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DOCKETING DIVISION  
Public Utilities Commission of Ohio

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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

REPLY MEMORANDUM OF  
OHIO PARTNERS FOR AFFORDABLE ENERGY

Ohio Partners for Affordable Energy ("OPAE") hereby files this Reply to the Memorandum Contra filed by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively "FirstEnergy" or "the Companies") on May 16, 2008, opposing OPAE's Motion requesting enforcement of the stipulations in the above-referenced cases. OPAE is a signatory party to the Supplemental 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 Stipulation filed November 4, 2005 in Case 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.

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There are two issues before the Commission in these matters. The first is to divine the intentions of the parties regarding \$1.5 million in additional funding for the Community Connections Program, a low-income energy efficiency program operated by OPAE for FirstEnergy. The second is to ensure that ratepayer funds are spent effectively to help low-income customers better afford their utility bills, thereby reducing costs associated with bad debt and the Percentage Income Payment Plan.

There is no dispute regarding the effectiveness of the Community Connections Program in reducing the electric bills of consumers receiving services under the program. Comparable programs operated by the same agencies delivering services under Community Connections show energy reductions of between 12 and 18%, depending on usage. In addition, funding from the program has leveraged \$2.27 from other programs for every dollar spent through Community Connections.

There is no dispute regarding the efficiency of OPAE's management of the program. OPAE's administrative cost is roughly 3%, far less than the administrative costs of the balance of the Home Performance with Energy Star® ("HPES") program overseen by FirstEnergy. OPAE has received an unqualified opinion from independent auditors during the four years it has operated the program; it has received an unqualified opinion for the twelve years it has existed. FirstEnergy has not complained about any problems including failure to provide timely reports. The Companies have not questioned any expenditure.

The Stipulations both make it clear that the Office of the Ohio Consumers' Counsel ("OCC"), the Companies, and OPAE agreed that OPAE would be the designated agency to administer \$1,500,000 of a Home Performance with Energy

Star® ("HPES") demand side management ("DSM") Program. OPAE had made it clear to all parties that it intended to use the money to expand the existing Community Connections Program. Community Connections is a mature program which complies with HPES requirements. Simple logic dictates that OPAE sought the funding to mitigate the impacts of the rate increases sought by the Companies, resulting in a balanced outcome the Commission could approve. OCC, the other party to the Stipulation, confirms this view in the Memorandum in Support filed in these dockets on May 9, 2008. When two of the three parties agree on the meaning of a stipulation, then one of the three disagreeing must be wrong.<sup>1</sup>

The Companies have not honored the agreement set forth in the stipulations approved by the Commission. Whether FirstEnergy has pursued this course of action (or inaction) in a fit of pique, unhappiness with the positions taken by OPAE in other cases or forum, or another reason is speculative and not relevant to whether or not stipulations approved by the Commission should be enforced. Two of the three parties to the agreement share an interpretation of the agreement that the funding should be administered by OPAE and utilized to provide services through the Community Connections Program to roughly 1,600 additional clients. FirstEnergy should be held to the agreements it executed.

The Companies' Memorandum Contra simply ignores the points raised by OPAE in its Motion to Enforce the Stipulations. The per customer funding level in the stipulations is consistent with that used in the Community Connections

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<sup>1</sup> FirstEnergy Witness Oullette apparently agrees with the interpretation of OPAE and OCC. Under cross-examination in Case No. 07-551, *et seq.*, Transcript Vol. IX at 81, "It (the \$1.5 million) was earmarked out of the dollars associated with the Home Performance with Energy Star to go to the OPAE customers."

Program. The Stipulations establish a process for altering policy on funding for appliance replacements for customers who are tenants. The balance of the HPES Program implemented by FirstEnergy does not fund appliance replacements; it only provides rebates. The Companies even ignore the simple meaning of the word 'administer.' The Companies fail to dispute that Community Connections complies with the requirements for an HPEA Program: (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.<sup>2</sup>

FirstEnergy attempts to redefine OPAE's role from the administrator to a contractor.<sup>3</sup> The Companies claim that once their hired consultant designed an entirely new program, OPAE was bound by that program design. Yet it is ludicrous to expect that OPAE would have signed a stipulation providing it with \$1.5 million to administer a program that did not yet exist.<sup>4</sup> All parties understood that Community Connections already complied with HPES requirements. All the Companies had to do was submit paperwork to the Environmental Protection Agency so that FirstEnergy's Community Connections Program was formally recognized.

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<sup>2</sup> *Supplemental Stipulation* at 2, subsection (b)(i). See also, [http://www.energystar.gov/index.cfm?c=home\\_improvement.hpwes\\_sponsors\\_about](http://www.energystar.gov/index.cfm?c=home_improvement.hpwes_sponsors_about).

<sup>3</sup> FirstEnergy Memorandum Contra at 2, 3.

<sup>4</sup> OPAE has repeatedly told the Company and its contractor that data and other information necessary to evaluate the program could be provided in any reasonable format requested. There is nothing unique to either Community Connections or the balance of the HPES program that prevents this. The agencies already report data and financial information for three to five other weatherization and efficiency programs. Accommodating the evaluator's needs for the HPES program will result in a bit more paperwork, but nothing the network cannot handle.

As FirstEnergy acknowledges, "the Companies are bound to follow the terms and conditions" of the Stipulations.<sup>5</sup> Two of the three signatories agree that OPAE is to administer the funding through an HPES compliant program – Community Connections. OPAE is not attempting to rewrite the Stipulations; FirstEnergy is.

The Commission needs to ensure parties can be confident that all signatories will comply with stipulations. The intransigence or vindictiveness of an individual party should not be countenanced. OPAE has limited resources, especially when compared to the largest utilities in the state. Agencies providing services to Ohio Edison customers have had their budgets for Community Connections cut by 54% thanks to FirstEnergy's selective memory. This issue must be resolved immediately to ensure that the ultimate beneficiaries of these funds, FirstEnergy's low-income customers, receive the services that are a product of the agreement struck among the parties -- OPAE, OCC, and the Companies – and twice approved by the Commission.

FirstEnergy points out that the Stipulation requires that "[p]ayments will be made to OPAE upon receipt of documentation that funds have been spent...."<sup>6</sup> This is commonly called an invoice. However, without a contract OPAE cannot authorize work by the subcontracting agencies on the hope that it will be honored and paid. Unfortunately, given the revisionist history proclaimed by the Companies, OPAE fears that the execution of a contract and payment of invoices will not occur and the parties will be back in front of the Commission yet again.

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<sup>5</sup> FirstEnergy Memorandum Contra at 5.

<sup>6</sup> Supplemental Stipulation at paragraph 2, pg. 1.

As a result, OPAE modifies its prayer for relief and requests that the Commission order FirstEnergy to remit the \$1.5 million in full to OPAE as a charitable donation within fifteen (15) days under the terms of the current contract executed by FirstEnergy CEO Anthony Alexander and OPAE. OPAE and its members will spend these funds as efficiently as possible to ensure the maximum benefit to FirstEnergy's low-income customers. OPAE will provide reports in a format that permits evaluation of the Companies' Program to the extent that current reporting practices do not provide the necessary information.

Wherefore, OPAE respectfully requests that the Commission grant the motion and order the Companies to honor the agreements by providing the \$1.5 million in funding per the terms of the above-referenced stipulations.

Respectfully submitted,

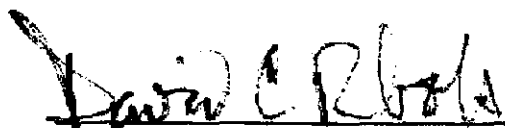


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**On Behalf of Ohio Partners for  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply to the Memorandum Contra was served upon the parties of record identified below on this 19th day of May, 2008.



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