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 to 2015.	:	Case Nos. 12-2190-EL-POR 12-2191-EL-POR 12-2192-EL-POR

INITIAL COMMENTS
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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1. Summary of proposed programs

On September 24, 2014, the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (Companies or FirstEnergy) filed their Application for Amended Energy Efficiency (EE) and Peak Demand Reduction (PDR) Portfolio Plans. The Companies propose modifying their existing approved EE programs to suspend all of the Companies' core prescriptive rebate programs. These are the programs that incentivize the Companies' retail distribution customers, through rebates, to invest in energy efficiency, when these customers may not have done so without such rebates.

The Companies propose retaining a number of programs from their existing portfolios, but these programs are generally customer driven and passive in nature, are low income oriented, or receive cost recovery through some other means. The following is the list of programs the Companies propose continuing through 2016:

1. The Residential Low Income program funded through Community Connections
2. The Mercantile Customer Program
3. The Transmission and Distribution Improvements Program
4. The Demand Reduction Program
    a. Existing Commercial and Industrial (C&I) Interruptible Tariffs (Riders ELR or OLR)
    b. Demand Response Resources participating in the PJM Market (of which those customers contracted with other Curtailment Service Providers in FE's Ohio Operating Companies can be counted)
5. The Residential Direct Load Control Program
6. The Smart Grid Modernization Program

The following are two new programs proposed by the Companies:

1. The Customer Action Program
2. Experimental Company Owned LED Street Lighting Program (LED Street Lighting Program)

Below are Staff's recommendations regarding FirstEnergy's proposed amendments.

2. Shared savings

A. Continued programs

Of the six existing programs that the Companies propose continuing, only the Residential Low Income Program and the Residential Direct Load Control Program are eligible for shared savings. In addition, of the six existing programs that the Companies propose continuing, only the Residential Low Income Program and the Residential Direct Load Control Program require the Companies to actively influence customers to implement energy efficiency. The Companies should not be financially rewarded if they are not actively influencing retail customers to invest in and implement energy efficiency programs, and incurring no financial risk with respect to these programs. Therefore, for the programs the Companies propose continuing through 2016, Staff recommends that only the Residential Low Income Program and Residential Direct Load Control Program be eligible for shared savings.

B. New programs

Staff recommends that the Commission allow the Companies to implement the Customer Action Program and the LED Street Lighting Program. Staff also recommends that the Commission allow the Companies to count savings obtained from these new programs towards the statutory benchmarks if the savings are verifiable.

3. Counting EE and PDR savings of opt-out customers

Staff is opposed to the Companies counting EE and PDR savings of opt-out customers towards the statutory benchmarks. R.C. 4928.66(A)(2)(a) states that the baseline for both EE and PDR shall not include the load and usage of customers that have opted out of the utility's portfolio plan.[1] Once a customer is removed from the baseline, it is as if the customer does not exist for purposes of calculating EE/PDR benchmarks. There is no justification for allowing an EDU to count EE/PDR savings for customers that do not exist. In addition, these opt-out customers must affirmatively choose to remove themselves from the EDU's portfolio program. Once they make this choice, these opt-out customers cannot obtain benefits from or participate in the portfolio plans, and they are exempt from the EE/PDR rider.[2] It would be inconsistent with the "opt out" concept created by SB 310 for the Commission to allow FirstEnergy to count the savings of customers that decided to completely divorce themselves from FirstEnergy's portfolio programs.

The Companies contend that they are allowed to count the EE and PDR savings of opt-out customers under R.C. 4928.662(A), which states:

> Energy efficiency savings and peak demand reduction achieved through actions taken by customers or through electric distribution utility programs that comply with federal standards for either or both energy efficiency and peak demand reduction requirements, including resources associated with such savings or reduction that are recognized as capacity resources by the regional transmission organization operating

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[1] *See* R.C. 4928.66(A)(2)(a)(iii); and R.C. 4928.(A)(2)(c).

[2] R.C. 4928.6613.

> in Ohio in compliance with section 4928.12 of the Revised Code, shall count toward compliance with the energy efficiency and peak demand reduction requirements. (Emphasis added).

R.C. 4928.662(A) does not address counting EE and PDR savings of opt-out customers. Rather, it simply addresses whether EDUs can count programs that comply with federal standards. The Companies previously challenged a Commission rule that prevented EDUs from counting measures that were adopted to comply with other laws, regulations, or building codes.[3] It appears that the intent of R.C. 4928.662(A) is to address this concern by specifically indicating that utility programs that comply with federal standards shall be counted towards the EE/PDR benchmarks. This provision, however, does not give FirstEnergy blanket authority to count the EE/PDR savings of opt-out customers.

Further, Staff recommends removing the energy savings from opt-out customers because such treatment would be consistent with the Generally Accepted Accounting Principles' (GAAP) matching principle. Under the matching principle, the opt-out customers' energy savings and baseline should be treated equally. The matching principle states that a company should match revenues with the related expenses.

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[3] See O.A.C. 4901:1-39-05(H); *In the Matter of the Adoption of Rule for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill No. 221*, Case No. 08-888-EL-ORD (the "Energy Rules"); and merit brief of the Companies' appeal to Ohio Supreme Court (Ohio Supreme Court No. 2013-1472) of the Energy Rules at http://www.sconet.state.oh.us/pdf_viewer/pdf_viewer.aspx?pdf=738240.pdf.

Applying the matching principle here will ensure that the Companies properly record and realize the true energy savings achieved due to the Companies' actions. If the energy savings and baseline are not treated equally, the Companies could achieve 22.2 percent energy efficiency savings, not through the affirmative action of the Companies, but by simply removing the historical consumption of the "opt-out" customers from the baseline while simultaneously counting these opt-out customers' savings.

If the Commission determines that energy efficiency savings from "opt-out" customers can count toward future annual goals, Staff is concerned about how these incremental efficiency savings from these customers will be verified. Staff recommends that the Companies and/or the customer should be required to use an independent qualified third-party evaluator to verify these savings. Such savings verification must also be reviewable by the Commission's evaluation, measurement, and verification (EM&V) consultant through the review process that is in place at that time.

4. The Companies' proposal to have the ability to "adjust their program mix during the term of the Amended Plan"

Staff is not opposed to the Companies retaining the ability to manage their portfolio by restarting programs that were already approved in the existing plan.[4] However, the Companies should also be required to retain any risk associated with such management decisions, and the costs and benefits associated with such decisions should

[4] Although Staff is not Staff opposed to the Companies' proposal, it is unclear to Staff whether it is authorized under SB 310. Therefore, Staff takes no positon regarding the legality of this proposal at this time.

be reviewable by the Commission's EM&V consultant through the review process that is in place at that time. If the Companies want to completely eliminate all of their programs in the future, Staff recommends that the Commission require the Companies to receive Commission approval before hand.

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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing **Comments** was served via electronic mail upon the following party on October 20, 2014.

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Summary: Comments Comments of PUCO Staff electronically filed by Mr. Devin D Parram on behalf of PUCO Staff