demand response resources from participating in the RPM BRA via effectuation of PJM's new rules that impose a "DR Sell Offer Plan." The sell offer plan must be submitted and approved by PJM prior to the RPM BRA. The Coalition's complaint states that the DR Sell Offer plan requires submittal of a variety of voluminous and competitively sensitive data about a demand response supplier's customers, and includes a customer "letter of support" requirement in certain cases, in which the customer must attest to being "likely to execute a contract" obligating them to provide demand response three or more years in the future. The Coalition also notes that PJM's Manual 18 revisions require that, if the customer declines to provide such a letter or provides one to more than one demand response supplier, capacity cannot be counted at all and will be removed by PJM from each demand response supplier's plans that include that customer. The DR Sell Offer Plan also includes an "officer's certification," which requires that a Curtailment Service Provider ("CSP") company officer attest to the reasonable expectation to physically deliver all megawatts that clear the RPM Auction through Demand Resource registrations. The DR Coalition's complaint maintains that each of these DR Plan Enhancements is unreasonable and discriminatory because they impose significantly burdensome obligations that will be difficult to satisfy. For these reasons, among others, the Demand Response Coalition maintains that FERC should issue an order finding the DR Plan Enhancements violate FPA section 205 and are unenforceable.

DISCUSSION

A. PJM's Authority

PJM is authorized by its current Open Access Transmission Tariff ("OATT"), Operating Agreement ("OA") and Reliability Assurance Agreement ("RAA") to ensure "the safe and reliable operation of the PJM region."[2] To that end, PJM requires that market participants agree to provide PJM not only all information specified in the governing tariffs and agreements but also "other information as the Office of Interconnection may reasonably require for the reliable and efficient operation of the PJM region."[3] Specifics regarding the required information and processes are found in PJM's Manual 18 and are the subject of this complaint. As stated by the Complainants, PJM uses its manuals to provide the actual administrative and operating procedures of PJM and are not filed at FERC.[4] However, it is the FERC-approved tariffs and operating agreements that vest PJM with authority to operate its Reliability Pricing Model ("RPM"), specifying how Capacity Market Sellers including Demand Response Providers will participate in the RPM. For example, Schedule 6 of the RAA provides the detailed criteria for Demand Resources and states that only the resources that qualify under those criteria may by offered in the RPM auctions.[5] Furthermore, the RAA defines a Demand Resource product as a commitment to provide a real reduction in physical load attached to the PJM system.[6] Thus, it is reasonable and consistent with current practice for PJM to update its

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2 PJM OA section 7.7(i).

3 *Id*. at Schedule 1, section 1.7.4(d).

4 Complaint at 10.

5 PJM RAA at Schedule 6, Section A. Available online: http://www.pjm.com/~/media/documents/agreements/raa.ashx, April 9, 2013.

6 *Id*. at Section 1.13.

Manual 18 to adopt implementing procedures to prevent conduct that is inconsistent with the explicit requirements of its governing tariffs and agreements.

B. PJM's Reporting and Verification Requirements

The Ohio Commission maintains that FERC must dismiss as unreasonable the Coalition's complaint. PJM not only possesses the requisite authority to amend its reliability pricing model's parameters through changes to its Manual 18, it has an obligation make such changes to ensure that reliability standards are realized. The issue is simple, whether a DR provider should be afforded the potential for unwarranted profits for undeliverable or overcounted DR resources to the detriment of PJM's obligation to ensure reliability. If reliability standards are not realized, the resulting consequences could be deleterious and potentially catastrophic to the PJM region. Consequently, FERC has no course of action but to rule in favor of reliability and dismiss the instant complaint.

In addition, the Ohio Commission maintains that PJM must be afforded the discretion to amend its RPM parameters via amendments to its Manual 18 to address legitimate concerns regarding a the lack of reliable information available for planned DR resources cleared in the auction in the RPM. Because the level of DR market penetration has significantly increased[7] over the past several years, PJM must have the discretion to amend its policies, via the stakeholder process, to require the additional information necessary to ensure that all DR offered into the RPM is physically available and deliverable to that

[7] For example, the PJM Independent Market Monitor's 2012 State of the Market Report reflects that in the 2007/2008 delivery year 127.6 MW (UCAP) DR cleared the RPM auction. 962.9 MW (UCAP) of DR in cleared the 2010/2011 delivery year. In the 2015/2016 delivery year, PJM's data reflect that 14,832 MWs (UCAP) cleared the RPM.

zone to maintain reliability standards. PJM's discretion in this regard is imperative. That is, as DR penetration increases, PJM must be afforded the latitude to require sufficient information to ensure that reliability standards are realized. The Ohio Commission, therefore, maintains that PJM's ongoing efforts to ensure reliability standards must be supported and sanctioned by FERC.

In addition, to the extent necessary, PJM must possess the capability to require on a zonal basis any necessary additional DR reporting and verification data to ensure that the DR offered into the RPM is actually available and deliverable to that specific zone to ensure against double or overcounting of DR resources.[8] Finally, clear and consistent DR reporting requirements and participant certifications are imperative to ensure that PJM can evaluate DR reporting numbers on an apples-to-apples basis to ensure that DR offered into the BRA is not being overcounted. PJM must have the discretion to ensure that DR plans are workable as supported by adequate reporting necessary for reliability-based planning.

Likewise, the Ohio Commission maintains that is perfectly legitimate for PJM to require a CSP's company officer to sign an attestation that the MWs bid into the RPM BRA are physically deliverable to the zone in which they are to receive compensation. Simple logic dictates that if a CSP is unable or unwilling to sign such an attestation, it should not be offering, nor should PJM be bound to accept, that quantity of DR into the BRA for that particular zone. Before one agrees to sell something, it seems axiomatic that

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8 PJM Reliability Assurance Agreement, Schedule 6, Section A, and Operating Agreement, Schedule 1 section 1.7.4(d).

one should own or control and be capable to deliver that service or product. The PJM requirement is nothing more than this. If one cannot attest to owning the item that one is offering, an observer could certainly be excused for questioning the reality of the offer. The greater goal of this enterprise is to ensure the reliability of the grid. This is not a mere financial game. The capacity market cannot be a casino with bets made on credit. If the demand response that clears the market does not appear when needed and contracted for, the lights may go out. This is the stark reality.

It is imperative that the demand response that is bid into the market be every bit as real as the generating plants that are also bid. Just as one could not offer generating capacity into the BRA when one does not have generating capacity, one should not be able to offer DR without the assurance that the DR is real. The PJM requirements are steps along the road to providing this necessary assurance. The demand response offered into the BRA must be as tangible as the dollars that customers are paying for it.

The Ohio Commission further questions the Coalition's position that PJM's new requirements are unduly discriminatory and preferential as compared to other capacity resources. As opposed to generation and energy efficiency capacity resources whose locations and available MWs offered into the RPM can be readily verified, DR offered into the RPM auctions cannot. The newly adopted Manual 18 reporting requirements simply attempt to place DR capacity resources on a comparable playing field with other capacity resources that are more readily accounted for and verified.

The Ohio Commission's position regarding DR measurement and verification is supported by the PJM's Independent Market Monitor ("IMM"). Specifically, the IMM's

2012 State of the Market Report reflects that substantial improvement in measurement and verification methods must be implemented in order to ensure the credibility of PJM's demand-side programs. The IMM's report reflects that the goal should be to treat the measurement of demand-side resources like the measurement of any other resource in the wholesale power market, including generation and load, that is paid by other participants or makes payments to other participants. In addition, the IMM's report reflects that there is a need for robust measurement and verification techniques to ensure that demand-side programs are resulting in the desired behavior.

What is more, the Ohio Commission also observes that the IMM's December 11, 2012 report[9] entitled "Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1, 2012" ("December 11, 2012 Report") recommends that an additional rule requiring that DR providers demonstrate that they are actually in the business of providing DR resources would be an appropriate part of any package of rule changes. The December 11, 2012 Report maintains that evidence shows that some DR providers, including CSPs and individual customers, do regularly purchase replacement capacity for a substantial portion of their RPM commitments for DR at a significant discount to the initial sale price.[10] Consistent with the IMM's observations, the Ohio Commission maintains that it is perfectly reasonable for PJM's DR providers to demonstrate that the DR offered into the BRA is physically deliverable to that particular zone. Every effort must

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9 "Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1 2012," The Independent Market Monitor for PJM, December 11, 2012, at Page 30.

10 *Id.*

be taken via enhancements to PJM's Manual 18 to ensure a physical DR product, as opposed to a financial product, is being furnished by the CSP. The Ohio Commission also notes the IMM's December 11, 2012 Report's conclusions that the risks to the markets associated with the sale of DR without any supporting information on the plausibility of the underlying assets include the risk that multiple CSPs could be assuming that they will win the same customers and the risk that sellers are taking speculative positions with a low probability of fulfilling them.[11] The IMM observes that the result in both cases is that the system is less reliable than it might otherwise be because: (1) the full amount of DR that cleared the RPM Auction is not actually available, (2) the price to other capacity resources has been suppressed by the sale of the speculative DR, (3) new entry of other capacity resources could have been forestalled by the sale of speculative DR, and (4) there may not be adequate replacement resources available with short notice prior to the delivery year.[12] The Ohio Commission observes that, with these matters in mind, the CSP's practice of buying themselves out of DR obligations via virtual transactions (*i.e.*, DR buy-backs) makes it more difficult to plan for transmission expansions. For example, if DR offers in the RPM auction from a specific location and the CSP purchases generation from another remote location to buy its way out of the DR obligation, transmission planners will be constantly attempting to find transmission planning solutions for a moving target.

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11 "Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1 2012," The Independent Market Monitor for PJM, December 11, 2012, at page 31.

12 *Id.*

C. Ohio Renews its Call for a Comprehensive Demand Response Rulemaking Investigation for the PJM Region

As noted in the Ohio Commission's previous comments[13] to FERC concerning PJM's DR programs, the Ohio Commission maintains that the unlimited Annual DR product has an important and valuable role in ensuring reliability via its role in the RPM BRA as an element in the capacity resource mix, as does generation and energy efficiency. The Ohio Commission is concerned, however, that other DR products are contributing to DR oversaturation to the overall detriment of reliability because these resources have fewer obligations to deliver, as compared to the actual generation and the unlimited Annual DR product.

The Ohio Commission, therefore, renews its previous recommendation to FERC that, in the near future, FERC initiate a rulemaking investigation to review whether it should significantly reduce or begin the phase out of the availability of all reduced DR capacity resources (*i.e.*, the Limited and Extended Summer DR products). That is, FERC should review whether all capacity products participating in the BRA should ultimately be subject to the same availability requirements as generation, in that they must be physically available and respond on par with generation. FERC's investigation also should work to ensure that penalties for nonperformance are uniform for both DR and generation and such penalties are sufficiently stringent to ensure that all capacity resources meet their respective obligations for delivery. Moreover, the Ohio Commission maintains that this proposed investigation be expanded to determine whether: (1) the DR buy-back

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13 PJM Interconnection, L.L.C., Docket No. ER13-486, December 21, 2012.

rules should be strengthened to ensure against abuse or the situation where DR participation in the RPM BRA is becoming more a monetary transaction though the proliferation of financial trades; and (2) whether credit requirements for financial-only DR participants are significantly adequate to cover commitments in the event of a default. The Ohio Commission recommends that any such decision in this proposed investigation be issued in time for PJM to include the new requirements in PJM's 2017-2018 auction parameters. Such an investigation could also invite public input on what additional reporting and verification requirements are necessary to ensure DR offered into the BRA are physically deliverable and available to the zone to which the product is offered. The proposed investigation should inquire as to whether PJM should be required to confirm via audits that DR quantities are physically available and actually deliverable to the LDA to which it has committed. Such proposed audits would ensure that reliability objectives continue to be realized. Finally, the Ohio Commission maintains that FERC should invite comments on the proposed DR rule modifications listed in the IMM's December 11, 2012 report[14] entitled "Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1, 2012," In this report the IMM recommended to FERC that, as a starting point, the following new DR parameters and issues be addressed:

- Develop rules for planned DR that requires specification of actual sites above a MW threshold, and specification of the nature of sites on which offers are based.

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14 "Analysis of Replacement Capacity for RPM Commitments: June 1, 2007 to June 1 2012," The Independent Market Monitor for PJM, December 11, 2012, at Pages 31 and 32.

- Require DR providers to maintain detailed business plans supporting offered levels of DR and provide them to the IMM and PJM upon Request.

- Require DR providers to provide evidence of an intent and capability to provide physical resources.

- Consider a cap on planned DR by LDA at a percentage of MW at existing registered sites. The level of the cap could be based on the current DR share of capacity in an LDA and the history of replacement capacity transactions.

- Reserve all Limited and Extended Summer DR sales to the Third Incremental Auction.

CONCLUSION

The Ohio Commission thanks FERC for the opportunity to provide comments on Coalition's section 206 complaint.

Respectfully submitted,

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On behalf of
The Public Utilities Commission of Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas W. McNamee
Thomas W. McNamee

Dated at Columbus, Ohio this April 11, 2015.

EXHIBIT B

As Introduced

130th General Assembly
Regular Session
2013-2014

S. B. No. 58

Senator Seitz

A BILL

To review and possibly modify the energy efficiency, peak demand reduction, and alternative energy resource provisions established by Ohio law governing competitive retail electric service.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. (A) As used in this section, "changes in electric service occurring since 2008" includes the following:

HELP - Field Definitions for this Page

(1) Development of large natural gas resources in Ohio;

(2) Reduced prices for electricity on the wholesale market;

(3) The impact that energy efficiency programs may have had on depressing wholesale prices in the PJM interconnection regional transmission organization auction area or improving the reliability of the electric grid;

(4) Consideration of whether energy efficiency is a least cost resource and whether it helps offset or defer the cost of new generation facilities;

(5) Whether the newly-authorized inclusion of combined heat and power and waste energy recovery in the energy efficiency standards makes it possible to cost-effectively meet the energy efficiency benchmarks going forward;

(6) Whether renewable energy resources have helped to depress wholesale prices in the PJM auction market;

(7) The hedge value of stable long-term renewables contract prices and the long-term price impact of the low cost of renewable fuels; and

(8) Whether renewables can offset the cost of new generation facilities and whether they help to achieve energy independence from foreign fuel sources.

(B) Given the changes in electric service occurring since 2008, it is the General Assembly's intent to review and possibly modify the energy efficiency, peak demand reduction, and alternative energy resource provisions established by Ohio law governing competitive retail electric service and first enacted in Am. Sub. S.B. 221 of the 127th General Assembly.

(1) In its review, the General Assembly shall consider whether:

(a) Energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code should be frozen at a certain level, amended, or repealed;

(b) Energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code, if amended, should be reduced or increased;

(c) An electric distribution utility may voluntarily design an energy efficiency and peak demand reduction plan that purposely exceeds the minimum requirements established in section 4928.66 of the Revised Code, and if so, whether the costs of exceeding the statutory requirements should be a nonbypassable charge that customers must pay;

(d) The Public Utilities Commission should be granted the authority to require an electric distribution utility to implement an energy efficiency and peak demand reduction plan that exceeds the minimum requirements established in section 4928.66 of the Revised Code or to require an electric distribution utility to bid all or part of its projected energy efficiency and peak demand reduction portfolios into the PJM base residual auction, and if so, whether the definition of energy efficiency savings in Ohio law should be consistent with that of PJM;

(e) An electric distribution utility, which designs an energy efficiency and peak demand reduction plan that exceeds the minimum requirements established in section 4928.66 of the Revised Code, should be permitted to implement incentive plans or shared savings plans that allow it to earn a profit upon exceeding the requirements established in its energy efficiency and peak demand reduction plan;

(f) A three per cent cost cap should apply to energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code;

(g) Alternative energy resource requirements under division (B) of section 4928.64 of the Revised Code should be frozen at a certain level, amended, or repealed;

(h) Alternative energy resource requirements under division (B) of section 4928.64 of the Revised Code, if amended, should be reduced or increased;

(i) The compliance payments under division (C)(2) of section 4928.64 of the Revised Code, including those for failure to meet solar energy requirements, should be amended or indexed to the Consumer Price Index;

(j) The three per cent cost cap provisions under division (C)(3) of section 4928.64 of the Revised Code have been properly interpreted by the Commission;

(k) The three per cent cost cap under division (C)(3) of section 4928.64 of the Revised Code should be amended;

(l) Electric distribution utilities and electric services companies may exceed the three per cent cost cap under division (C)(3) of section 4928.64 of the Revised Code, and if so, to what extent, and whether the additional costs may be recovered from some or all customers and how that may be done;

(m) Ohio's alternative energy resource law should continue to provide separate requirements for particular forms of energy, such as solar energy, or whether the law should be changed to apply equally to all forms of energy, thereby allowing all energy providers to compete directly;

(n) A portion of the renewable energy resources implemented by an electric distribution utility or electric services company should be met, as is currently required under division (B)(3) of section 4928.64 of the Revised Code, through facilities located in this state or with resources shown to be deliverable into this state;

(o) Requirements for advanced energy under section 4928.64 of the Revised Code are achievable without providing incentives to meet the capital costs for meeting the advanced energy requirements or whether these requirements are necessary given the current low price of electricity and the excess generating capacity that now exist;

(p) The costs incurred by electric distribution utilities and electric services companies in complying with the energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code and the alternative energy resource requirements under division (B) of section 4928.64 of the Revised Code are bypassable, and if so, to what extent, and whether these costs should be bypassable or nonbypassable, and if so, to what extent;

(q) Electric distribution utilities and electric services companies should be required to provide, as a separate line item on customer bills, the utility's or company's cost of complying with the energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code and the alternative energy resource requirements under division (B) of section 4928.64 of the Revised Code;

(r) A comprehensive cost-benefit analysis of the competitive retail electric service law, including renewable and advanced energy requirements, energy efficiency requirements, and peak demand reduction requirements, should be prepared to determine whether consumers are deriving sufficient benefits based on how the benefits and costs are allocated;

(s) The Commission has correctly upheld the intent of Am. Sub. S.B. 221 of the 127th General Assembly in permitting incentive programs that have the effect of making certain charges nonbypassable;

(t) Renewable energy resource providers and energy efficiency program providers face undue legal barriers to competing more cost effectively and whether such barriers could be reduced by implementing programs such as virtual net metering and feed-in tariffs, facilitating master limited partnerships, decentralizing portions of the transmission and distribution system by investing in distributed generation and microgrids, or pursuing other state efforts to drive down costs of energy efficiency and renewable energy;

(u) Statutes or administrative rules are needed to permit more accurate and transparent levelized cost comparisons of the actual cost of the various fuels available to produce electricity for this state;

(v) Adequate processes exist to determine whether electric distribution utilities and electric services companies prudently purchase energy to fulfill the requirements of the energy efficiency law and alternative energy resource law; and

(w) The law should be amended to include provisions to protect the ability of an electric distribution utility or an electric services company to recover costs committed to or incurred to comply with mandates and to protect the validity of contracts made in good faith pursuant to current law, if the energy efficiency, peak demand reduction, and alternative energy resource standards are significantly altered or repealed, and if the law is significantly amended or repealed, to what extent such protections should be granted.

(C) The General Assembly also shall review the following:

(1) How best to protect ratepayers against future price changes that may occur if the energy efficiency, peak demand reduction, and alternative energy resource requirements remain law;

(2) What the appropriate standards should be for measuring the amount of energy savings and peak demand reduction that an electric distribution company achieves in order to determine whether such savings or reduction may count toward compliance with the energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code, including whether the Commission should be directed to do the following:

(a) Clarify that such savings be calculated on an annualized basis based on gross savings and not just those savings net of savings attributed to the customer;

(b) Substantially broaden the nature of the energy savings that may be counted towards compliance with the requirements under section 4928.66 of the Revised Code as compared to that allowed under current Commission rules and practice; and

(3) What effects there would be on the Ohio job market and on planned in-process investments and committed investments in Ohio, if cost recovery or contract protections as described in division (B)(1)(w) of this section were established following the alteration or repeal of the state's energy efficiency, peak demand reduction, and alternative energy resource standards.