

FILE



The
Legal Aid Society
of Cleveland
Since 1905

FAX

PUCO

2008 MAY 14 PM 3:05

RECEIVED-DOCKETING DIV

May 14, 2008

Joseph P. Meissner
Phone: 216.861.5672
Fax: 216.575.6209
jpmcissn@lasclev.org

TO: Commissioners of the Public Utilities Commission of Ohio,
Other Parties to these Proceedings, and Docketing at PUCO

SUBJECT: "Ohio Partners for Affordable Energy's Motion to Enforce the
Stipulation
and Memorandum in Support" in PUCO Cases Numbered 04-1932-EL-ATA, 05-
1125-EL-ATA, 05-1126-EL-AAM, and 05-1127-EL-UNC

Dear Commissioners:

We request that Docketing include this letter in the file of the above listed cases. We are also sending this letter to all parties involved in these proceedings which includes the utility companies themselves.

We understand that the Ohio Partners for Affordable Energy (OPAE) has filed a Motion to enforce certain stipulations in the above cited cases. The enforcement regards the payment of \$1,500,000.00 to be administered by OPAE for the Home Performance with Energy Star ("HPES") demand side management program. OPAE was a signatory to stipulations in the above cases. An agreement was reached among the parties and was approved by the Commission in the form of a Stipulation Agreement. The utility companies which are part of FirstEnergy have failed to abide by the terms of the Stipulated Agreement. OPAE seeks Commission action to enforce the Agreement.

Our clients, the Citizens Coalition, composed of the Empowerment Center of Greater Cleveland, Consumers for Fair Utility Rates, and the Neighborhood Environmental Coalition, join together in support of the Motion filed by OPAE.

We urge the PUCO to insure that the involved electric utility companies carry out their responsibilities contained in the Agreement. We urge this based upon the following reasons:

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 TM Date Processed 5/14/2008

Cuyahoga County
& ADMINISTRATIVE OFFICES
1223 West Sixth Street
Cleveland, OH 44113
Phone: 216.687.1900
Toll-Free: 888.817.3777
Fax: 216.687.0779

Ashland County
121 East Walnut Street
Jefferson, OH 44047
Phone: 440.576.8120
Toll-Free: 866.873.9665
Fax: 440.576.3021

Lake & Geauga Counties
8 North State Street
Suite 300
Painesville, OH 44077
Phone: 440.352.6200
Toll-Free: 888.808.2800
Fax: 440.352.0015

Lorain County
538 West Broad Street
Suite 300
Elyria, OH 44035
Phone: 440.323.8240
Toll-Free: 800.444.7348
Fax: 440.323.8526

www.lasclev.org

Letter to _____, 5/14/2008, Page 2 of 3

First, the amount, while significant for low income families and advocacy groups such as OPAC--is relatively minor for the utility companies which as part of FirstEnergy had overall net earnings of some \$800 million in 2005, and approximately \$1.2 billion in each of 2006 and 2007. It is hard to see how these First Energy affiliates could plead any kind of hardship or lack of funding which would prevent their carrying out their Agreement.

Second, although the stipulated amount of money compared to the finances of these utility companies is relatively small, these funds do provide important and essential services which can help many poor and vulnerable families. These families are sometimes composed of seniors trying to live on limited budgets, single mothers struggling with raising a family, and other similarly situated low-income households. These various DSM and energy programs can help such families cut down on their enormous utility bills. These savings may mean the difference between being able to afford necessary medicines or not, being able to provide adequate food, paying for necessary school supplies and expenses, and taking care of a dozen other necessities in the budgets of the poor. When these utility companies fail to carry out their agreements to provide such funding, they are hurting the families and children in our society. At the same time, since these companies have not filed any complaints or motions of their own regarding these proceedings, it can be presumed they received and enjoyed their bargained for benefits from the Stipulations. This leads to the question: does it seem honorable, legal, and ethical to take the benefits of this Stipulation, but then fail to carry out one's obligations and commitments? While there is a question mark at the end of that sentence, it hardly seems likely that is necessary in order to understand this concern.

Third, the failure of the utility companies to carry out their Agreements also undermines the stipulation process which is so essential for the efficient and timely functioning of the PUCO. The stipulation process is built on trust by all the parties that the signatories are honorable people who stand by their word. Parties in a proceeding would never enter into stipulations which include much time-consuming work and consumption of scarce resources if they feared that the other signatories would not abide by their word. Every case would then have to be "litigated all the way," using up the valuable time and resources of the Commission. Extensive legal resources would be expended by all, especially the Commission, but to no avail. By enforcing the relevant stipulations in these cases, the Commission is actually upholding its own authority and legal procedures.

Fourth, the Commission itself approved the stipulations involved in these cases. When a party fails to carry out its obligations, this is an attack upon the authority and credibility of the Commission itself. Unless there is some reasonable explanation or excuse, when a party neglects or purposely fails to meet its commitment under a stipulation, that party is treating the Commission and the Commissioners with contempt.

We therefore urge the Commission to enforce the pertinent stipulations and require the involved companies to pay the \$1.5 million for OPAC to administer. If the utility companies still refuse to meet their obligations within a reasonable time, we suggest that further sanctions be taken against these companies, such as denying any requests now pending before the Commission from these companies including those for any rate increases. Utility companies that do not meet their voluntarily-undertaken obligations do not come with "clean hands" and "clean

Letter to _____, 5/14/2008, Page 3 of 3

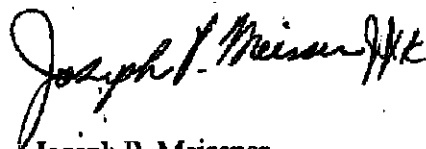
hearts" before the Commission. Such rogue utility companies have no right to expect their requests for relief be met when they deny relief to other parties.

Finally, there are provisions in the Ohio Revised Code which provide for a triple penalty in certain cases of wrongdoing as well as other monetary penalties. Please look at O.R.C. Sections 4905.54, 4905.55, 4905.56, 4905.61, 4905.64, and 4905.73. We would request that the Commission consider these provisions and examine whether these pertain to the actions of the utility companies, their executives and directors, and their legal counsel. To the extent these are relevant and pertinent, we urge the Commission to require the utility companies to pay triple the \$1.5 million or a total of \$4.5 million to be administered by OP&E in order to help the low-income and vulnerable families who need these programs.

We look forward to hearing from you. If there is any way our offices can assist the PUCO, in these proceedings, please let us know.

Thank you for time and attention to this.

Respectfully submitted,



Joseph P. Meissner
Attorney at Law

Counsel for the Citizens' Coalition