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, Ohio Administrative Code, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, the "Companies"), hereby apply for rehearing of the Finding and Order issued in the above-captioned case on November 20, 2014 ("Order"). The Commission's Order is both a significant step toward providing the Companies' customers access to more affordable and reliable energy with adjusted energy efficiency and peak demand reduction ("EEPDR") mandates and implementing provisions contained in S.B. 310. The Companies file this Application to request that the Commission comply with the statutory mandates of S.B. 310 and the associated policy objectives. As explained in more detail in the attached Memorandum in Support, the Order in this case is unreasonable and unlawful on the following grounds[1]:

1. The Order unreasonably and unlawfully prohibits the Companies from counting prospective savings from opt-out customers toward the statutory benchmarks, and fails

[1] Capitalized terms used herein and in the attached Memorandum in Support but not otherwise defined have the meanings set forth in the Order.

to clarify that historical savings that the Companies' customers already have funded would continue to count toward benchmark compliance even after such customers have opted out.

2. The Order unreasonably and unlawfully suggests that the "stand still" provision in Section 7(B) of S.B. 310 prevents the Commission from administering the Amended Plan consistent with Commission rules and the express provisions of the Amended Plan.

As demonstrated in the Memorandum in Support of this Application, which is attached hereto, the Commission should grant this Application for Rehearing as requested herein.

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

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

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

TABLE OF CONTENTS

I. Introduction.

The Commission's Order is a significant step toward providing the Companies' customers access to affordable, reliable energy with adjusted energy efficiency and peak demand reduction ("EEPDR") mandates and implementing provisions contained in S.B. 310. The Companies submit this Application to request that the Commission comply with the statutory mandates of S.B. 310 and the associated policy objections by correcting two errors in the Order.

First, the Order unreasonably and unlawfully prevents the Companies from counting prospective savings from opt-out customers toward the statutory benchmarks.[2] Further, the Order fails to clarify that historical savings from opt-out customers that the Companies' customers already have funded, would continue to count toward benchmark compliance. If left unaddressed, parties exercising a creative license could unreasonably and unlawfully interpret the Commission's Order to require the Companies to remove from their benchmark compliance any EEPDR savings realized prior to a customer's opt out, forcing customers to pay more for electric service. Not only would customers unnecessarily be paying more – or twice – for EEPDR savings, but the Companies would be exposed to much higher risk of non-compliance resulting from unilateral opt-out decisions made by individual customers, over which the Companies have no control. The Commission should not expose customers to such needless risk and expense.

Second, the Commission appears unreasonably concerned that Section 7(B) of S.B. 310 somehow eliminated the Commission and the Commission Staff's, existing authority to approve the reallocation of funds between programs and to adjust the program mix, including restarting suspended programs.[3] Yet Section 7(B) of S.B. 310 clearly authorizes the Commission to

[2] Order ¶ 29.

[3] *See* Order ¶ 56.

administer the implementation of the Amended Plan, which includes implementing the Amended Plan's express terms and administering the Commission's own rules. Notably, the Amended Plan approved by the Commission pursuant to Section 6(B) of S.B. 310 expressly authorizes the Companies to adjust their program mix and to implement modifications to the Amended Plan in accordance with O.A.C. 4901:1-39-05(C)(2)(c).[4] The Companies included this language in the Amended Plan specifically to ensure that the Commission, and the Commission's Staff, retains authority to administer the implementation of the Amended Plan with regard to fund reallocation and program mix changes. The Commission should clarify on rehearing that it does possess this authority. Moreover, the Commission should clarify on rehearing that the Companies can still reallocate their budgets in accordance with O.A.C. 4901:1-39-05(C)(2)(c) as they have done in the past. Otherwise, the Order has created risk, and potential cost, for customers that conflicts with the policy objectives of S.B. 310.

II. The Commission must clarify or correct the errors in the Order so that the Companies' customers receive the full benefits of S.B. 310.

A. The Companies should be authorized to count opt-out customer savings, from both before any opt out and after.

Although no language in S.B. 310 prohibits the Companies from counting savings of opt-out customers toward the statutory benchmarks, the Commission decided that doing so "would be inconsistent with the intent" of R.C. 4928.66.[5] This decision ignores clear statutory language authorizing the Companies to count all EEPDR savings, and it unreasonably imposes needless costs on the Companies' customers. The intent of S.B. 310 is to "ensure that customers in Ohio have access to affordable energy,"[6] not to charge customers twice for EEPDR savings. The

[4] Verified Application ¶ 5.

[5] Order ¶ 29.

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

Commission should grant rehearing to bring the Order into compliance with both the express language and the clear intent of S.B. 310.

A statutory design to permit customer opt outs from EEPDR programs must necessarily address four aspects of the utility/customer relationship. The first and second aspects are what the customer gives up, and what the customer gains, as a result of the opt out. Under Section 8 of S.B. 310, a customer gives up "the opportunity and ability to obtain direct benefits from the" Companies' Amended Plan. Thus, any eligible customer that opts out will not be able to receive any payments or credits funded out of the Amended Plan budget. In exchange, under Section 10 of S.B. 310, the opt-out customer is not subject to the Companies' EEPDR cost recovery mechanism in Rider DSE.

The third and fourth aspects of an opt-out design define the impact on the utility in terms of how the baseline is calculated and the savings are counted. If the objective were to provide affordable service to retail customers, the opt out would affect the baseline but not the savings. And this is what the General Assembly did in S.B. 310. The General Assembly directed that the Companies' baselines not include the load and usage for any opt-out customer.[7] As discussed below, however, the General Assembly directed that all savings be counted so that customers would not pointlessly incur costs to duplicate opt-out customer savings. This last aspect of the General Assembly's opt-out design is where the Commission's Order goes astray by assuming that the General Assembly did not intend to protect customers from duplicative costs. The Commission should revisit this question, both with respect to historical, or pre-opt-out, savings and with respect to future savings.

[7] R.C. 4928.66(A)(2)(a)(iii).

1. R.C. 4928.66 mandates that savings realized prior to customer opt outs must be counted toward the Companies' benchmark compliance.

Division (F) of R.C. 4928.662 imposes a mandatory duty on the Commission to count any and all EEPDR savings approved by the Commission toward achieving the EEPDR requirements for as long as the requirements remain in effect. Thus, all savings actually realized and verified prior to a customer's opt out must continue to be counted toward the Companies' benchmarks. The Commission has no discretion to decide, in its opinion, that the "intent" of R.C. 4928.66 requires otherwise. The Commission must follow the law.

Not only is counting these savings required by R.C. 4928.662(F), but it makes good sense for two reasons. First, the Companies' customers already have paid for existing savings through Rider DSE. Savings arising from such historic projects will persist and continue delivering energy reductions for years, regardless of an individual customer's decision whether or not to participate in future Company-sponsored energy efficiency programs. The Commission cannot lawfully deprive those customers of the benefits for which they've already paid. Such a decision would violate state policy as set out in S.B. 310 by denying customers access to affordable energy. Customers that paid for EEPDR 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.

Second, if the Commission's Order is improperly interpreted as to disallow counting of historical savings from opt out customers, the Companies must remove existing savings from their benchmark calculation whenever a large customer unilaterally decides to opt out, the Companies' ability to efficiently plan for benchmark compliance will be greatly compromised. For example, TE currently forecasts that it will exceed the 2015 EE benchmark by approximately 38,000 MWh.[8] If a handful of customers with combined energy efficiency savings of more than this amount elect toward the end of 2015 to opt out, however, TE could fail to meet its 2015 EE benchmark through no fault of its own. The Companies readily agree that the 2015 EE benchmark also would be reduced by the amount of the opt-out customers' load, but the impact on the Companies would be neutral only if the opt-out customers' savings equaled exactly 4.2% of their load. For customers who have implemented large-scale projects, the loss of savings from a customer could substantially exceed any benefit derived from the corresponding baseline reduction. This creates an incentive for TE to spend substantially more, and to charge its remaining non-opt-out customers substantially more through Rider DSE, to substantially over-comply. Similarly, if the same customers were to opt out early in 2015, TE would have to spend additional amounts on compliance efforts, and charge its customers additional amounts through Rider DSE, to duplicate energy savings that already exist. It defies logice for the Commission to eliminate, by administrative fiat, those savings and to thereby deprive the Companies' customers of affordable energy. Thus, the Commission should clarify that historical savings from opt-out customers would continue to count toward benchmark compliance.

2. Opt-out customer prospective savings also must be counted toward compliance with the statutory benchmarks.

R.C. 4928.662 also requires that opt-out customer prospective 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.[9] State policy, as expressed in S.B. 310, is to count all such EEPDR savings

---

[8] Verified Application, Attachment 1.

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

toward compliance so that customers have access to affordable, inexpensive and reliable electric service. R.C. 4928.662(A) mandates that "[e]nergy 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 . . . shall count toward compliance with the energy efficiency and peak demand 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. Although the Commission states in its Order that it does not believe R.C. 4928.662(A) applies,[10] it fails to provide any explanation why it does not apply.

Special notice should be taken of the demand resources generated by the Companies' Rider ELR customers because Rider ELR customers who opt out of the Amended Plan will nevertheless continue to have the option of taking service under Rider ELR. Among other things, these customers would continue to receive, and the Companies' customers would continue to pay for, the benefits of the Interruptible Credit Provision in the Companies' Economic Development Rider and the DSE1 component of Rider DSE. Indeed, as the Commission recently determined, "interruptible tariff credits are primarily economic development costs" and "are not related to EDUs' compliance with the EE and PDR requirements."[11] Customers who elect to take service under Rider ELR receive benefits, and pay charges, authorized by the Commission in the Companies' current electric security plan, Case No. 12-1230-EL-SSO. The credits received by Rider ELR customers are not funded from the Amended Plan budget (or, prior to 2015, from the

[10] Order ¶ 29.

[11] In the Matter of the Amendment of Chapters 4901:1-10 and 4901:1-21, Ohio Administrative Code Regarding Electric Companies and Competitive Retail Electric Service, to Implement 2014 Sub.S.B. No. 310, Case No. 14-1411-EL-ORD, Finding and Order at p. 20 (Dec. 17, 2014).

Existing Plan budget). Regardless of whether these customers opt out, they will continue to commit their demand resources – i.e., their Curtailable Load as defined in Rider ELR – to the Companies under the Companies' program contract through May 30, 2016, as provided in Rider ELR. Thus, even if Rider ELR customers opt out and their load is removed from the Companies' baselines, the demand resources contractually committed to the Companies under Rider ELR must continue to be counted toward the statutory benchmarks. .

In addition to Rider ELR savings, other EEPDR savings of opt-out customers must also be counted toward the statutory benchmarks. Although S.B. 310 requires the exclusion of the load and usage for any opt-out customer from the Companies' baselines,[12] it does not correspondingly state that any savings derived by customer projects contemplated in Section 11 of S.B. 310 be excluded as well. To the contrary, as discussed above, S.B. 310 explicitly requires savings achieved "through actions taken by customers" to be counted toward compliance with the benchmarks. Instead of attempting to divine the General Assembly's intent by reading between the lines, as the Commission does in its Order, the Commission should simply apply the actual lines written by the General Assembly. S.B. 310 directs the Companies to count EEPDR savings at a reduced cost to customers and, consequently, lower the costs of compliance with statutory mandates – now and into the future. The Commission should confirm on rehearing that the savings of opt-out customers count toward meeting the statutory benchmarks.

[12] R.C. 4928.66(A)(2)(a)(iii).

B. The Commission should clarify that it retains the authority under S.B. 310 to administer the Amended Plan consistent with Commission rules and the express provisions of the Amended Plan.

The Order creates risk for the Companies and their customers by deferring ruling on whether Section 7(B) of S.B. 310 prevents the Commission, once the Amended Plan is in place, from authorizing the Companies to (1) recommence suspended programs; (2) reallocate funds; or (3) adjust the program mix.[13] The Commission should eliminate that risk on rehearing by stating what is clearly the law: the Commission has authority under Section 7(B) of S.B. 310 to administer the Amended Plan consistent with Commission rules and the express provisions of the Amended Plan. S.B. 310 did not usurp the Commission's authority to apply its own rules.

S.B. 310 contains a "stand still" provision barring the Commission from interfering with an amended portfolio plan once the Commission has approved, or modified and approved the plan.[14] Thus, for example, the Commission is barred from reversing course and rejecting the Customer Action Plan. However, the Commission retains authority under S.B. 310 to take "actions necessary to administer the implementation of existing portfolio plans."[15] Any such administration of the Amended Plan would take two obvious forms.

First, the Commission retains authority to act in conformance with the Amended Plan's express terms. For example, the Amended Plan expressly authorizes the Companies to request Commission approval of programs to augment or modify the Amended Plan.[16] The Companies could make such a request in another proceeding, such as the Companies' pending electric security plan proceeding, or in this proceeding. In considering the Companies' request to include additional

---

[13] Order ¶¶ 49, 56.

[14] S.B. 310, Section 7(B).

[15] *Id.*

[16] Verified Application ¶ 5.

programs in the Amended Plan or to restart suspended programs, the Commission would be administering the Amended Plan's terms.

Second, the Commission and its Staff retain authority to act in conformance with the Commission's existing EEPDR rules. In particular, the Amended Plan provides that the Companies may implement modifications to the Amended Plan in accordance with O.A.C. 4901:1-39-05(C)(2)(c).[17] Under that rule, the Companies must include in their annual Portfolio Status Report a recommendation to continue, modify or eliminate existing programs and may propose alternative programs to replace eliminated programs. The Companies also may request written approval from Staff to reallocate funds between programs serving the same sector. S.B. 310 did not repeal O.A.C. 4901:1-39-05(C)(2)(c). Thus, the Commission, and the Commission Staff, retain the authority to administer changes to the Amended Plan that may be required for the Companies' compliance with the statutory benchmarks in conformance with O.A.C. 4901:1-39-05(C)(2)(c).

This is not a theoretical exercise, as the Companies have requested Staff approval of fund reallocations in the past. However, the Commission's Order ambiguously requires that the Companies "must seek Commission approval prior to any reallocation of funds or adjustment of the program mix."[18] Does this mean that the Companies no longer can obtain written consent from Staff to reallocate funds between programs as authorized by O.A.C. 4901:1-39-05(C)(2)(c)? Given that Staff's approval to reallocate funds would merely effectuate the administration of the Amended Plan pursuant to its express terms, the Companies fail to understand why the Commission would want to create an added burden it previously did not require.

---

[17] *Id.*

[18] Order ¶ 56.

Therefore, the Companies request that the Commission clearly state on rehearing that the Commission has authority to administer the Amended Plan consistent with Commission rules and the express provisions of the Amended Plan.

III. Conclusion

For the reasons set forth above, the Companies respectfully request that the Commission grant rehearing and amend the Order as specified herein.

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

CERTIFICATE OF SERVICE

I certify that this Application for Rehearing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 22nd day of December, 2014. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record.

__s/ *Carrie M. Dunn*
One of Attorneys for Applicants