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

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

Carrie M. Dunn (0076952)
Counsel of Record
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-2352
(330) 384-3875 (fax)
cdunn@firstenergycorp.com

James F. Lang (0059668)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East 6th Street
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com

ATTORNEYS FOR OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

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I. Introduction

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "Companies") submit their reply comments to the comments filed by the Commission Staff, Industrial Energy Users-Ohio ("IEU-Ohio"), Ohio Partners for Affordable Energy ("OPAE"), the Ohio Manufacturers' Association Energy Group ("OMAEG"), the Office of the Ohio Consumers' Counsel ("OCC"), Ohio Hospital Association ("OHA"), and Sierra Club, Environmental Law and Policy Center, Natural Resources Defense Council, and Ohio Environmental Council (collectively "Sierra Club"). Many of the comments offered in opposition to the Companies' Verified Application for Approval of Amended Energy Efficiency and Peak Demand Reduction Plans for 2015 through 2016 ("Verified Application") fail to recognize that the General Assembly enacted Substitute Senate Bill 310 ("S.B. 310") to "get a better understanding of how energy mandates impact jobs and the economy in Ohio, and to minimize government mandates" and "to review all energy resources as part of its efforts to address energy pricing issues" while "ensuring that customers in Ohio have access to affordable energy."[1] S.B. 310 provided express statutory authority for the Companies to amend their existing energy efficiency and peak demand reduction ("EEPDR") portfolio plans to meet revised statutory benchmarks while the General Assembly's Energy Mandates Study Committee reviews the EEPDR mandates. Accordingly, the Companies reviewed their Existing Plan and determined that they could meet the revised statutory benchmarks through 2016 without the need to continue several of the programs from the Existing Plan. The Companies, as indicated in their Verified Application, demonstrated that the Amended Plan meets or exceeds the statutory benchmarks with the anticipation that the costs of implementing the Amended Plan (including an

[1] S.B. 310, Section 3.

extra year of compliance) will be less than what they would have been under the Existing Plan. The Commission's review of this Verified Application under the expedited timeline provided for in S.B. 310 should end there.[2]

Nevertheless, several parties offer their opinion as to why the Commission should essentially deny completely the Companies' Verified Application. These comments ignore, however, that the Companies' Verified Application puts into motion the goals the General Assembly explicitly articulated in enacting S.B. 310. While some of the commenting parties may disagree with the General Assembly on those goals – the law is the law. The Companies are doing nothing more than implementing that law as intended by the General Assembly. In contrast, a few parties have requested additional clarity regarding specific portions of the Amended Plan, and the Companies have readily obliged in these reply comments below. Therefore, the Commission should approve the Verified Application as filed.

II. Under the Amended Plan, the Companies will satisfy the statutory benchmarks and properly account for customers who opt out of the Amended Plan.

As discussed above, by implementing the programs in the Amended Plan, the Companies will achieve the energy savings and reduction in peak demand required by statute.[3] The Companies' Verified Application shows the estimated compliance percentages for 2014, 2015 and 2016 in Attachment 1 and sets out the applicable baselines for compliance in Attachment 2.[4]

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[2] The Companies recognize that the Commission has authority to review the savings the Companies claim for compliance in its annual portfolio status report filings or to review the Companies' cost recovery mechanism. The Companies are merely stating that the Commission can approve the Amended Plan as filed while retaining authority to examine the savings claimed and cost recovery thereunder in other proceedings.

[3] *See* R.C. 4928.66(A)(1).

[4] *See* Verified Application, ¶¶ 15-16.

The Companies' data have been verified as true.[5] Thus, the Amended Plan is reasonably designed to enable the Companies to achieve the statutory benchmarks.

Only one commenter – OHA – even attempts to criticize the evidence regarding the Companies' projected compliance with the statutory benchmarks, and its criticisms fall flat. OHA argues that the retail sales shown in the 2014 Long-Term Forecast Report ("LTFR") have not been approved by the Commission yet and, thus, cannot be used as evidence in this proceeding.[6] However, the "energy baseline" and "peak-demand baseline" are required by rule to be based on the "most recent long-term forecast report."[7] And contrary to OHA's suggestion, the "most recent long-term forecast report" used in approving the Existing Plan also was not approved by the Commission prior to approval of the Existing Plan.[8] OHA's complaint that the baseline data are "unsupported" also ignores that all data are verified as true.[9] OHA simply has no grounds for criticizing the Companies' estimates of compliance with the statutory benchmarks.

Likewise, OHA lacks justification for requesting that the hospital audit program be continued, or that all programs in the Existing Plan be continued.[10] Again, the Companies reasonably determined that these programs are not necessary at this time for the Companies to

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[5] Verified Application, p. 12.

[6] OHA Comments at 5-7.

[7] O.A.C. 4901:1-39-01(J), (S).

[8] *See* In the matter of the 2012 Long Term Forecast Report to the Public Utilities Commission of Ohio filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company and American Transmissions Systems, Inc., Case No. 12-504-EL-FOR. *See also* Direct Testimony of Bradley D. Eberts ("Eberts Testimony"), at 5.

[9] Verified Application, p. 12.

[10] OHA Comments at 5, 7-10. Likewise, as discussed below, the Commission should also reject Sierra Club's request that the Companies continue all programs in the Existing Plan that are needed to fulfill its obligation to PJM. (Sierra Club Comments at 20.)

achieve the statutory benchmarks. Mandating that the Companies continue one or more of the suspended programs could conflict with state policy as expressed in S.B. 310, which allows companies to suspend programs to minimize government mandates and "ensure that customers in Ohio have access to affordable energy."[11] It also could conflict directly with the General Assembly's decision to revise the 2015 and 2016 benchmarks for electric distribution utilities that amend their portfolio plan under Section 6(B) of S.B. 310. These dynamics are precisely why the Companies have left in the Amended Plan the needed flexibility to restart any programs that are subsequently deemed necessary. Because OHA's comments demonstrate that it has misunderstood the options available under S.B. 310, the Commission should reject its proposed modifications to the Amended Plan.

A related issue affecting benchmark and savings calculations is how the Companies will address customers who opt out of the Amended Plan as permitted by Section 8 of S.B. 310.[12] As stated in the Verified Application, the Companies will comply with Section 8.[13] Under Section 8, a customer "may opt out of the opportunity and ability to obtain direct benefits from the [Companies'] portfolio plan that is amended under division (B) of Section 6" of S.B. 310.[14] The Companies' baselines for energy efficiency and peak demand reduction will not include the load and usage for any opt-out customer.[15]

The Companies disagree, however, with Staff that energy savings arising from opt-out customers' energy efficiency efforts should not be counted toward the benchmarks. As a general

[11] S.B. 310, Section 3.

[12] Staff Comments at 4-6.

[13] Verified Application, ¶ 4.

[14] S.B. 310, Section 8.

[15] R.C. 4928.66(A)(2)(a)(iii). Verified Application, ¶ 16.

matter, such an outcome would directly conflict with the express language of S.B. 310 in R.C. 4928.662, which states with reference to the divisions thereof: "For the purpose of measuring and determining compliance with the energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code, the public utilities commission shall count and recognize compliance as follows: . . . ." Therefore, the Commission is required by law to count all savings and peak demand reductions arising from the divisions of R.C. 4928.662. Importantly, R.C. 4928.662(F) requires that "energy efficiency savings and peak demand reduction amounts approved by the commission shall continue to be counted toward achieving the energy efficiency and peak demand reduction requirements as long as the requirements remain in effect." To the extent Staff is requesting that the Commission not allow the Companies to count savings from opt-out customers who participated in programs from the Existing Plan, the Commission should reject that suggestion as completely contrary to the statutory language contained in R.C. 4928.662(F). Customer savings resulting from programs in the Companies' Existing Plan are unaffected by the opt-out provisions and must be counted toward the benchmarks.

Moreover, in addition to the explicit statutory language mandating that these types of savings be counted "as long as the requirements remain in effect," practically speaking, it does not make sense to exclude these savings. Take, for example, a large industrial customer that took advantage of the C&I Energy Efficient Equipment Program-Large to obtain rebates for retrofitting its fluorescent lighting in 2013. That customer would have received its rebate in 2013, but the corresponding benefits of the lighting retrofit under the Existing Plan will continue to be realized for years.[16] Savings such as these – which the Companies' customers have already paid for through Rider DSE – will continue to be counted toward the benchmarks "as long as the requirements remain in effect." A customer's decision to opt out from future programs does not make existing savings from the Existing Plan disappear.

Indeed, Staff's reference to the GAAP "matching principle," while not relevant, is helpful in this context, although not applied correctly by Staff.[17] What should be matched is program activities and costs on the one hand, with program savings on the other. Staff appears to be suggesting that savings should not be counted even if they are actual, verifiable savings resulting directly from the Companies' programs. The sensible approach is to match program activities with program savings. After all, customers that paid for those activities should receive the corresponding benefit reflected in benchmark compliance, and customers that remain in the Companies' programs should not subsequently bear costs for the Companies to acquire replacement energy efficient savings.

R.C. 4928.662 also requires that opt-out customer savings and reductions achieved during the Amended Plan period be counted toward the Companies' benchmarks. Customers that opt out in 2015 or 2016 will be required to implement projects designed to reduce energy intensity.[18] Again, R.C. 4928.662(A) mandates that "[e]nergy efficiency savings and peak demand reduction achieved through actions <u>taken by customers</u> or through electric distribution utility programs that comply with federal standards for either or both energy efficiency and peak demand reduction requirements . . . <u>shall</u> count toward compliance with the energy efficiency and peak demand

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[16] *See* Existing Plan, Appendix C-1, C&I Energy Efficient Program-Large, Lighting-Large, Linear Fluorescent Retrofits (Standrd & Non Standrd) – Large C&I.

[17] Staff Comments, pp. 5-6.

[18] S.B. 310, Section 11.

reduction requirements." To the extent the Companies can identify and verify the savings or reductions resulting from those projects, S.B. 310 requires those savings to be counted toward the Companies' benchmarks. Moreover, R.C. 4928.66(A)(2)(c) continues to provide that compliance with the benchmarks "shall be measured by including the effects of all demand-response programs for mercantile customers of the subject electric distribution utility, . . . and all such mercantile customer-sited energy efficiency, ..." Thus, verifiable savings or reductions achieved by opt-out customers must be counted toward the benchmarks.

Although S.B. 310 requires the exclusion of the load and usage for any opt-out customer from the Companies' baselines,[19] it does not correspondingly state that any savings derived by customer projects contemplated in S.B. 310, Section 11, be excluded as well. Rather, as discussed above, S.B. 310 explicitly requires savings achieved "through actions taken by customers" to be counted toward compliance with the benchmarks. Thus, the Commission does not have authority to exclude those savings.

Finally, allowing the Companies to count savings derived from opt-out customer actions is consistent with the intent behind S.B. 310, namely, to ensure "customers have access to affordable energy" and "to incorporate as many forms of inexpensive, reliable energy sources in the state of Ohio as possible."[20] The Companies will count energy efficiency and peak demand reduction savings at a reduced cost to customers and, consequently, lower the costs of compliance with statutory mandates – now and into the future.

The Amended Plan will permit the Companies to achieve the statutory benchmarks and will properly account for the existing savings of customers who opt out. IEU-Ohio supports the

[19] R.C. 4928.66(A)(2)(a)(iii). Verified Application, ¶ 16.

[20] S.B. 310, Section 3.

Amended Plan and urges the Commission to approve it promptly.[21] The Commission should approve the Amended Plan as filed.

III. Continuing the shared savings incentive mechanism in the Amended Plan is reasonable.

The Amended Plan continues the shared savings incentive mechanism approved by the Commission in its March 20, 2013 Order.[22] As the Commission noted in that order, there is broad support for a shared savings incentive mechanism.[23] Shared savings are designed as a mechanism to encourage the Companies to exceed the benchmarks set by statute to the extent net benefits can be gained, thereby providing additional opportunities for customers to further reduce energy consumption over and above the baseline established by statute.[24] Shared savings are earned on a Company-specific basis (results are not aggregated across the Companies) when a Company achieves more reductions than are mandated by R.C. § 4928.66 in any given year.[25]

As approved by the Commission, the incentive mechanism is triggered only if a Company's total energy savings exceed both its incremental annual and cumulative energy savings targets as set forth in R.C. 4928.66(A)(1)(a) in any given year.[26] If the incentive mechanism is triggered in a given year, the incentive is calculated based upon two components: (i) an incentive percentage, and (ii) adjusted discounted net lifetime benefits based upon the Utility Cost Test ("Adjusted Net Benefits").[27] The Companies' independent evaluator calculates

[21] IEU-Ohio Comments at 4-5.

[22] *See* March 20, 2013 Order, pp. 15-16.

[23] *Id.*, p. 15. *See* Scheck Testimony, p. 9; Reed Testimony, pp. 20-23; Sullivan Testimony, pp. 11-20; Gonzalez Testimony, p. 5; Tr. Vol. VI, pp. 849-50.

[24] Demiray Testimony, p. 4.

[25] Demiray Testimony, p. 4.

[26] Demiray Testimony, pp. 7, 8.

[27] Demiray Testimony, p. 9.

discounted net lifetime benefits using the Utility Cost Test.[28] Then the Companies exclude the effect of certain projects as adopted by the Commission to produce the Adjusted Net Benefits.[29] The amount that may be collected is capped at $10 million on an after-tax basis through Rider DSE2.[30] Banked savings are counted only in the year banked.[31] The Amended Plan proposes to continue this same shared savings mechanism for years 2015 and 2016.

Several parties filed comments proposing limitations or modifications to the Commission-approved shared savings mechanism for the Amended Plan period of 2015-2016. For the Amended Plan period of 2015-2016, Staff recommends that, of the nine programs listed in the Verified Application,[32] only the Residential Low Income Program and Residential Direct Load Control Program should qualify for shared savings. For the programs included in the Amended Plan, through the Amended Plan period of 2015-2016, the Companies will not oppose Staff's recommendation and will go one step further – the Companies will not claim Adjusted Net Benefits produced by any of the programs identified to continue in the Amended Plan. However, the remaining elements of the shared savings incentive mechanism will remain in place.

The Companies have proposed a smooth program suspension strategy that seeks to honor customer commitments made under the Existing Plan for projects that will not be completed until

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[28] *See* Companies' Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report, Case Nos. 14-859-EL-EEC, *et al*. (May 15, 2014), Appendix A, showing calculation of shared savings, as corrected by May 30, 2014 errata.

[29] Demiray Testimony, pp. 10, 11.

[30] March 20, 2013 Order, p. 16. *See generally* Companies' Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report, Case Nos. 14-859-EL-EEC, *et al*. (May 15, 2014), Appendix A, showing calculation of shared savings, as corrected by May 30, 2014 errata.

[31] March 20, 2013 Order, p. 16. OMAEG mistakenly states in its comments that the Companies plan to earn shared savings using only banked savings. OMAEG Comments at 6.

[32] Verified Application, ¶ 3.

2015. The Companies expect that significant savings will be realized in 2015 from these projects. As such, the Companies will claim, and the Commission should not change, shared savings in the Amended Plan period that reflect these savings realized in 2015. In addition, should the Companies re-commence any programs from the Existing Plan, those programs will qualify for shared savings during the Amended Plan period.

The fact that the cumulative benchmark for energy savings in R.C. § 4928.66(A)(1)(a) is paused for the Companies at 4.2% for 2015 and 2016 does not discount the value of the shared savings incentive mechanism. Because the calculation of Adjusted Net Benefits approved by the Commission is based only on annual energy efficiency savings results (not cumulative totals), no shared savings are generated simply by achieving the 4.2% cumulative benchmark. Only the Adjusted Net Benefits arising from the incremental annual savings from Existing Plan projects realized in 2015, or from re-commenced programs, will be used to calculate shared savings. These savings, if achieved, would be above the mandated levels in 2015 and 2016. Thus, the shared savings incentive mechanism will continue to function exactly as intended and as approved by the Commission in its March 20, 2013 Order – as an incentive to the Companies to exceed the benchmarks set by statute.

OCC and OMAEG argue that the shared savings incentive mechanism should not be triggered for 2015 and 2016 unless the Companies exceed the 1% annual benchmark in former R.C. 4928.64(A)(1)(a).[33] Yet, this 1% annual benchmark is no longer the law and is not binding on the Companies. For 2015 and 2016, the Companies have a 4.2% cumulative benchmark and a 0% annual benchmark. Under Ohio law, the Companies have no legal obligation to increase energy savings above existing levels for the next two years. Under these circumstances, the

[33] OCC Comments at 9; OMAEG Comments at 6.

shared savings incentive mechanism will continue to perform as designed by incenting the Companies to exceed the annual benchmarks. If the incentive design were amended as proposed by OCC and OMAEG, the Companies would not have the appropriate incentive structure to exceed their existing benchmarks.

OCC also argues that the Commission should modify the Amended Plan to reduce the $10 million annual cap on shared savings.[34] However, OCC's only justification for reducing the cap amount is that the Companies likely will not achieve the same level of savings as they would have under former R.C. 4928.66(A)(1)(a).[35] OCC's solution to an anticipated reduction in energy savings is to reduce the Companies' incentive to achieve additional energy savings. As OCC Witness Gonzalez admitted at hearing, any cap is a disincentive to increased energy efficiency savings.[36] Thus, Staff Witness Scheck opposed a cap because it "may disincentivize [the Companies] from implementing EE measures that go beyond the minimum statutory requirements."[37] Given the disincentive resulting from a cap and the level of savings at issue, the only sensible option would be to increase the cap. Regardless, the Commission should reject OCC's proposal to reduce the cap.

The Commission should find that continuing the shared savings incentive mechanism in the Amended Plan is reasonable.

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[34] OCC Comments at 10-11. *See* March 20, 2013 Order, p. 16 ("The Commission finds that a $10 million cap on the amount of shared savings that may be collected is appropriate").

[35] OCC Comments at 10-11.

[36] Tr. Vol. IV, pp. 862-63.

[37] Scheck Testimony, p. 11.

IV. The Customer Action Program is reasonably designed to implement authority newly granted by R.C. 4928.662.

Two parties question whether the Companies have adequately documented the anticipated costs and benefits of the Customer Action Program.[38] This program implements the statutory authorization granted under R.C. 4928.662(A) and (B).[39] The objective of the program is to capture "energy efficiency savings and peak demand reductions achieved through actions taken by customers outside of utility administered programs pursuant to R.C. 4928.662."[40] Under this new Revised Code section, the Companies are authorized to count toward the benchmarks energy efficiency savings and peak demand reductions that are: (1) achieved through customer actions that comply with federal standards, including resources recognized as capacity resources by PJM Interconnection, L.L.C.; (2) achieved since 2006, measured on the higher of an as found or deemed basis; and (3) for new construction, counted based on 2008 federal standards. No additional information is necessary for the Companies to implement R.C. 4928.662(A) and (B) during the Amended Plan period.

Notably, Section 6 of the Existing Plan, which provides an in-depth description of the Companies' evaluation, measurement and verification ("EM&V") activities, is incorporated into the Amended Plan.[41] As with any program, the EM&V Consultant will continue to use established measurement and verification processes. Any savings identified by the Customer Action Program will be disclosed in evaluation reports filed with the Annual Energy Efficiency

[38] OMAEG Comments at 2-4; OPAE Comments at 3-4.

[39] *See* Verified Application, ¶ 3.

[40] Verified Application, ¶ 24.

[41] *See* Verified Application, ¶ 3.

and Peak Demand Reduction Program Portfolio Status Reports, which will be subject to review by the Commission's statewide Independent Program Evaluator.

Projected budgets for the Customer Action program include items such as EM&V, administration costs, and commitment payments for project information or to allow site access to facilitate the EM&V process.[42] The Companies currently estimate[43] that costs for the Customer Action Program would equate to the following during the 2015-2016 program years:

	2015-2016 Customer Action Program Budget ($)
CEI	1,800,000
Ohio Edison	3,500,000
Toledo Edison	1,400,000
Total	6,700,000

As stated in the Amended Plan, the Companies will rely upon their approved Existing Plan budget by sector to achieve benchmark compliance through December 31, 2016, including the budget for the Customer Action Program.

Although the Companies have not calculated cost effectiveness for this program, the Companies anticipate that the benefits of customer investments in energy efficiency, independent of Company programs, as established through the measurement and verification processes and

[42] OMAEG fears that the Companies would somehow deprive mercantile customers of their ownership of their own energy attributes through the Customer Action Program. OMAEG at 3-4. OMAEG misunderstands the difference between ownership of energy attributes for the purpose of bidding into PJM and counting energy efficiency savings for compliance with statutory mandates. The Companies will not be depriving customers of ownership as the Customer Action Program is designed solely to identify energy efficiency savings and peak demand reduction that counts toward the applicable benchmarks as required by Ohio law.

[43] As discussed below, this is an estimate. As the program continues to develop, the Companies could seek additional funding through its Existing Plan budget to fund activities under this program. This additional funding would be requested in accordance with O.A.C. 4901:1-39-05(C)(2)(c). Moreover, any costs of this program would be disclosed in the Companies' annual portfolio status report, as well as any cost recovery mechanism filings.

documented through the Customer Action Program will exceed its costs. Indeed, when customers implement EEPDR projects, they are conducting their own cost/benefit tests based on investment criteria and business-specific returns. The relatively minimal EM&V costs to capture these customer-driven savings and reductions in the Amended Plan will be more than offset by the savings to customers of not having to pay for more costly future programs.

A variety of EM&V approaches will be used depending on the specific measure to support claimed savings. Customer Action Program savings may be supported by independent evaluator surveys to obtain data supporting verified energy savings. The survey would collect information such as customer demographics, customer building characteristics including, heating and cooling systems, lighting and controls, home appliances and equipment, miscellaneous end uses, customer energy use practices and behavior, conservation efforts, and the characteristics of any new and replaced equipment as well as other information as required. The Companies and independent evaluators may also work with retailers, administrators and trade allies to obtain project specific information, particularly for commercial and industrial markets. On-site visits may also be conducted for a sample of customers to collect information regarding the characteristics of the building structure (e.g., insulation levels) and of space conditioning equipment, and for installed conservation measures. Market data on the distribution of energy efficient products may be acquired through organizations such as the Air-Conditioning, Heating & Refrigeration Institute and the Association of Home Appliance Manufacturers to support the total number of units of each measure type in the Companies' service territories.

Thus, to the extent Customer Action Plan savings are verifiable, Staff recommends that they be counted toward the benchmarks.[44] No party has provided justification for excluding the

[44] Staff Comments at 3.

Customer Action Program from the Amended Plan. Indeed, to do so, would be inconsistent with the statutory mandates contained in R.C. 4928.662.

V. The Amended Plan does not alter the balance established by the Commission regarding the bidding of energy efficiency resources into PJM capacity auctions.

The Amended Plan does not propose to alter any of the provisions of the Existing Plan relating to the bidding of planned energy efficiency resources into the PJM Base Residual Auction ("BRA"). During the Amended Plan period, as ordered by the Commission under the Existing Plan, the Companies will continue to comply with the Commission's directive to offer 75% of planned energy efficiency resources under its program portfolio, as modified by the Amended Plan, in the PJM BRA, assuming PJM rules permit such offers.[45] The Companies will continue to follow this bidding strategy despite the risks associated with PJM bidding unless the Commission orders otherwise.[46] Under the Amended Plan, the Companies also will continue to receive a portion of the PJM BRA revenue as an incentive and risk mitigation strategy.

Several parties now recognize that offering planned resources, instead of installed resources as originally proposed by the Companies, carries the risk that those resources will not be installed and available in the delivery year. Indeed, several parties are now concerned that the Companies will be unable to deliver to PJM for the 2016/2017 delivery year the resources that

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[45] March 20, 2013 Order, pp. 20-21. The Commission's order applied specifically to the BRA to be conducted in May 2013 for the 2016/2017 delivery year. *Id.* Under the Amended Plan and as permitted by law, the Companies would offer 75% of planned energy efficiency resources, as modified by the Amended Plan, into the May auctions to be conducted for the 2018/2019 and 2019/2020 delivery years.

[46] As discussed in the Companies' Application for Rehearing filed on April 19, 2013, those risks include such unknowns as: 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 applicable delivery year under PJM rules; 2) the price of capacity in the PJM BRA and the three incremental auctions that may occur between the PJM BRA and the applicable delivery year; and 3) the extent to which future Ohio law will include energy efficiency mandates. App. for Rehearing, p. 1.

were bid into and cleared in the 2013 BRA as ordered by the Commission.[47] As the Companies explained previously in this proceeding,[48] this is a valid concern. Indeed, the Companies specifically identified as a risk the possibility that the General Assembly would alter the form or level of energy efficiency mandates.[49] Commissioners Slaby and Porter, in their concurring opinion to the Commission's March 20, 2013 Order, recognized the risk:

> 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.

Because of this known risk, the Commission authorized the Companies to fully recover all PJM costs and applicable penalties associated with PJM auctions, including the cost of purchasing replacement capacity from incremental auctions, to the extent such costs or penalties are prudently incurred.[50]

With regard to the Companies' obligation to PJM for the 2016/2017 and 2017/2018 delivery years, the Companies expect to meet a substantial portion of this obligation with energy efficiency programs that will have been implemented by the delivery years. The Companies believe that any potential penalty costs for shortfalls (or replacement power costs if less than penalties) will be more than offset by revenues received for the obligations committed by the Companies when implementing the Commission's directive. Under PJM's current capacity market design, the Companies will be paid for 100% of the resources that cleared the auction, but

[47] Sierra Club at 3, 10-20; OCC at 16-17; OMAEG at 7.

[48] *See* Mikkelsen Testimony, pp. 4-6.

[49] Companies' App. for Rehearing, p. 1 (April 19, 2013).

[50] July 17, 2013 Entry, p. 7.

expect to pay a penalty of 120% of the value of only those resources it is unable to deliver (unless the Companies are able to purchase replacement capacity for the shortfall at less than the penalty amount). Thus, the Companies fully expect customers will see a net positive impact from the Companies' actions complying with the Commission's directives for those delivery years, even to the extent that any shortfall occurs as a result of the Amended Plan.

The Commission should reject the disingenuous attempt by some parties to revise the historical record and now impose the risk on the Companies of PJM bidding.[51] Incredibly, if OCC's position on PJM bidding had been adopted by the Commission – i.e., bidding 100% of all planned resources, customers might now be positioned to pay PJM for that speculative bet. Instead, the Companies have prudently implemented the bidding strategy ordered by the Commission and are entitled to recover in full all costs and penalties associated with the PJM auctions.

OCC may or may not be correct that the Companies will not have planned energy efficiency to offer into the next two capacity auctions scheduled for May 2015 and 2016, but not for the reason posited by OCC.[52] As the Commission undoubtedly is aware, the legality of having retail demand response resources participate in the PJM BRA is currently in doubt.[53] Nevertheless, if the Companies are permitted to offer planned energy efficiency resources into

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[51] *See* OCC Comments at 16-17; OMAEG Comments at 7.

[52] OCC Comments at 15-16.

[53] In *Electric Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), the court held that FERC did not have jurisdiction to order that demand response providers be paid locational marginal pricing ("LMP") at the wholesale energy rate, thus vacating FERC Order 745 (which required payment of wholesale LMP to demand response that wanted to participate as a supply resource in the energy markets). The court reasoned that demand response is a decision by a retail end-use customer to forego consumption and, because FERC's jurisdiction is limited to wholesale markets, FERC does not have jurisdiction to regulate demand response. Energy efficiency resources also are a retail end use and, thus, the D.C. Circuit's logic could apply to prevent energy efficiency resources from participating in PJM's wholesale capacity market.

the upcoming auctions, it will offer 75% of those resources available to it through the Amended Plan, unless the Commission orders otherwise, which is consistent with the Commission's order that the Companies' prudently offer those assets. If those resources eventually are installed and available for the 2018/2019 and 2019/2020 delivery years, respectively, customers would receive whatever PJM compensation is paid, net of incentives and penalties or other costs, during those delivery years.

VI. The Amended Plan budget reasonably corresponds to anticipated 2015/2016 costs.

OCC, OMAEG and OPAE raise related objections to the Amended Plan budget.[54] Apparently, these parties were alarmed by the Companies' statement that the Companies will rely upon their approved Existing Plan budget by sector to achieve benchmark compliance through December 31, 2016 – i.e., will use the remaining Existing Plan budget by sector to cover all costs for 2015 and 2016, one year longer than the budget was originally authorized for.[55] These parties argue that the total spend for the Amended Plan period should be less than the total 2015 budget given the reduced level of programming, and they are correct. Indeed, the Companies stated in the Verified Application that they anticipate that the costs of implementing the Amended Plan over two years will be less than the cost of implementing the Existing Plan over one year.[56] Simply because the budget is higher than the estimated spend does not mean that the Companies will "over-collect" as asserted by OMAEG[57] – collection is based on a forecast of the costs to be incurred over the six-month rider period, not the budget, and these forecasts will be trued up to actual costs incurred with the reconciliation included and reflected

[54] OMAEG Comments at 5-6; OCC Comments at 11-13; OPAE Comments at 4-5.

[55] *See* Verified Application, ¶ 26.

[56] Verified Application, ¶ 26.

[57] OMAEG Comments at 5-6.

in the Rider DSE updated and filed every six months. The fact that customers should see savings from the Amended Plan, as compared to the costs customers would have faced under former R.C. 4928.66, is not a reason to modify the Amended Plan.

Importantly, the Commission already has determined that the Existing Plan is cost-effective on a portfolio basis (as determined consistent with the Commission's rules) and already has approved the portfolio budget. In addition, several of the programs being continued in the Amended Plan have only EM&V costs. The Companies do not plan to incur costs under the Amended Plan for the operation of the T&D Improvements Program or Smart Grid Modernization Initiative, although costs associated with reporting and filing for compliance with the Companies' energy efficiency and peak demand requirements will be recovered through the Companies' existing cost recovery mechanisms.

OCC and OMAEG want the Commission to incentivize the Companies to achieve the 5.2% and 6.2% cumulative benchmarks for 2015 and 2016 that applied under former R.C. 4928.66, but they also want the Commission to slash program budgets for 2015 and 2016. These parties' arguments are internally in conflict, and should be dismissed. In contrast, the Companies have proposed reasonable amendments to the Existing Plan budget to achieve compliance with the statutory benchmarks during the Amended Plan period.

VII. The Amended Plan is cost effective under the Commission's rules.

Not only is the Existing Plan cost effective using the TRC test required by the Commission's rules, but the Amended Plan also will be cost effective. The programs that will be continued under the Amended Plan already have been reviewed for cost effectiveness, their TRCs were estimated, and the Commission approved the inclusion of these programs in the Existing Plan. The two new programs that will be included in the Amended Plan do not require a cost-effectiveness test because they either implement a separate tariff filing (the Experimental

Company Owned LED Lighting Program) or simply implement a statutory mandate (the Customer Action Program). Moreover, the Companies' EEPDR portfolio for the 2013-2016 period, as amended, easily passes the Commission's TRC test.

The Companies must note, however, that TRC results are calculated consistent with the formula set forth in O.A.C. 4901:1-39-01(Y) and, thus, do not accurately represent the costs to customers of these programs. The TRC test compares the costs of investments in energy efficiency measures and programs incurred today against numerous assumptions regarding potential long-term benefits of programs. The TRC test fails to consider the costs of rebates paid to customers, even though those costs are collected from all customers. The TRC test fails to specifically consider non-participating customers' perspective relative to energy efficiency programs, even though they help pay for the programs. Thus, customers not participating in programs may pay higher electric rates regardless of TRC results.

VIII. Including the Smart Grid Modernization Initiative in the Amended Plan is reasonable.

OPAE complains that the Companies have not shown that the Smart Grid Modernization Initiative is cost effective, while Staff supports including this program in the Amended Plan and counting any verifiable savings toward the benchmarks.[58] As stated above, the Companies do not plan to incur costs under the Amended Plan for the operation of the Smart Grid Modernization Initiative in 2015 and 2016 and, thus, cost effectiveness is a moot point. As Staff has determined, the Companies' proposal to include the Smart Grid Modernization Initiative in the Amended Plan is reasonable.

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[58] OPAE Comments at 2-3; Staff Comments at 3.

IX. The Companies' recovery of lost distribution revenues is not at issue in this proceeding.

OCC recommends that adjustments should be made to the Companies' recovery of lost distribution revenues after May 31, 2016.[59] The reference to May 31, 2016 is a tip-off, as that is the duration that the Companies' current electric security plan authorizes recovery of lost distribution revenues – a completely different proceeding than this. By applying for approval of the Amended Plan in this proceeding, the Companies have not put at issue lost distribution revenue recovery approved in a separate proceeding. Indeed, this issue appropriately has not been addressed in the Existing Plan, and should not now be addressed as it relates to the Amended Plan.

X. The Companies will adjust their program mix and implement modifications to the Amended Plan consistent with Commission rules.

OCC and OMAEG mistakenly believe that the Companies are proposing to unilaterally adjust their program mix.[60] In fact, the Companies will adjust their program mix consistent with O.A.C. 4901:1-39-05(C)(2)(c) or a Commission order in another proceeding. As provided in O.A.C. 4901:1-39-05(C)(2)(c), before changing the program mix or budget allocations, the Companies will provide notice to all parties in this proceeding. Moreover, the Companies' annual portfolio status report will include a recommendation to the Commission for whether a program should be continued, modified, or eliminated. If a reallocation of funds is necessary, the Companies will seek written staff approval or file for approval with the Commission.

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[59] OCC Comments at 14.

[60] OCC Comments at 17-18; OMAEG Comments at 8-9.

XI. Procedural objections raised by various parties are misguided and contrary to S.B. 310.

Sierra Club and OCC, joined now by OPAE, repeat in their comments procedural arguments they each raised earlier in "memorandum contra" filed October 9, 2014. These arguments fail for the same reasons stated in the Companies' reply filed October 16, 2014, which the Companies incorporate here. Most importantly, they have not shown that any of the energy efficiency rules on which they rely govern the Commission's review of plan amendments filed under Section 6 of S.B. 310. The Commission's review of plan amendments "in accordance with its rules" necessarily means in accordance with its procedural rules so that parties have the opportunity to comment in an open, transparent proceeding during the sixty-day review period required by S.B. 310. That is exactly the process the Commission has afforded these intervenors and others. It is unreasonable to assume that energy efficiency rules written specifically to apply to a much more prolonged process would apply here.

Regardless, the Companies have sufficiently answered all questions posed by Staff and intervenors in this proceeding in their Verified Application and in these Reply Comments. To the extent certain parties believed cost information was lacking,[61] the Companies have provided that information. By carrying forward Existing Plan provisions, the Companies have incorporated into the Amended Plan the detail from the Existing Plan required by the energy efficiency rules with regard to program design criteria, program costs (including TRCs) and compliance with Ohio policies. Thus, Sierra Club's complaint that the Companies have ignored O.A.C. 4901:1-39-03(B) and -04(E)[62] is simply wrong. The Companies also have provided

[61] Sierra Club Comments at 6; OCC Comments at 12.

[62] Sierra Club Comments at 7-8.

additional detail above, to the extent available, regarding the two new programs proposed to be included in the Amended Plan.

Sierra Club's recommendation that the Commission reject the Verified Application,[63] and OPAE's related recommendation that the Commission suspend the sixty-day timeline,[64] must be rejected as exceeding the Commission's authority. By filing the Verified Application on September 24, 2014, the Companies satisfied S.B. 310's requirement that an electric distribution utility must file an application to amend its existing plan on or before October 14, 2014. S.B. 310 gives the Commission no discretion to reject outright the Verified Application, only authority to review the Verified Application during a sixty-day review period.[65] Likewise, S.B. 310 gives the Commission no discretion to "suspend" the sixty-day review period. If the Commission does not review and approve, or modify and approve, the Amended Plan on or before November 23, 2014, its authority to take further action is extinguished by operation of law.[66] Of course, the Companies strongly encourage the Commission to review and approve in full the Amended Plan well before November 23, 2014 so that the Companies may efficiently transition to operations under the Amended Plan.

XII. Conclusion

For the reasons set forth above, the Companies respectfully request that the Commission approve the Verified Application without modification.

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[63] Sierra Club Comments at 2.

[64] OPAE Comments at 2.

[65] *See* S.B. 310, Section 6(B)(1).

[66] See id.

Respectfully submitted,

s/ *Carrie M. Dunn*

Carrie M. Dunn (0076952)
Counsel of Record
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-2352
(330) 384-3875 (fax)
cdunn@firstenergycorp.com

James F. Lang (0059668)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East 6th Street
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com

Attorneys for Applicants, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company

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I certify that this Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 27th day of October 2014. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record.

__s/ *James F. Lang*________________________
One of Attorneys for Applicants

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Summary: Reply Comments electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company