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PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Energy Efficiency and)
Peak Demand Reduction Program) Case Nos. 09-580-EL-EEC
Portfolio of Ohio Edison Company, The) 09-581-EL-EEC
Cleveland Electric Illuminating Company) 09-582-EL-EEC
and The Toledo Edison Company.)

REPLY TO FIRSTENERGY'S MEMORANDUM CONTRA TO OCC'S MOTION
FOR A PROCEDURAL SCHEDULE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") represents approximately 1.9 million residential electric consumers of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "Companies") who will be affected by FirstEnergy's plans to distribute compact fluorescent light bulbs. On October 9, 2009, OCC submitted a Motion for Procedural Schedule ("Motion") along with OCC's Application for Rehearing. OCC submits this Reply to the Memorandum Contra ("Memo Contra") that FirstEnergy filed on October 19, 2009, in response to OCC's Motion.¹

In the Motion, OCC requested a procedural schedule that would permit interested parties the opportunity for a hearing related to the PUCO's stated intention to address some of the details of FirstEnergy's CFL program, including charges to customers. In this Reply, OCC focuses on FirstEnergy's statements that no additional process is needed because the Commission has the information it needs.

¹ Ohio Adm. Code 4901-1-35(B). FirstEnergy's October 19, 2009 Memorandum Contra addressed both OCC's Motion for a Procedural Schedule and Application for Rehearing.

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II. OCC'S MOTION FOR A PROCEDURAL SCHEDULE SHOULD BE GRANTED.

FirstEnergy seems to oppose OCC's motion for a procedural schedule because there already was a process in these cases before the Public Utilities Commission of Ohio ("PUCO" or "Commission") issued its Order on September 23, 2009.² The Order addresses the distribution of the energy-efficient light bulbs and collection of costs from customers.³

FirstEnergy claims that OCC "seeks only more process."⁴ It is true that OCC is seeking more process. But FirstEnergy itself, in action if not words, is supporting more process. FirstEnergy stated in an October 8, 2009 press release that it would be discussing the issues in these cases with the PUCO, for possible alternatives to what is in the PUCO's Order.⁵ That is more process. And FirstEnergy itself is already a participant in a formal post-Order process in these cases, by virtue of presenting an oral argument on October 28, 2009, as allowed by PUCO Entry.⁶ That is more process.

Moreover, the PUCO stated in a press release that there will be additional steps to address the implementation and related costs of FirstEnergy's compact fluorescent light bulb program:

The PUCO will gather information regarding the program and its related costs. Until the PUCO has specific details regarding the

² FirstEnergy Memo Contra at 2.

³ Order at 2 (September 23, 2009).

⁴ E.g. FirstEnergy Memo Contra at 2.

⁵ See *FirstEnergy to Postpone Energy-Efficient Light Bulb Distribution* (October 8, 2009) (The press release can be found at <http://www.firstenergycorp.com/NewsReleases/CFL%20Postponed.pdf>)

⁶ See Entry (October 15, 2009).

program costs, FirstEnergy should not deploy its compact fluorescent light bulb program.⁷

That is more process.

Considering that FirstEnergy's opposition to a procedural schedule is inconsistent with its own actions and words, the PUCO should be concerned that in reality FirstEnergy may be opposed to there being a legal basis for the post-Order process. In this regard, there should be a concern that FirstEnergy may later claim, in the event of a further ruling it does not like, that there was no process in place under R.C. 4903.10 for the PUCO to make the ruling. This potentiality presents another reason why the PUCO should grant OCC's Motion (in conjunction with granting OCC's Application for Rehearing).

Finally, FirstEnergy makes a number of *ad hominem* or gratuitous remarks about OCC's participation in these cases and motives for seeking more process, and makes allegations about what it characterizes as OCC's "support for the CFL program...."⁸ OCC will not address such remarks in detail, other than to state strong disagreement with them and with FirstEnergy's mischaracterization of OCC's position in these cases, which was not a position of support for the type of CFL program proposed by FirstEnergy.⁹ OCC otherwise looks forward to participating in the PUCO's forward-looking post-Order process for bringing the benefits of energy efficiency to residential customers in northern Ohio.

⁷ PUCO press release, *Statement from PUCO Chairman on FirstEnergy's compact fluorescent light bulb program*, (October 7, 2009) ("PUCO Press Release").

⁸ FirstEnergy Memo Contra at 1.


⁹ OCC's non-opposition to certain conditions that were the basis of FirstEnergy's letter filed on September 16, 2009 did not constitute support for FirstEnergy's CFL program – a program OCC has vehemently opposed throughout the case and collaborative process. Furthermore, OCC's non-opposition was based on achieving certain benefits for residential consumers that were not part of FirstEnergy's proposal.

III. CONCLUSION

OCC requests that a procedural schedule and hearing date be established to ensure a public process for participation in the post-Order process of these cases. For the reasons stated above, the PUCO should grant OCC's Motion for a procedural schedule.

Respectfully submitted,

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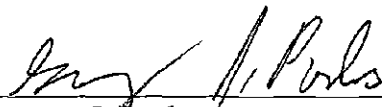


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Reply* was served by regular mail, postage prepaid, to the following parties of record, this 29th day of October, 2009.



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