

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Commission's Review)
of Chapters 4901:1-9, 4901:1-10, 4901:1-)
21, 4901:1-22, 4901:1-23, 4901:1-24, and)
4901:1-25 of the Ohio Administrative)
Code.)

Case No. 06-653-EL-ORD

PUCO

**MOTION TO REOPEN FOR THE LIMITED PURPOSE OF SUPPLEMENTING
THE RECORD
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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March 25, 2008

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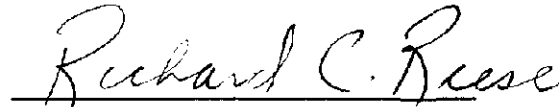
**MOTION TO REOPEN FOR THE LIMITED PURPOSE OF SUPPLEMENTING
THE RECORD
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential consumers in Ohio's 4.5 million households, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to reopen this rulemaking in which the PUCO is considering the electric service and safety standards ("Rules" or "ESSS") for electric service to Ohioans. The Commission should supplement the record by accepting this pleading which includes recent additional information and related recommendations that illustrate how the current system of voluntary compliance and self-enforcement of the Rules is failing to serve Ohioans.¹ The detailed reasons supporting OCC's Motion are set forth in the attached Memorandum in Support.

¹ The Motion is made in accordance with Ohio Adm. Code 4901-1-12 and 4901-1-34.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in cursive script that reads "Richard C. Reese". The signature is written in dark ink and is positioned above a horizontal line.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission adopted a system of Rules, which has been in place for eight years, regarding the reliability of the service that electric distribution utilities ("EDU's") provide to Ohio customers.² The Commission, by Entry dated April 4, 2007, initiated a review of its Rules and sought comment on the PUCO Staff's proposed revisions that were attached to the Entry. The Office of the Ohio Consumers' Counsel ("OCC"), the Appalachian People's Action Coalition, Empowerment Center of Greater Cleveland, Communities United for Action, Edgemont Neighborhood Coalition, Community Action Partnership, and Consumers for Fair Utility Rates (collectively, "Consumer Groups") submitted Initial Comments on the Staff Proposal on June 8, 2007. Reply Comments were submitted on July 24, 2007.

Pursuant to Ohio Adm. Code 4901-1-34, OCC requests that the Commission reopen the record in the ESSS Case for the purpose of allowing the record to be supplemented with information obtained in the FirstEnergy rate case proceeding that is

² In re the Application of the Commission's Promulgation of Amendments to the Electric Service and Safety Standards to Chapter 4928, Revised Code, Case No. 99-1613-EL-ORD.

pending at the Commission.³ The information elicited in connection with the hearing in the FirstEnergy Rate Case is pertinent to the ESSS rulemaking, and could not have been presented earlier in the above-captioned proceeding. OCC attaches transcripts from the hearing in FirstEnergy Rate Case that contain facts and opinion testimony that the Commission should consider in weighing the proposed revisions to the ESSS.

II. OCC'S MOTION SHOULD BE GRANTED.

Ohio Adm. Code 4901-1-34 allows for the reopening of proceedings to present additional evidence if good cause is shown:

- (A) The commission, the legal director, the deputy legal director, or the attorney examiner assigned to a case may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.
- (B) A motion to reopen a proceeding shall specifically set forth the purpose of the requested reopening. If the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of such evidence, and shall set forth facts showing why such evidence could not, with reasonable diligence, have been presented earlier in the proceeding.

OCC's motion meets the standards set forth in Ohio Adm. Code 4901-1-34, and should thus be granted.

A. OCC's Motion to Reopen meets the two standards of Ohio Adm. Code 4901-1-34(A).

There has been no final order issued in the ESSS Case. As such, OCC's Motion to reopen meets the first standard in Ohio Adm. Code 4901-1-34(A), as it is filed before

³ *In re the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and For Tariff Approvals*, Case No. 07-551 et al. ("FirstEnergy Rate Case").

the final order. There has been no activity in the ESSS Case since reply comments were filed by the various participants on or about July 24, 2007.

OCC's Motion also shows good cause to reopen this proceeding. That meets the second standard of Ohio Adm. Code 4901-1-34(A). Specifically, the Consumer Groups' comments and reply comments in the ESSS Case focused heavily on the failure of the existing and proposed ESSS to provide meaningful, enforceable standards to protect Ohioans.⁴ This supplemental information should be heard regarding these issues under consideration by the PUCO.

B. OCC's Motion to Reopen meets the two standards of Ohio Adm. Code 4901-1-34(B).

Rule 34(B) requires a movant to reopen to show that the supplemental information could not have been presented earlier with reasonable diligence. Historically, in determining whether to reopen a proceeding to consider additional evidence, the Commission has focused on whether the party seeking to reopen the record had a fair opportunity to present the evidence at hearing or in comments.⁵ There has been no "fair opportunity" for OCC or any other party to present the evidence included with this Motion for consideration in the ESSS Case.

It was after the comment and reply comment periods of this proceeding that the PUCO Staff filed concerns in another case regarding the service quality provided by

⁴ Consumer Groups' Initial Comments at 68. "While the term "performance targets" is not defined, the Consumer Groups interpret this term to mean enforceable reliability performance standards that are applicable to each EDU. The establishment of performance standards that are enforceable and enforced is the most important aspect of this rulemaking proceeding. Recent history in Ohio has clearly demonstrated the need for clearly defined and enforceable reliability performance requirements."

⁵ See *In the Matter of the Petition of Numerous Subscribers of the Seven Mile Exchange of Cincinnati Bell Telephone Company, Complainants, v. Cincinnati Bell Telephone Company, Respondent, Relative to a Request for Two-way, Nonoptional, Extended Area Service Between the Seven Mile and Cincinnati Exchanges of Cincinnati Bell Telephone Company*, Entry on Rehearing (May 20, 1992), 1992 Ohio PUC LEXIS 352, *4-*5.

FirstEnergy, which included the PUCO Staff's consultant's "focused assessment" of CEI that is partly the subject of the Staff Reports in the FirstEnergy Rate Case.⁶ The evidence in the FirstEnergy Rate Case reflected repeated failures to meet reliability targets and the PUCO Staff's resolve issues with FirstEnergy's recordkeeping.

Most importantly for purposes in this case, there was not an opportunity to present this information in the context of how deficiencies in the PUCO's present and proposed rules are leaving Ohioans unprotected from problems with electric service reliability. The results of the Staff's investigations as well as the "assessment" of CEI conducted by an outside consultant were not publicly available until the PUCO Staff made them public through reference in the various Staff Reports filed in the FirstEnergy Rate Case.

The Consumer Groups certainly would have included a discussion of service quality performance by the FirstEnergy distribution companies, particularly that of The Cleveland Electric Illuminating Company ("CEI"), if the PUCO Staff's concerns had been public knowledge during the comment and reply comment period in the above-captioned proceeding. A clear understanding of the breadth of FirstEnergy's service quality problems and how those problems relate to deficiencies in the ESSS was obtained only after a review of the three Staff Reports filed in the case as well as cross-examination of FirstEnergy and Staff witnesses. Therefore, that standard in Rule 34(B) is met.

⁶ *FirstEnergy Rate Case*, CEI Staff Report at 57-80 (December 4, 2007). UMS Group, Inc. was hired as a consultant to review CEI's performance subsequent to the Company's failure to meet its outage-related targets: "The Company also agreed that if it missed any of the interim targets, it would hire a consultant to provide Staff with an independent assessment of CEI's infrastructure and operational practices. The Consultant would also recommend steps CEI could take to improve its CAIDI and SAIFI performance. During 2006, CEI missed all of its interim targets which triggered the hiring of a Consultant. Staff developed a request for proposal and selected UMS Group Inc. (UMS) as consultants to conduct a focused assessment under Staff supervision. UMS began this project on July 2 and issued its report on October 30, 2007." *Id.* at 76.

The other standard in Rule 34(B) is that the movant to reopen must “specifically describe the nature and purpose of such evidence” for supplementing. OCC has met that standard by describing the specific information that the PUCO should accept for supplementing, as described in the following section.

III. THE COMMISSION SHOULD SUPPLEMENT THE RECORD IN THE ESSS CASE WITH THE RELEVANT INFORMATION CONTAINED IN THE RECORD OF THE FIRSTENERGY RATE CASE.

The testimony and cross-examination in the FirstEnergy Rate Case hearing established many of the shortcomings of the existing and proposed ESSS that were previously pointed out by the comments and reply comments of the Consumer Groups in the ESSS Case. Several common themes, pointing out flaws in the ESSS, were evident in the FirstEnergy Rate Case and are discussed below.

A. The Commission should accept supplementation with information that supports ensuring that the ESSS constitute standards and provide consequences for noncompliance.

The existing goals and “targets” in the ESSS should be replaced by meaningful standards coupled with consequences for noncompliance.⁷ The existing ESSS clearly do not require compliance.⁸ In other words, EDUs are not required to actually comply with their stated programs or *hit* the targets set for the companies, as reflected in the cross-examination and examination of FirstEnergy’s witness Susan Lettrich:

Q. I’m just asking. I’m referring you to the ESS rules, specifically Rule 27(E)(1). I believe that’s on page 32 of the standards that I gave you.

⁷ Id. at 3. “The existing and proposed rules pertaining to the reliability of the distribution system, do not constitute standards. At best, they are benchmarks that are negotiated in private with the Commission Staff. The Consumer Groups propose that the Commission adopt actual reliability standards developed with public input. An EDU’s failure to meet these standards should have real and public consequences.”

⁸ Id. at 67. “The Commission should set standards for the EDUs rather than negotiating performance “targets.”

A. Okay. I have found it. What is the question? I'm sorry.

MR. REESE: Can you reread the question, please?

(Record read.)

A. What I see here in my interpretation is that each electric utility shall establish and maintain written programs. It does not reference follow the program, although we strive to follow the program, but that's not what's stated here.

Q. So the rule doesn't require the company to follow its own programs that are filed with the Commission; is that correct?

A. 27(E)(1), that is what -- that is correct.

Q. Now, if the company does not follow its programs and procedures for inspection, maintenance, repair, and replacement, do you consider that a violation of any ESS rule?

A. No, I do not consider that a violation of an ESS rule. I do consider that a violation of our program.

FirstEnergy Rate Case, Tr. Vol. IV at 83-84 (FirstEnergy Witness Lettrich) (February 11, 2008).

EXAMINER PRICE: You're saying that would not violate the Administrative Code provision, if you do not perform a single recloser inspection, even though it was listed in your program that you were going to do it on a quarterly basis; if you failed to do that, you're saying that would not violate the Administrative Code rule.

THE WITNESS: That's correct.

Tr. Vol. IV at 87 (FirstEnergy Witness Lettrich) (February 11, 2008).

Q. So under your interpretation of the appropriate Administrative Code provisions, who gets to determine whether it's sufficient for Ohio Administrative Code compliance? The company? The staff? Can you elaborate?

A. We provide a program, whether it's veg management or it's distribution inspections and maintenance we provide record of our execution, if you will, of that program. And the staff can say "yes" or "no" whether or not they agree that that is sufficient.

Q. And if they say it's not sufficient, does that mean the program -- that FirstEnergy's program is in noncompliance with the Ohio Administrative Code?

A. I wouldn't think so, no.

Tr. Vol. IV at 98 (FirstEnergy Witness Lettrich) (February 11, 2008).

Q. you state that it is not a, quote/unquote, rule violation for an EDU to miss a reliability target; is that correct?

A. Yes, that is correct.

Tr. Vol. VI at 105 (Staff Witness Baker) (February 13, 2008).

OCC submits that the testimony cited above from the FirstEnergy Rate Case proves that the ESSS are not really considered standards at all by some EDUs but are viewed merely as guidelines the EDUs may choose to follow -- or not follow.

In addition to supplementing the record with information that supports implementing enforceable standards, the Commission should also take the opportunity to supplement with information that supports ensuring that any action plan that an EDU files with the Commission is enforceable and that it is made public.⁹ Transparency of the EDUs' action plans and proposed reliability targets are essential to the public interest and

⁹ FirstEnergy Rate Case Tr. Vol. VI at 109 (Staff Witness Baker) (February 13, 2008): "Q. Now, back to the action plan. If a company, in this case Ohio Edison or CEI, fails to meet its reliability targets in any given year, it is then required to file an action plan; is that correct? A. The word "file" is incorrect. It should be submit an action plan. It is not filed in Docketing. Q. So it's submitted, it's not docketed. So this means it's given to the staff for review? A. That is correct."

ensure consumers that they are receiving the level of service that they pay for. Such transparency is woefully lacking within the structure of the current ESSS, as shown in this excerpt of cross-examination:

Q. (By Mr. Reese) Now, Ms. Lettrich, let's move to page 9 of your testimony. Focus specifically for now on lines 6 to 9. You state that those outside of the process unfortunately confuse top and second quartile performance with some sort of minimum standards; is that correct?

A. Yes, that is correct.

Q. So, again, I think we've already covered this, you do not believe that the plans you file in accordance with Rule 10 that conclude targets, you don't believe those are part of any minimum standards.

A. That the targets that we have set for the companies are not minimum standards, that is correct.

Q. Okay. Now, when you refer to these outside the process, are you referring to all parties with the exception of the company and the staff?

A. That is correct.

Q. You consider FirstEnergy's customers to be outside the process?

A. In this context, yes.

Q. So it's really a rather closed process; is that correct? It's just between the staff and the company.

A. Oh, I'm sorry. No, that's not what I -- it's just between the staff and the company?

Q. Yeah. When you make your submission under Rule 10, the only parties involved with that are the staff and the company, correct?

A. Yes, that is correct.

Q. No one else has any influence on those targets, correct?

A. Not as it's described in Rule 10, no.

Tr. Vol. VIII at 89-90 (FirstEnergy Witness Lettrich) (February 22, 2008).

Further, the PUCO should accept supplementing with information that shows an EDU's failure to follow its plan should also be a noncompliance with the ESSS:

The mandates of the rule are merely that the EDUs follow their own plans. The plans are reviewed and basically approved by PUCO Staff. If EDUs are not subject to violation of these plans, how is any enforcement of inspection and maintenance regimes possible?

Consumer Groups' Reply Comments at 45-46.

B. The Commission should accept supplementation with information that supports earlier comments provided to the Commission in this proceeding.

Several of Ohio's electric distribution utilities ("EDUs") repeatedly fail to meet their performance targets set in response to Ohio Adm. Code 4901:1-10-10(B)(2):

Each EDU shall submit performance targets and supporting justification for each service reliability index to the director of the consumer services department or the director's designee. An EDU may revise performance targets (starting with the next succeeding calendar year) by submitting such revisions and supporting justification for such revisions to the director of the consumer services department or the director's designee for review and acceptance. Performance targets should reflect historical system performance, system design, service area geography, and other relevant factors. If the company and director of the consumer services department or the director's designee cannot agree on any target, staff and/or the company may apply, within forty-five days after submission of the performance target, to the commission for a hearing, file a written report and/or recommendations, and submit evidence on such targets at the hearing.

The PUCO should accept supplementation regarding CEI's failure to meet performance targets for reliable service to Ohioans.¹⁰ Year after year, EDUs can fail to meet reliability targets¹¹ yet the targets remain voluntary. The EDU merely submits another plan the following year to explain why it failed to meet its targets and how it intends to meet the targets in the future. Ohio Adm. Code 4901:1-10-10(C)(2). CEI has had the same CAIDI target for 8 years and has failed to meet the target each year:

Q. So with the interim data that we have regarding the performance on the 2007 CAIDI and SAIDI targets for CEI, CEI has failed to meet its CAIDI targets for seven years; is that correct?

A. That would be the seven years referenced in the chart on page 76. It would be eight years if you want to include the preliminary data that we discussed earlier.

Tr. Vol. VI at 113 (Staff Witness Baker) (February 13, 2008).

¹⁰ FirstEnergy Rate Case, Tr. Vol. VI at 110-111 (Staff Witness Baker) (February 13, 2008):

Q. So the staff and the companies discuss what a reasonable target might be for the next year?

A. No, the dialogue is not over the target. The dialogue is over the plan, the action plan. The targets generally stay the same year after year.

Q. Could you explain to me why the targets stay the same each year?

A. ESSS Rule 10(B) requires utilities to submit for staff's review and acceptance proposed targets. They were initially required to do that I believe around year -- prior to year 2000. I don't remember whether it was 1998 or 1999. And staff reviewed those targets and had dialogues with the company and accepted targets, and if a company did not initiate a target change after that date, then those targets would still be in effect.

Q. Does the staff -- if you know, has the staff, since the year 2000, proposed that the company revise its performance targets for SAIFI or CAIDI?

A. Are you asking about a specific company?

Q. Yes; CEI.

A. And the question was have we done what?

Q. Have you recommended that the company adopt revised SAIFI or CAIDI targets since the year 2000, if you know?

A. No, we have not.

¹¹ The reliability targets at issue in the FirstEnergy Rate Case are the System Average Interruption Frequency Index ("SAIFI") and the Customer Average Interruption Duration Index ("CAIDI") that measure the frequency and duration of outages respectively.

Despite the repeated failure of some of Ohio's EDUs to deliver reliable service to their customers, as measured by the targets negotiated with the Staff, the outage targets of the EDUs remain voluntary.¹² The reliability targets are meaningless if they remain voluntary. The Commission must adopt standards in lieu of targets.¹³

The adoption of enforceable standards rather than targets is the only way for the Commission to ensure that consumers are receiving the minimum quality of service that they pay for in rates. Certain EDUs do not consider the ESSS to constitute minimum standards.¹⁴ The Commission must ensure that the ESSS constitute minimum standards and that consumers can depend on the reliability of the distribution system.¹⁵

IV. CONCLUSION

Customers of Ohio's electric distribution utilities are affected when the power goes out. These customers suffer inconvenience and incur costs from these outages. With today's increased use of electronics, reliability of the power supply is all the more important and unreliability can be all the more disruptive and costly for Ohioans. The Commission should supplement the record of this case with this Motion to Reopen that

¹² OCC is aware through docketed Staff Reports that certain of the FirstEnergy operating companies, as well as AEP, have routinely failed to meet their reliability targets in recent years. However, since the performance of other EDUs in meeting the reliability targets is not publicly filed, OCC does not know if other EDUs are meeting outage targets.

¹³ Consumer Groups' Initial Comments at 3, 67.

¹⁴ FirstEnergy Rate Case Rebuttal Testimony of Susan Lettrich, February 20, 2008 at 8. "Q. Do you believe the targets of CEI or Ohio Edison represent minimum standards for reliable service? A. Absolutely not. . . ."

¹⁵ In re the Commission's Promulgation of Amendments to the Electric Service and Safety Standards Pursuant to Chapter 4928, Revised Code, Case No. 99-1613-EL-ORD, Finding and Order (April 7, 2000) at 17. "However, the electric utilities are put on notice that should the Commission determine that the equipment and/or facilities of any electric utility are inadequately maintained or repaired, the Commission shall initiate an investigation and may implement more prescriptive inspection, maintenance, repair and replacement standards to ensure the development of electric competition, reliable and safe service for Ohio's consumers and to protect the integrity of the electric system and the power grid."

contains important information and related recommendations which could not have been provided during the earlier comment period and should be considered by the PUCO for creating rules that consist of effective electric service and safety standards with transparent regulatory processes for electric service to Ohioans. In the interest of protecting Ohio consumers, OCC's Motion to Reopen should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Reopen was served by first class United States Mail, postage prepaid, to the persons listed below, on this 25th day of March, 2008.



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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

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In the Matter of the :
Application of Ohio Edison :
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case Nos. 07-551-EL-AIR
Authority to Increase : 07-552-EL-ATA
Rates for Distribution : 07-553-EL-AAM
Service, Modify Certain : 07-554-EL-UNC
Accounting Practices, and :
For Tariff Approvals. :

PROCEEDINGS

before Ms. Kimberly W. Bojko and Mr. Gregory Price,
Hearing Examiners, at the Public Utilities Commission
of Ohio, 180 East Broad Street, Room 11-C, Columbus,
Ohio, called at 9:30 a.m. on Monday, February 11,
2008.

VOLUME IV

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1 annual plan that's filed March 31st of every year?

2 A. If we have an update.

3 Q. If you have an update.

4 A. If we have an update to our program, then
5 we provide it in that March 31st annual report.

6 Q. So if -- strike that. Let's move on.

7 In the context of Rule -- ESS Rule
8 27(E)(1), isn't it true that the Ohio Administrative
9 Code requirements are for the company to follow its
10 own programs and procedures for inspection,
11 maintenance, repair, and replacement?

12 A. Where are you at? I'm sorry.

13 Q. I'm just asking. I'm referring you to
14 the ESS rules, specifically Rule 27(E)(1). I believe
15 that's on page 32 of the standards that I gave you.

16 A. Okay. I have found it. What is the
17 question? I'm sorry.

18 MR. REESE: Can you reread the question,
19 please?

20 (Record read.)

21 A. What I see here in my interpretation is
22 that each electric utility shall establish and
23 maintain written programs. It does not reference
24 follow the program, although we strive to follow the

1 program, but that's not what's stated here.

2 Q. So the rule doesn't require the company
3 to follow its own programs that are filed with the
4 Commission; is that correct?

5 A. 27(E)(1), that is what -- that is
6 correct.

7 Q. Now, if the company does not follow its
8 programs and procedures for inspection, maintenance,
9 repair, and replacement, do you consider that a
10 violation of any ESS rule?

11 A. No, I do not consider that a violation of
12 an ESS rule. I do consider that a violation of our
13 program.

14 Q. And it is true that the company's free to
15 file revisions to its programs annually; is that
16 correct?

17 A. Yes.

18 Q. Let's move to page 6 of your testimony.

19 EXAMINER PRICE: One minute. In (E)(1)
20 it says these programs shall establish preventive
21 requirements. You're saying there's a requirement,
22 that you don't have to follow it; it's a requirement
23 advisory in that sense?

24 THE WITNESS: No, I'm saying that it says

1 You have to answer my questions.

2 THE WITNESS: Okay.

3 EXAMINER PRICE: You're saying that would
4 not violate the Administrative Code provision, if you
5 do not perform a single recloser inspection, even
6 though it was listed in your program that you were
7 going to do it on a quarterly basis; if you failed to
8 do that, you're saying that would not violate the
9 Administrative Code rule.

10 THE WITNESS: That's correct.

11 EXAMINER PRICE: Thank you.

12 EXAMINER BOJKO: I guess then are you
13 saying that your programs are targets and that the
14 only ones that you're required to meet are those to
15 maintain safe and reliable service? Is that what
16 you're saying?

17 THE WITNESS: No. I am not saying that
18 they are strictly targets. We make every effort to
19 perform and achieve, follow our programs, but what
20 you're asking me is in this 27 do I read -- is it my
21 interpretation that this 27(E)(1) indicates that we
22 have to follow the program.

23 We do follow the program, and I don't
24 want it to sound as though we don't, we absolutely

1 maintained year and the next scheduled year, and that
2 has been sufficient up to a certain point when the
3 staff asked can we start providing start and end
4 dates or can we provide start and end dates.

5 Q. So under your interpretation of the
6 appropriate Administrative Code provisions, who gets
7 to determine whether it's sufficient for Ohio
8 Administrative Code compliance? The company? The
9 staff? Can you elaborate?

10 A. We provide a program, whether it's veg
11 management or it's distribution inspections and
12 maintenance we provide record of our execution, if
13 you will, of that program. And the staff can say
14 "yes" or "no" whether or not they agree that that is
15 sufficient.

16 Q. And if they say it's not sufficient, does
17 that mean the program -- that FirstEnergy's program
18 is in noncompliance with the Ohio Administrative
19 Code?

20 A. I wouldn't think so, no.

21 Q. Since FirstEnergy -- each of the
22 FirstEnergy operating companies -- let me rephrase
23 that.

24 Do each of the FirstEnergy operating

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 : Case Nos. 07-551-EL-AIR
 Authority to Increase : 07-552-EL-ATA
 Rates for Distribution : 07-553-EL-AAM
 Service, Modify Certain : 07-554-EL-UNC
 Accounting Practices, and :
 For Tariff Approvals. :

PROCEEDINGS

before Ms. Kimberly W. Bojko and Mr. Gregory Price,
 Hearing Examiners, at the Public Utilities Commission
 of Ohio, 180 East Broad Street, Room 11-C, Columbus,
 Ohio, called at 10:00 a.m. on Wednesday, February 13,
 2008.

VOLUME VI

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1 reliability targets for SAIFI and CAIDI in 2007?

2 A. Based on the preliminary data request
3 response, it appears that CEI did not meet its SAIFI
4 and SAIDI requirement targets.

5 Q. And those were with the same caveats that
6 Mr. Roberts gave earlier today, they were preliminary
7 and unadjusted.

8 A. Yes.

9 Q. But if they were to remain unchanged,
10 they would not have achieved their targets, correct?

11 A. Correct.

12 Q. And that's specific to CEI.

13 A. Yes.

14 Q. Thank you. Mr. Baker, I'll be moving
15 around a little bit between the testimony and the
16 rules. I'll try to take my time so neither one of us
17 gets confused. In your prefiled testimony,
18 specifically regarding question 14 on page 5 of your
19 testimony --

20 A. Yes.

21 Q. -- you state that it is not a,
22 quote/unquote, rule violation for an EDU to miss a
23 reliability target; is that correct?

24 A. Yes, that is correct.

1 A. That provision has only been in existence
2 since January 1st, 2004. I'm not sure what -- at
3 this point what other provisions also became
4 effective on that date.

5 Q. Okay. But there have been targets under
6 the ESSS for CEI and Ohio Edison since 2000.

7 A. Yes.

8 Q. Now, back to the action plan. If a
9 company, in this case Ohio Edison or CEI, fails to
10 meet its reliability targets in any given year, it is
11 then required to file an action plan; is that
12 correct?

13 A. The word "file" is incorrect. It should
14 be submit an action plan. It is not filed in
15 Docketing.

16 Q. So it's submitted, it's not docketed. So
17 this means it's given to the staff for review?

18 A. That is correct.

19 Q. Let's take this out several years. So if
20 there's an action plan in 2005 submitted to the staff
21 on March 31st, I believe, if there's an action plan
22 submitted with a proposal, if you will, of how the
23 company is going to achieve its performance targets
24 for the following year, and the company doesn't

1 achieve its targets and files another action plan
2 proposing how it will meet its performance targets
3 for that year, and then we go on and on, is there any
4 point at which there's a noncompliance with either
5 the rule or the company's plan if it fails to meet a
6 reliability target?

7 A. Would you repeat the question?

8 MR. REESE: Can you read that back for
9 me, please?

10 (Record read.)

11 A. I believe what's supposed to happen is
12 that when an action plan is submitted, the staff
13 reviews the action plan for sufficiency, and if the
14 staff does not believe that the action plan is
15 sufficient, then the staff will bring that to the
16 company's attention and a dialogue should begin on
17 improving that plan.

18 Q. So the staff and the companies discuss
19 what a reasonable target might be for the next year?

20 A. No, the dialogue is not over the target.
21 The dialogue is over the plan, the action plan. The
22 targets generally stay the same year after year.

23 Q. Could you explain to me why the targets
24 stay the same each year?

1 A. ESSS Rule 10(B) requires utilities to
2 submit for staff's review and acceptance proposed
3 targets. They were initially required to do that I
4 believe around year -- prior to year 2000. I don't
5 remember whether it was 1998 or 1999. And staff
6 reviewed those targets and had dialogues with the
7 company and accepted targets, and if a company did
8 not initiate a target change after that date, then
9 those targets would still be in effect.

10 Q. Does the staff -- if you know, has the
11 staff, since the year 2000, proposed that the company
12 revise its performance targets for SAIFI or CAIDI?

13 A. Are you asking about a specific company?

14 Q. Yes; CEI.

15 A. And the question was have we done what?

16 Q. Have you recommended that the company
17 adopt revised SAIFI or CAIDI targets since the year
18 2000, if you know?

19 A. No, we have not.

20 Q. Now, I believe there was something in the
21 CEI Staff Report, I believe it's at the bottom of
22 page 76, yeah, 76 of the CEI Staff Report.

23 A. I have it.

24 Q. There's some discussion there that there

1 Q. And the company failed to meet those more
2 lenient targets; is that correct?

3 A. Yes, that is correct.

4 Q. And that's part of the reason that the
5 UMS consultant was hired?

6 A. Yes. As a part -- part of the action
7 plan was a commitment that if they did miss the
8 interim targets, that they would hire a consultant.

9 Q. So with the interim data that we have
10 regarding the performance on the 2007 CAIDI and SAIDI
11 targets for CEI, CEI has failed to meet its CAIDI
12 targets for seven years; is that correct?

13 A. That would be the seven years referenced
14 in the chart on page 76. It would be eight years if
15 you want to include the preliminary data that we
16 discussed earlier.

17 Q. Thank you.

18 Now going back to 10(B)(2) that you
19 referenced earlier regarding the EDU submitting
20 targets and supporting justification, reading further
21 down in 10(B)(2), isn't it true that if the company
22 cannot agree on specific targets, that the company
23 can request a hearing from the Commission, file a
24 written report and/or recommendations, and submit

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2 - - -

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14 - - -

10 PROCEEDINGS

11 before Ms. Kimberly W. Bojko and Mr. Gregory Price,
12 Hearing Examiners, at the Public Utilities Commission
13 of Ohio, 180 East Broad Street, Room 11-C, Columbus,
14 Ohio, called at 9:00 a.m. on Friday, February 22,
15 2008.

17 VOLUME VIII

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1 any judgment as to how CEI's performance stacks up
2 against the rest of the industry. It might be much
3 better, it might be much worse, we just don't know
4 because the exclusions are different. I mean,
5 because the means of measuring are different; isn't
6 that the case?

7 THE WITNESS: That's right, I would agree
8 with that, your Honor.

9 EXAMINER PRICE: Thank you.

10 Thank you, Mr. Reese.

11 Q. (By Mr. Reese) Now, Ms. Lettrich, let's
12 move to page 9 of your testimony. Focus specifically
13 for now on lines 6 to 9. You state that those
14 outside of the process unfortunately confuse top and
15 second quartile performance with some sort of minimum
16 standards; is that correct?

17 A. Yes, that is correct.

18 Q. So, again, I think we've already covered
19 this, you do not believe that the plans you file in
20 accordance with Rule 10 that conclude targets, you
21 don't believe those are part of any minimum
22 standards.

23 A. That the targets that we have set for the
24 companies are not minimum standards, that is correct.

1 Q. Okay. Now, when you refer to those
2 outside the process, are you referring to all parties
3 with the exception of the company and the staff?

4 A. That is correct.

5 Q. You consider FirstEnergy's customers to
6 be outside the process?

7 A. In this context, yes.

8 Q. So it's really a rather closed process;
9 is that correct? It's just between the staff and the
10 company.

11 A. Oh, I'm sorry. No, that's not what I --
12 it's just between the staff and the company?

13 Q. Yeah. When you make your submission
14 under Rule 10, the only parties involved with that
15 are the staff and the company, correct?

16 A. Yes, that is correct.

17 Q. No one else has any influence on those
18 targets, correct?

19 A. Not as it's described in Rule 10, no.

20 Q. And those outside of the process don't
21 know what the targets are, do they?

22 A. I do not know if they know what the
23 targets are.

24 Q. Well, they're submitted to the staff,