

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Energy Efficiency)	
and Peak Demand Reduction Program)	
Portfolio of Ohio Edison Company,)	Case No. 09-951-EL-EEC
The Cleveland Electric Illuminating)	09-952-EL-EEC
Company, and The Toledo Edison)	09-953-EL-EEC
Company.)	

**REPLY TO FIRSTENERGY’S MEMORANDUM CONTRA
MOTION FOR HEARING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL, THE OHIO
ENVIRONMENTAL COUNCIL, AND THE NATURAL RESOURCES DEFENSE
COUNCIL**

I. INTRODUCTION

In their Application filed on October 14, 2009, the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy EDUs” or “Companies”) proposed a method of implementing the energy efficiency provisions of Substitute Senate Bill 221 (“S.B. 221”) in connection with improvements in electrical systems. Stating that the Application is inconsistent with that law, the Office of the Ohio Consumers’ Counsel (“OCC”), the Ohio Environmental Council (“OEC”), and the Natural Resources Defense Council (“NRDC,” collectively with OCC and OEC, “Movants”) moved for a hearing to investigate the facts regarding any qualifying energy savings under S.B. 221. Movants also noted various technical infirmities that should be closely examined by the Public Utilities Commission of Ohio (“Commission” or “PUCO”) in the context of a hearing.

The FirstEnergy EDUs opposed setting the matter for a hearing, stating on December 8, 2009 that their Application seeks to count towards their energy efficiency

goals the projects entered into by an entity other than the Companies.¹ They also assert that Movants should be satisfied with the Companies' methodology for measuring energy efficiency improvement.²

Movants herein reply to the Companies' Memo Contra. The pleadings reveal issues of both fact and law that should be resolved only after these issues are subject to the greater scrutiny that can be provided in a hearing to ensure that the benefits of energy efficiency are realized for Ohio customers as intended by the Ohio General Assembly.

II. ARGUMENT

The Companies' Memo Contra states that the "General Assembly clearly intended that all projects that reduce line losses on transmission facilities, regardless of the ownership of those facilities, count toward the energy efficiency benchmarks."³ The Companies, however, do not provide a statutory analysis to support how their view was "clearly intended" as stated in S.B. 221. A portion of the statutes enacted as part of S.B. 221, R.C. 4928.66(A)(1)(a), states:

Beginning in 2009, an *electric distribution utility* shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one percent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state.⁴

¹ Memorandum Contra at 2 (December 8, 2009) ("Memo Contra" to the "Motion") ("Movants are correct that some of the projects . . . were undertaken by . . . American Transmission Systems, Incorporated").

² Id.

³ Id. at 3.

⁴ Emphasis added.

The Commission Order relied upon by the FirstEnergy EDUs⁵ did not approve rules about improvements in the facilities owned by other entities, and the Order appropriately noted that “the final rules do[] not change the law.”⁶

The FirstEnergy EDUs fail to explain how, under this statute, programs implemented by an “electric distribution utility” can describe programs that were actually implemented by another entity. The FirstEnergy EDUs [i.e. Electric Distribution Utilities] state that “EDUs should be encouraged to implement energy efficiency programs,”⁷ yet they admit that some of the programs in their Application were undertaken by an entity that is *not* an EDU. The Companies’ admission provides ample reason for a hearing. Such a hearing is necessary to sort out permissible from impermissible projects for the purposes of satisfying the energy efficiency program requirements stated in S.B. 221.

The Companies’ defend their estimates of efficiency improvements as being “clearly . . . project-specific”⁸ and as being based upon “methods . . . accepted by the industry.”⁹ In its rulemaking regarding energy efficiency programs, the Commission noted that “measuring and verifying net line-loss reductions will require documentation” and that there is “the need for an efficient and *transparent process* . . . in the measurement and verification of energy efficiency programs [related to infrastructure

⁵ Memo Contra at 2 (“request of the Companies for clarification”), citing *In re Second Rulemaking Related to S.B. 221*, Case No. 09-888-EL-ORD, Order at 8 (April 15, 2009).

⁶ *In re Second Rulemaking Related to S.B. 221*, Case No. 09-888-EL-ORD, Order at 8 (April 15, 2009).

⁷ Memo Contra at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 5.

improvements].”¹⁰ Other than asserting that their methods are “accepted,” without citation or attempt at additional documentation, the Companies do not respond to specific criticisms that the Application displays the use of system-wide averages to estimate project-specific conditions. In their Memo Contra, the Companies make no attempt to explain measurement methods that are left unexplained in their Application.¹¹ The Companies’ arguments against a transparent process should be rejected.

The Motion cited (as an example) the Companies’ calculation of line loss reductions for distribution level improvements by:

Stud[ying] a sample set of 98 Ohio distribution circuits, [and] calculating the peak load coincidence factors at the operating company level based on the top-five peak load times.¹²

The Companies do not support the use of the average of these results to quantify the benefit of their projects,¹³ their method for selecting the circuits was neither described in the Application nor by the Memo Contra,¹⁴ and the significance of choosing the “top-five peak load times” is neither explained in the Application nor by the Memo Contra.¹⁵ The Companies’ measurement methods should be further examined to determine whether they are acceptable for purposes of satisfying S.B. 221 requirements and delivering to

¹⁰ *In re Second Rulemaking Related to S.B. 221*, Case No. 09-888-EL-ORD, Order at 8 (April 15, 2009).

¹¹ The Companies’ Application provides inadequate documentation for the methods used by the FirstEnergy EDUs to quantify the effect of infrastructure improvements. Application, Exhibit B. Not only must the models be identified, verified, and approved as best practice, but an investigation must be undertaken regarding the means by which each quantification method is applied for various types of improvements.

¹² Application, Exhibit B at 2, quoted by Motion at 4.

¹³ See Motion at 4.

¹⁴ *Id.*

¹⁵ *Id.*

consumers the benefits of energy efficiency that the General Assembly intended. The Companies' implementation of the measurement methods they characterized as "accepted" should also be examined under the factual circumstances presented by the projects that are the subject of the Application.

The Commission should not allow the Companies to use methods that produce an inaccurate view of the benefits of projects. A hearing is necessary to provide a transparent process that will provide insights into the proper measurement of energy efficiency improvement that may result from changes in the Companies' distribution systems.

III. CONCLUSION

The failings in the Application should result in greater investigation of the claimed benefits from the Companies' line improvements (i.e. *only* the Companies' improvements). Movants ask that the PUCO set this matter for hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Reply to Memorandum Contra Motion for Hearing* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 14th day of December 2009.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/14/2009 11:51:00 AM

in

Case No(s). 09-0951-EL-EEC, 09-0952-EL-EEC, 09-0953-EL-EEC

Summary: Reply Reply to FirstEnergy's Memorandum Contra Motion for Hearing by the Office of the Ohio Consumers' Counsel, the Ohio Environmental Council, and the Natural Resources Defense Council electronically filed by Patti Mallarnee on behalf of Mr. Jeffrey L Small