

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )	
Edison Company, The Cleveland )	
Electric Illuminating Company, and The )	Case No. 19-363-EL-WVR
Toledo Edison Company for a Waiver of )	
Rule 4901:1-39-04. )	

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**APPLICATION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY, THE TOLEDO EDISON COMPANY  
FOR A LIMITED WAIVER AND REQUEST FOR EXPEDITED RULING**

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Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively “Companies”), electric utilities as defined in § 4928.01(A)(11), Ohio Rev. Code, seek a limited waiver of the requirement set forth in § 4901:1-39-04, Ohio Adm. Code (“O.A.C.”) that will suspend the April 15 filing requirement set forth in Rule 4901:1-39-04, O.A.C. The Companies respectfully request that the Public Utilities Commission of Ohio (“Commission”) grant this motion on an expedited basis as soon as practicable or by March 7, 2019, pursuant to Rule 4901-1-12(C), for the reasons set forth more fully in the attached Memorandum in support.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

Pursuant to the requirements set forth in Rule 4901:1-39-04, O.A.C., the Companies are required to submit an application no later than April 15, 2019, for a new energy efficiency and peak demand reduction portfolio plan (“portfolio plan”) that would enable the Companies to continue compliance with State of Ohio energy efficiency mandates. The Companies’ current portfolio plan was approved November 21, 2017, for the period that includes January 1, 2017 through December 31, 2019 (“November 2017 Order”). However, pursuant to the Commission’s November 2017 Order, the portfolio programs may continue beyond December 31, 2019, until such time that the Commission orders otherwise.<sup>1</sup>

On December 19, 2018, the Commission issued a Finding and Order adopting new rules for management of energy efficiency programs. Among them is new rule 4901:1-39-04. This new rule contemplates the annual filing of one-year portfolio plans on September 1. The new rule has not yet taken effect and remains subject to finalization of the rulemaking process. As a result, the timing of the promulgation of the new rules calling for the filing of one-year plans by September 1 of each year, at the same time the Company is required to file an application by April 15 for approval of its next three-year portfolio plan under the current rule, causes some dissonance.

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<sup>1</sup> *In the Matter of the Application of the 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 2017 through 2019*, Case No. 16-743-EL-POR, Finding and Order, November 21, 2017, p. 29 (“the Companies’ Revised 2017-2019 Portfolio Plans, as modified and approved in this Opinion and Order, continue in effect until otherwise ordered by this Commission”)

If the Company files its portfolio plan for three years in April pursuant to the current rule, it is very likely that the regulatory process to approve the portfolio plan would continue as the Commission finalizes its new rules through resolution of pending Applications for Rehearing and submission to the Joint Committee on Agency Rule Review. If the new rule takes effect in the interim, it would arguably nullify the Companies' proposed portfolio plan, create confusion and uncertainty for customers and other parties, and lead to other difficulties due to an application filed under the old rules being out-of-sync with the new rules that became effective mid-process. It would be administratively inefficient if parties, as well as the Commission and its Staff, were to expend significant resources on a portfolio plan rendered moot by the new rules.

Rule 4901:1-39-02(B) states that the Commission may, upon an application or motion filed by a party, waive any requirement of Chapter 39 for good cause. Good cause exists for this request. The process of developing and filing a portfolio plan is lengthy and resource intensive, requiring the work of many people for an extended period of time.<sup>2</sup> The data that is required to accompany the application is set forth in the rules, and those directives also may be changed as the rule-making process continues. The Companies and other stakeholders have requested in Applications for Rehearing that the Commission reopen the rulemaking process to consider additional comments from stakeholders, and the Commission granted those applications for further consideration on February 6, 2019. That too could impact what ultimately must be filed in this year's portfolio plan submission by the Companies. Under the circumstances, the most expedient way forward is for the Commission to grant the Companies waiver of the April 15 filing requirement. If the new

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<sup>2</sup> While work has been in progress for several months already, two more months of intense effort remain.

rules are not yet effective prior to January 1, 2020, the Companies already have authority to continue with their current portfolio plans pursuant to the Commission's November 2017 Order noted above. Once the pending rulemaking proceeding has been resolved and there is clarity on the Companies' requirements for their next portfolio plan filing, the Companies will take necessary actions to comply with the applicable rules in a reasonable amount of time.

Accordingly, the Companies herein request Commission limited waiver of the April 15 requirement to file a new portfolio plan as contained in the current rules.

In accordance with Rule 4901-1-12(C), the Companies respectfully request an expedited ruling on this application by March 7, 2019. An expedited ruling is necessary due to the timing of the next portfolio plan filing and the significant and necessary work and resources leading up to the filing that could be rendered moot upon finalization of the rulemaking process described above. The Companies are presently preparing for an April filing; however, if the Commission grants the requested waiver, the Companies will be able to avoid expending unnecessary and significant resources on a work product that could be rendered moot by the new rules.<sup>3</sup>

For the reasons set forth above, the Companies respectfully request that the Commission grant this Application to waive its April 15 filing requirement within its rules.

Respectfully submitted,

/s/ Robert M. Endris  
Robert M. Endris (0089886)  
FirstEnergy Service Company

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<sup>3</sup> As this request is not yet related to a docketed proceeding, the Companies did not contact any other parties for acquiescence in this filing.

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Company

**CERTIFICATE OF SERVICE**

I certify that this Application for Waiver and Request for Expedited Ruling was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 13<sup>th</sup> day of February, 2019.

/s/ Robert M. Endris  
*One of the Attorneys for Ohio Edison  
Company, The Cleveland Electric  
Illuminating Company and The Toledo  
Edison Company*

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 19-0363-EL-WVR**

Summary: Application Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for a Waiver of Rule 4901:1-39-04 electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company