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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 09-1820-EL-ATA
Illuminating Company and The Toledo Edison)	Case No. 09-1821-EL-GRD
Company for Approval of Ohio Site)	Case No. 09-1822-EL-EEC
Deployment of the Smart Grid Modernization)	Case No. 09-1823-EL-AAM
Initiative and Timely Recovery of Associated)	
Costs.)	

MOTION FOR HEARING
OF
OHIO PARTNERS FOR AFFORDABLE

Ohio Partners for Affordable Energy ("OPAE"), an intervenor in the above-captioned dockets, hereby respectfully moves for a hearing in the above-captioned cases. The Applications of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "Companies") request approval for a smart grid plan and the collection costs and lost revenues associated with the deployment of the proposed pilot project.

The Applications request expedited approval by the Commission without a hearing. The date requested, December 9th, has already passed. Nonetheless, OPAE remains concerned that this new plan, which has not been accepted by all parties to these proceedings, and the proposed elements of the cost recovery warrant a hearing before the Commission. The reasons for granting the above-state motion are further set forth in the attached Memorandum in Support, which is incorporated herein.

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Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION FOR HEARING

Introduction

On March 25, 2009, the Public Utilities Commission of Ohio ("PUCO" or "Commission") approved a Stipulation and Recommendation in Case No. 08-935-EL-SSO, *et seq.*, approving the Electric Security Plans (ESP) for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively "FirstEnergy" or "Companies"). In that Stipulation, the Companies abandoned a proposed smart grid plan, and instead committed to developing a new plan in concert with an application for funding made available to utilities under the American Reinvestment and Recovery Act ("ARRA").¹

Prior to approval of the ESP decision, the Commission had also required FirstEnergy in the Opinion and Order in Case No. 07-551-EL-AIR, and a May 21, 2009, Entry in Case No. 07-646-EL-UNC, to submit a preliminary report on Advanced Metering Infrastructure and Smart Grid Technology. A supplemental report was subsequently filed on August 14, 2009. This supplemental report included an application prepared by the Company, after consultation with Staff and

¹ Smart grid is a generic term for transmission and distribution automation which make those systems more efficient and reliable, and advanced metering which burdens customers with higher prices.

according to FirstEnergy the Office of the Ohio Consumers' Counsel, which was submitted to the U.S. Department of Energy ("DOE") for funding under the ARRA.²

FirstEnergy was awarded funding under the ARRA's Smart Grid Modernization Initiative -- \$57 million of taxpayer money in total, of which \$36 million will be spent in Ohio. This application was filed to approve the Ohio Site Deployment plan and define the nature and level of costs that will be recovered from ratepayers.

Argument

I. The Cost Recovery Approach Contained in the Application does not Represent a Consensus Among Parties and a Hearing is Necessary to Determine the Level and the Nature of the Costs to be Recovered from Customers.

The Company has requested rapid approval of the instant Applications without a hearing, implying that parties have had an adequate opportunity to review the Ohio Site Deployment.³ The ARRA application did include matching funds from customers, but did not define what costs would be recovered. The amount of ratepayer funds required to match the federal funding was to some degree determined by the size of the federal grant. Some detail of the proposed recovery from ratepayers was first revealed in these Applications. Establishing a cost recovery rider, which will increase customer rates, should not occur without an adequate review provided by a hearing.

Cost recovery issues were partially defined in the Stipulation in the ESP case:

² See *Comments in Response to the Office of the Ohio Consumers' Counsel comments on FirstEnergy's Application Related to a Pilot Program for Deployment of Smart Grid, Smart Meters and Peak-Time Rebate Pricing and Collection of Costs from Customers*, Case No. 09-1820-EL-ATA (December 21, 2009) at 2. ("FE Comments")

³ *Id.*

The recovery for smart grid investment shall be through a non-bypassable rider; any under or over-recovery of costs by the Companies due to time-differentiated rate structures shall also be passed through a non-bypassable rider applicable to all customers, allocated on a voltage differentiated basis, and reconciled quarterly; any load factor pricing provisions implemented for either Rate GSU or Rate GP shall be funded within the specific rate schedule by non-bypassable demand charges and non-bypassable energy credits and shall be consistent with the Additional Provisions of Section (d) of Rider EDR and reconciled quarterly. Stipulation at 22.

The Opinion and Order of March 25, 2009 made no modifications to this language.

Traditionally, when utilities file for the initial implementation of a rider to collect some cost, the first proceeding establishes the framework for collection, defining the nature of the costs that will be recovered and the adjustment process. This exercise needs to occur in these dockets as well. The language of the Stipulation does not define the costs that are eligible for recovery under the rider.

There are a number of open issues that require further definition. What costs constitute smart grid-related costs? Do these costs include early retirement of existing meters? Are these costs netted against distribution infrastructure costs already included in distribution rates? What are the costs that can be "over or under-recovered due to time-differentiated rate structures"? Does this mean that if a customer reduces use on-peak by shifting the use to an off-peak period, the Companies collects lost generation revenues from other customers? Or, does it mean that if a customer reduces energy on-peak without an offsetting increase in use during another period

that the Company can collect lost distribution revenues? How is the lost revenue determined?

These are critical issues that have significant implications for ratepayers. Smart grid advocates, and there are many including this Commission, have trumpeted the ability of customers to save money by controlling their use of electricity. Yet under these Applications it may well be that the only entities that emerge from smart grid tsunami with an economic advantage are the distribution utility and the generation supplier; the utility because it never sees a reduction in revenue (which means that ratepayer bills have not declined) and the generation supplier which, thanks to the actions of customers, avoids having to buy power at peak. In the latter case, there is no mechanism to pass the savings through to ratepayers, nor any ability to capture for ratepayers the profits from selling excess capacity and power freed up by customers shifting their load into the wholesale market.

There are too many unknowns regarding the rider to simply permit it to be implemented. Ratepayers need to know what they are paying for in the Rider. This will require a hearing.

II. The Filing of the Plan in Other Dockets does not Constitute Adequate Notice to Parties, nor does it Indicate Acceptance of the Plan by Parties.

The FE Comments imply that the filing of the ARRA applications in other dockets constitutes adequate notice to potential parties to these proceedings, and that failure to file comments in the other dockets somehow amount to acquiescence by parties to these Applications. This constructive notice and the stipulations in other cases along with the approval of the ARRA

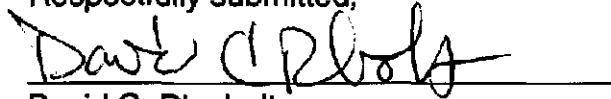
application by the U.S. Department of Energy have, in the view of the Company, pre-approved these Applications.

OPAЕ respectfully disagrees with this interpretation. Unlike the Staff and OCC, FirstEnergy never consulted with OPAЕ during the development of the ARRA applications, nor did it provide any briefings to OPAЕ after the applications were filed with the U.S. Department of Energy. The Department is not a regulatory body that can bind Ohio ratepayers to fund a plan that may not be used and useful under Ohio law, or beneficial to ratepayers. At this point, OPAЕ is not aware of what portions of the Companies' smart grid plan are being funded by the federal government, what is covered in current rates, and what will be assessed from ratepayers through the Riders. Even if OPAЕ had been briefed, participation in that meeting would not constitute our approval of the Companies' approach to recovery. These are the very issues should be the subject of litigation in these proceedings.

Conclusion

There is no consensus among the parties of what expenses should be authorized for recovery under the smart grid plan. Prior consultation with selected parties or a grant award from DOE does not constitute approval of a recovery plan. The Commission should set these Applications for hearing. The ARRA solicitation anticipated the need for regulatory approval of cost-sharing. Regulatory approval is not always swift but is necessary. The Commission should set this matter for hearing to determine what components of the proposal benefit ratepayers and what costs and lost revenues are appropriate for collection via the Riders.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Hearing and Memorandum in Support and Memorandum of Support was served by regular U.S. Mail upon the following parties identified below in these cases on this 23rd day of December 2009.



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