

FILE

**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 a Rider for the Collection of RTO Costs and Transmission and Ancillary Service Costs and Authority to Modify their Accounting Procedures.)	Case No. 04-1932-EL-ATA
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approvals.)	Case No. 05-1125-EL-ATA Case No. 05-1126-EL-AAM Case No. 05-1127-EL-UNC

RECEIVED-DOCKETING DIV
2009 MAY -2 AM 9:34
PUCO

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MOTION TO ENFORCE THE STIPULATIONS
AND MEMORANDUM IN SUPPORT**

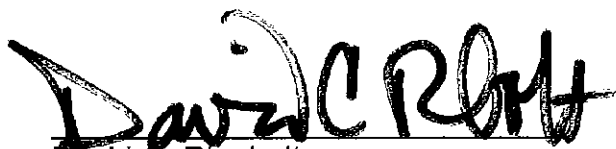
Ohio Partners for Affordable Energy ("OPAE"), a signatory party to two stipulations and recommendations filed in the above-captioned cases, hereby moves that the Public Utilities Commission of Ohio ("Commission") enforce the stipulations and recommendations approved by the Commission in these cases filed by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("Companies"). OPAE is a signatory party to the stipulation filed January 31, 2007 in Case No. 04-1932-EL-ATA, which the Commission approved with no relevant modifications in its Finding and Order on February 14, 2007. OPAE is also a signatory party to the supplemental stipulation filed November 4, 2005 in Case

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Amw Date Processed 5/2/08

No. 05-1125-EL-ATA, et al., which the Commission also approved with no relevant modifications in its Opinion and Order dated January 4, 2006.

In both stipulations, the Companies agreed that OPAE will be the designated agency to administer \$1,500,000 of a Home Performance with Energy Star® ("HPES") demand side management ("DSM") Program. The Companies have not honored their agreement set forth in the stipulations, which the Commission approved. Therefore, OPAE respectfully moves this Commission to order the Companies to honor the terms of their agreement. The reasons for this motion to enforce the stipulations are set forth in the attached memorandum in support.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Rinebolt". The signature is stylized with a large, looped "D" and a cursive "Rinebolt".

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
419-425-8860 – Phone
419-425-8862 – FAX
e-mail: DRinebolt@aol.com

**On Behalf of Ohio Partners for
Affordable Energy**

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MEMORANDUM IN SUPPORT**

On April 27, 2006, the Companies made a tariff filing in Case No. 04-1932-EL-ATA for approval to adjust their transmission and ancillary service riders. On January 31, 2007, a stipulation and recommendation was docketed in Case No. 04-1932-EL-ATA to resolve all pending issues in the April 27, 2006 tariff filing. The January 31, 2007 stipulation also resolved concerns among some of the parties regarding implementation of the Supplemental Stipulation approved by the Commission as part of a package in Case No. 05-1125-EL-ATA, et al. Specifically, in the January 31, 2007 stipulation, the Companies agreed that the Supplemental Stipulation filed in Case No. 05-1125-EL-ATA, et al., shall remain in full force and effect in the same form and with the same signatory parties as existed when it was executed and filed in those cases on November 4, 2005. The Supplemental Stipulation was to be implemented immediately in its entirety.

Among the provisions of the Supplemental Stipulation that was to be implemented immediately in its entirety was Paragraph 2, which states that "OPAE will be the designated agency to annually administer¹ \$500,000 of the

¹ The definition of 'administer' is as follows:

1. to manage (affairs, a government, etc.); have executive charge of: *to administer the law.*

6. to contribute assistance; bring aid or supplies (usually fol. by to): *to administer to the poor.*

Dictionary.com Unabridged (v 1.1)

Based on the Random House Unabridged Dictionary, © Random House, Inc. 2006.

<http://dictionary.reference.com/browse/administer>

Home Performance Energy Star DSM program amounts provided for in Paragraph 3 for the years 2006, 2007, and 2008.” *Supplemental Stipulation*, Case No. 05-1125-EL-ATA, et al., (November 4, 2005) at 1. The Supplemental Stipulation also states that “[p]ayments will be made to OPAE upon receipt of documentation that funds have been spent under the appropriate parameters of this Energy Star program. OPAE may charge up to 3% of the annual amount actually paid as an administrative fee that will be included as part of the program costs.” *Id.*

The Supplemental Stipulation also set the funding level at \$1,250 per customers, generally the upper level of the per unit cost expended under the Community Connections Program. The next paragraph discusses funding for appliance replacements for customers who are tenants. This reflects the current policy of the Community Connections Program. OPAE has previously suggested to FirstEnergy that replacing landlord-owned appliances with Program funds also achieves the program goal of reducing customer energy bills in a cost-effective manner; in either case the customer is the one paying the bill. The provisions speak directly to continuing an ongoing discussion related to the existing Community Connections Program.

The Case No. 04-1932-EL-ATA January 31, 2007 stipulation affirms that, as contemplated in Paragraph 2 of the Supplemental Stipulation, OPAE will continue to be the designated agency to administer a total of \$1.5 million of the Home Performance with Energy Star DSM program funding. *Stipulation* at 7. The Commission approved the January 31, 2007 stipulation in its Finding and

Order in Case No. 04-1932-EL-ATA on February 14, 2007, at 5, 8. This stipulation explicitly states that the Supplemental Stipulation remains in full force and will be implemented immediately and in its entirety.

The Companies are now reneging on the commitment made to OPAE without cause. Recent testimony in Case No. 07-551-EL-AIR *et seq.*, confirms that FirstEnergy has failed to enter into a contract to provide OPAE with the funding committed under the two stipulations and approved by the Commission despite the fact that the \$1.5 million “was earmarked out of the dollars associated with the Home Performance with Energy Star to go to the OPAE customers.”²

The primary elements of the Home Performance with Energy Star are straightforward: (1) a whole-house energy assessment; (2) a network of qualified contractors to improve home performance; (3) verification inspection; (4) independent review of contractors’ work; and, (5) data collection and evaluation.³ There is no doubt that the existing Community Connection Program designed by FirstEnergy as administered by OPAE and delivered by its member agencies meets the requirements of Home Performance with Energy Star.

Agencies delivering the Community Connections Program conduct a whole-house audit using tools approved by the U.S. Department of Energy and the Ohio Department of Development. The audit/inspection creates a

² Case No. 07-551-EL-AIR *et seq.*, Transcript Vol. IX at 81.

³ Supplemental Stipulation at 2, subsection (b)(i). See also, http://www.energystar.gov/index.cfm?c=home_improvement.hpwes_sponsors_about. The Home Performance with Energy Star Program is not prescriptive. Any company or organization can develop a program and apply for Energy Star designation, so long as it meets the criteria established by the Environmental Protection Agency. OPAE has never bothered with the paperwork because Energy Star is primarily a branding tool to stimulate sales of efficiency equipment and services. The waiting list for our services belies the need for branding to effectively deliver energy efficiency.

comprehensive list of recommended improvements which are explained to the customer. OPAE's network of nonprofits and their contractors have been weatherizing homes for over twenty-five years. Employees and contractors are certified and regularly recertified under training requirements issued by the Ohio Department of Development. Training is provided by the Corporation for Appalachian Development, which was hired to provide training for the portion of the Home Performance with Energy Star managed by FirstEnergy's contractor ICF, Inc. OPAE members deliver comprehensive services because they must combine Community Connections Program funding with other weatherization and efficiency program funding. Program costs average \$873.58 per unit with \$1,985 per unit leveraged from other weatherization and housing programs. Agency inspectors review the work done by in-house crews and contractors. An appropriate sample is re-inspected by State monitors and/or program monitors. Customer consumption data pre- and post- retrofits are available from existing reports and through consumption data in the hands of FirstEnergy to permit program evaluation. The program meets every Energy Star criteria.

By comparison, the portion of the program administered by ICF, Inc., an out-of-state for-profit company, has delivered little if anything in the year since the program was initiated. Testimony by Company Witness Oullette in the rate case could not say how many customers have been served by the program, though he did allow that only about \$1 million of the \$10 million allocated had been spent since the Commission issued a second Finding and Order

authorizing the program in Case No. 04-1132 on February 14, 2007.⁴ OCC Witness Gonzalez noted that few if any customers have been served despite the \$1 million outlay.⁵ The Companies only recently began advertising the program, but in the last year have qualified a paltry 11 contractors to provide service to its 1.1 million customers. OPAE members work with over certified 100 contractors in the FirstEnergy service territories.

The stipulations clearly provide that OPAE will receive \$1.5 million in funding, administer the program, and deliver services to FirstEnergy's low-income customers. This is the agreement among the parties, including OPAE, OCC, and the Companies, which has been twice approved by the Commission.

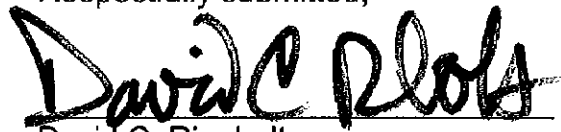
The remedy required is simple and straightforward. The Commission should order FirstEnergy to execute a contract with OPAE for the full \$1.5 million within the next 15 days. The contract should provide 30 percent of the funding as an advance to ensure OPAE can meet the timeframe for expending the money approved by the Commission rulings. These prescriptive terms are necessary. Because FirstEnergy has failed to live up to its commitments as ordered by this Commission, 1,665 households struggling to pay their energy bills will not receive assistance.

Wherefore, OPAE respectfully requests that the Commission grant this motion and order the Companies to honor the stipulated, Commission-approved agreements by entering into a contract per the terms referenced above.

⁴ Case No. 07-551-EL-AIR *et seq*, *Transcript Vol. IX* at 81.

⁵ *Id.*, *Transcript Vol. V* at 151.

Respectfully submitted,

A handwritten signature in black ink that reads "David C Rinebolt". The signature is written in a cursive, slightly slanted style.

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
419-425-8860 – Phone
419-425-8862 – FAX
e-mail: DRinebolt@aol.com

**On Behalf of Ohio Partners for
Affordable Energy**

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Enforce the Stipulations and Memorandum in Support was served upon the parties of record identified below on this 2nd day of May, 2008.



David C. Rinebolt
Counsel for Ohio Partners for Affordable Energy

PARTIES

James Burk
FirstEnergy Service Co.
76 South Main Street
Akron, Ohio 44308
Cincinnati, Ohio 45201-0960

Jeffrey Small
Office of the Consumers' Counsel
10 W. Broad Street, 18th Floor
Columbus, Ohio 43215
small@occ.state.oh.us

Daniel J. Neilsen
McNees, Wallace & Nurick
21 East State Street
Columbus, Ohio 43215
dneilsen@mwncmh.com

Richard L. Sites
Ohio Hospital Association
155 East Broad St. 15th Floor
Columbus, Ohio 43215-3620

Thomas McNamee
Attorney General's Office
Public Utilities Section
Columbus, Ohio 43215-3793
Thomas.McNamee@puc.state.oh.us

Glenn Krassen
Brickler & Eckler LLP
1375 East Ninth Street, Se. 1500
Cleveland, Ohio 44115

Howard Petricoff
Vorys, Sater, Seymour & Pease
52 East Gay Street
Columbus, Ohio 43216-1008
mhpetricoff@vssp.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 E. Seventh Street, Se. 1510
Cincinnati, Ohio 45202

Barth Royer
Bell, Royer & Sanders
33 South Grant Avenue
Columbus, Ohio 43215
broyer@brscolaw.com

Joseph P. Meissner
Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, Ohio 44133

Robert N. Fronek
Local 270, UWUA, AFL-CIO
1205 Chester Avenue
Cleveland, Ohio 44103

Rick C. Giannantonio
FirstEnergy Service Company
16 South Main Street
Akron, Ohio 44308

Trent A. Dougherty
Ohio Environmental Counsel
1207 Grandview Avenue, Se. 201
Columbus, Ohio 43212

Lance M. Keiffer
Counsel for Lucas County
Commissioners
111 Adams Street, 2nd Floor
Toledo, OH 43624-1680

James E. Moan
Counsel for City of Sylvania
1930 Holland-Sylvania Road
Sylvania, Ohio 43560

William M. Ondrey Gruber
2714 Leighton Road
Shaker Heights, Ohio 44120

Carl Word
Utility Workers Union of America
10103 Live Oak Avenue
Cherry Valley, CA 02223

Sheilah H. McAdams
Counsel for City of Maumee
Marsh & McAdams
204 West Wayne Street
Maumee, Ohio 43537

Brian S. Goldberg
Counsel for Village of Oregon
6800 West Central Avenue
Toledo, Ohio 43617-1135

Paul Skaff
Counsel for Village of Holland
Leatherman, Witzler, Dombey
353 Elm Street
Perrysburg, Ohio 43551

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291

Marvin J. Resnik
American Electric Power Service
Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215

Brian J. Ballenger
Counsel for Village of Northwood
Ballenger & Moore
3401 Woodville Road, Suite C
Northwood, Ohio 43618

Peter D. Gwyn
Counsel for Village of Perrysburg
110 West Second Street
Perrysburg, Ohio 43551

Stephen L. Huntoon
FPL Energy Power Marketing, Inc.
801 Pennsylvania Ave, N.W.
Suite 220
Washington, D.C. 20004