

**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)	Case Nos. 09-1947-EL-POR
Edison Company For Approval of Their)	09-1948-EL-POR
Energy Efficiency and Peak Demand)	09-1949-EL-POR
Reduction Program Portfolio Plans for 2010)	
through 2012 and Associated Cost Recovery)	
Mechanisms.)	
)	
In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case Nos. 09-1942-EL-EEC
Illuminating Company, and The Toledo)	09-1943-EL-EEC
Edison Company For Approval of Their)	09-1944-EL-EEC
Initial Benchmark Reports.)	
)	
In the Matter of the Energy Efficiency and)	
Peak Demand Reduction Program Portfolio of)	Case Nos. 09-580-EL-EEC
Ohio Edison Company, The Cleveland)	09-581-EL-EEC
Electric Illuminating Company, and The)	09-582-EL-EEC
Toledo Edison Company.)	

MOTION TO STRIKE COMMENTS FILED BY THE CITIZENS COALITION

Pursuant to OAC 4901-1-12, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) hereby respectfully ask the Commission to strike from the record the “Comments on Companies’ Energy Efficiency and Peak Demand Reduction Program Portfolios Filed on Behalf of The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, and The Consumers for Fair Utility Rates, Dated December 15, 2009.”

As described in the attached memorandum in support, the Comments are not permitted by rule and fail to promote a fair resolution of this proceeding. As such, the Commission should issue an order striking them from the record.

Respectfully submitted,

s/ James F. Lang

Kathy J. Kolich J. Kolich, Counsel of Record

Arthur E. Korkosz

Ebony L. Miller

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, OH 44308

(330) 384-4580

(330) 384-3875 (fax)

kjkolich@firstenergycorp.com

korkosza@firstenergycorp.com

elmiller@firstenergycorp.com

James F. Lang

Laura C. McBride

N. Trevor Alexander

Kevin P. Shannon

CALFEE, HALTER & GRISWOLD LLP

1400 KeyBank Center

800 Superior Ave.

Cleveland, OH 44114

(216) 622-8200

(216) 241-0816 (fax)

jlang@calfee.com

lmcbride@calfee.com

tallexander@calfee.com

kshannon@calfee.com

ATTORNEYS FOR APPLICANTS, OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY

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**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE
COMMENTS FILED BY THE CITIZENS COALITION**

Four groups purporting to represent low and moderate income families – The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, Cleveland Housing Network, and The Consumers for Fair Utility Rates (collectively, the “Citizens Coalition”) – filed the Comments on December 22, 2009. These entities have been active in other Commission proceedings involving the Companies and, quite recently, consented to the terms of the Stipulation and Supplemental Stipulation approved by the Commission on March 4, 2009, in Case No. 08-935-EL-SSO (the “ESP Case”).¹ The Comments consist of

¹ The Citizens Coalition was a signatory to the Supplemental Stipulation filed in the ESP Case on February 26, 2009. As a signatory, the Citizens Coalition agreed to all terms of the Stipulation filed in that proceeding on February 19, 2009, with certain modifications not of relevance here.

“general” and “specific” comments on the Companies’ proposed Energy Efficiency and Peak Demand Reduction Portfolio Plans (“EE&PDR Plans”) filed on December 15, 2009. The Citizens Coalition filed its Comments a mere five business days after the Companies filed their EE&PDR Plan, while complaining that it “barely had a week to review these plans, digest them, and then present comments.” Comments, p. 3. The Comments are out-of-rule and should be stricken from the record.

The Comments violate O.A.C. 4901:1-39-04(D), which provides, in relevant part:

any person may file objections within sixty days after the filing of an electric utility’s program portfolio plan. Any person filing objections shall specify the basis for all objections, including any proposed additional or alternative programs, or modifications to the electric utility’s proposed program portfolio plan.

The Comments do not appear to be the Citizens Coalition’s objections to the EE&PDR Plans. Indeed, the Citizens Coalition claims to reserve its right to file further comments throughout this proceeding. Comments, p. 10. The Citizens Coalition also fails to specify the basis for any of its comments – to the extent they can be construed as objections – and fails to propose additions or modifications as required by rule. Thus, the Comments are out-of-rule, serve no valid purpose and should be stricken from the record.

Notably, the Citizens Coalition appears intent on breaching the Stipulation and Supplemental Stipulation to which it agreed in the ESP Case. The Citizens Coalition stipulated in that proceeding that “[l]ost distribution revenues associated with the energy efficiency programs, including demand response programs shall be recovered from all customers based on the allocation of distribution revenues approved in Case No. 07-551, et. al. for a period not to exceed the earlier of the Companies effective date of the Companies next distribution case, or six years from the effective date of this Stipulated ESP.”² In direct conflict with this stipulation is

² Stipulation and Recommendation at p. 28, filed February 19, 2009, in the ESP Case.

Citizens Coalitions' current position that recovery of lost distribution revenues should not be authorized until the Companies' next distribution rate case. Comments, p. 7. The Companies are compelled to ask whether the Citizens Coalition intentionally deceived the Companies and this Commission in agreeing to a Stipulation in order to obtain benefits for its membership without intending to keep its part of the bargain. The Companies also are concerned that the four citizens groups purportedly endorsing these Comments may not have had the time or the opportunity to review and approve them, particularly given that they were filed hastily and include statements that so clearly conflict with recent positions adopted by these groups.³ In which case, the Comments are nothing more than the unauthorized meanderings of counsel. Regardless of whether they have been authorized or not, the Comments are duplicitous and should be stricken on that basis alone.

For the reasons set forth above, the Companies respectfully request that the Commission strike the Citizens Coalition's Comments from the record.

Respectfully submitted,

s/ James F. Lang

Kathy J. Kolich, Counsel of Record

Arthur E. Korkosz

Ebony L. Miller

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, OH 44308

(330) 384-4580

(330) 384-3875 (fax)

kjkolich@firstenergycorp.com

korkosza@firstenergycorp.com

elmiller@firstenergycorp.com

³ To eliminate any confusion, the Commission is urged to require counsel for the Citizens Coalition to produce authorizing resolutions from each of the four citizens groups approving the filing of the Comments.

James F. Lang
Laura C. McBride
N. Trevor Alexander
Kevin P. Shannon
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com
kshannon@calfee.com

ATTORNEYS FOR APPLICANTS, OHIO
EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

I hereby certify that this **Motion To Strike** was filed electronically this 25th day of January, 2010, with the Public Utilities Commission of Ohio Docketing Information System. Notice of this filing will be sent via e-mail to the following subscribers by operation of the Commission's electronic filing system:

Will Reisinger
Nolan Moser
Trent Dougherty
The Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, OH 43212-3449

Jacqueline Lake Roberts
101 Federal Street, Suite 1100
Boston, MA 02110

Glenn S. Krassen
Bricker & Eckler LLP
1375 E. 9th St., Suite 1500
Cleveland, OH 44114

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620

Michael E. Heintz
Environmental Law & Policy Center
1207 Grandview Ave., Suite 201
Columbus, Ohio 43204

Samuel Randazzo
Lisa G. McAlister
Joseph M. Clark
McNees, Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215-4228

Jeffrey L. Small
Gregory J. Poulos
Christopher J. Allwein
Office of the Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, OH 43215-3485

A copy of this **Motion to Strike** was served on the persons stated below by regular U.S.

Mail, postage prepaid, on this 19th day of January, 2010.

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793

Duane W. Luckey
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, OH 43215-3793

Theodore S. Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

Christopher L. Miller
Andre T. Porter
Gregory H. Dunn
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, Ohio 43215

Henry W. Eckhart
50 West Broad Street, #2117
Columbus, OH 43215

Joseph P. Meissner
Matthew D. Vincel
The Legal Aid Society of Cleveland
1223 West 6th St.
Cleveland, OH 44113

s/ James F. Lang

One of the Attorneys for Applicants

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Summary: Motion to Strike Comments Filed by the Citizens Coalition electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company