

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Status Report	)	
Regarding the Status of EE&PDR	)	Case Nos. 10-227-EL-EEC
Programs of Ohio Edison Company,	)	10-228-EL-EEC
The Cleveland Electric Illuminating	)	10-229-EL-EEC
Company, and The Toledo Edison	)	
Company.	)	

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**COMMENTS ON THE FIRSTENERGY STATUS REPORT FOR ENERGY  
EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAMS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND THE NATURAL  
RESOURCES DEFENSE COUNCIL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC") and the Natural Resources Defense Council ("NRDC") file these comments in accordance with Ohio Adm. Code 4901:1-39-06(A), which provides for persons to file comments on initial benchmark reports and portfolio status reports. These comments are in response to the Energy Efficiency and Peak Demand Reduction ("EE&PDR") Portfolio Status Report filed collectively by the Ohio Edison Company, the Toledo Edison Company, and the Cleveland Electric Illuminating Company (collectively "FirstEnergy" or "Companies").

All customer classes benefit from effective EE&PDR program offerings. The Portfolio Status Report is a marker indicating the effectiveness of these programs across customer classes. The Commission should deny the Companies' request for a waiver of the requirements stated in 4901:1-39-05(C), which require EE&PDR cost effectiveness and measures and other items that FirstEnergy should be capable of supplying as a part of

this filing.<sup>1</sup> The information the Companies are requesting not to provide to other parties is an important indicator of an electric distribution utility's strategy for meeting the statutory benchmarks. Rather than a waiver, the PUCO should enforce the Rule and require the Companies to supplement or re-file this Portfolio Status Report with the appropriate, additional information as outlined in the Rule.

## **II. ARGUMENT**

### **A. The Company Is Out Of Compliance With Ohio Adm. Code 4901:1-39-05(C)(2)(B) Which Requires Documentation Of Several Items.**

FirstEnergy should be required to comply with the Rule provisions governing the Portfolio Status Report.<sup>2</sup> Ohio Adm. Code 4901:1-39-05(C)(2)(b) presents specific information that must be provided as part of a utility company Portfolio Status Report filing:

An evaluation, measurement, and verification report that documents the energy savings and peak-demand reduction values and the cost-effectiveness of each energy efficiency and demand-side management program reported in the electric utility's portfolio status report. Such report shall include documentation of any process evaluations and expenditures, measured and verified savings, and cost-effectiveness of each program. Measurement and verification processes shall confirm that the measures were actually installed, the installation meets reasonable quality standards, and the measures are operating correctly and are expected to generate the predicted savings. Upon commission order, the staff may publish guidelines for program measurement and verification.

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<sup>1</sup> Ohio Adm. Code 4901:1-39-05(C).

<sup>2</sup> See, for example the Columbus Southern Power Company and the Ohio Power Company filings in PUCO Case Nos. 10-318-EL-EEC AND 10-321-EL-EEC, which provide nearly 400 pages of documentation, as opposed to the 26 pages submitted in these cases.

The Companies acknowledge that they did not comply with this Rule.<sup>3</sup> Rather, FirstEnergy requested a waiver of the Rule<sup>4</sup> and provided insufficient information about its programs.

As presented above, the Rule requires documentation of process evaluations and expenditures, and installation documentation. However, none of this information is supplied, even though FirstEnergy notes that the sources for this information exist. For example, for the Community Connections Program, the Companies noted that monthly detailed reports are received from provider agencies and that the information contained in these reports has been verified by OP&A.<sup>5</sup> None of this information is included in the filing for review, nor is any explanation of the information in the exhibits included. Vague details provided in the Application exhibits<sup>6</sup> do not provide the information noted above, which would provide the Commission and other interested parties a more accurate assessment of this program.

Further, the Companies appear to completely rely on information that is given to them from the agencies completing the work.<sup>7</sup> These agencies rely financially on the Companies' program funding. But the Commission has stated its preference for independence in auditing processes, and in particular energy efficiency and peak demand

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<sup>3</sup> Status Report at page 8: "...[T]he Companies request a waiver of Section 4901:1-39-05(C)...to the extent the information available and presented does not conform to the unattainable requirements of that Section." (March 8, 2010).

<sup>4</sup> Id.

<sup>5</sup> Status Report at 7 (March 8, 2010).

<sup>6</sup> Status Report at Exhibits 1, 3 and 4.

<sup>7</sup> Status Report at 7.

programs.<sup>8</sup> Ensuring independence in the process is a protective approach for customers that is more reliable than depending on conclusions from those that are responsible for the work being performed and who could have an incentive to present completed work in a light most favorable to continue and/or increase the amount of funding provided by FirstEnergy's customers. As with all energy efficiency programs undertaken, the Company should be required to demonstrate some kind of objective monitoring or sampling of the work to confirm the information reported by OPAE. If that monitoring already exists, it should be included as part of the process evaluation information, which is required by the Rule.

The Companies list three other approved programs, which also are unaccompanied by the documentation required by the rule. In order to gauge the effectiveness of these programs, the Companies must comply with the rule to the fullest extent possible. This noncompliance should be addressed by a supplemental filing, or a re-filing of the Companies' Portfolio Status Report by a date certain with the additional documentation that is required by the Rule and that FirstEnergy acknowledges is available.

**B. The Company Is Out Of Compliance With Ohio Adm. Code 4901:1-39-05(C)(2)(B) Which Requires Recommendations For Program Modification.**

FirstEnergy recommends that the current programs continue, despite the fact they have not achieved the intended results in terms of savings. Ohio Adm. Code 4901:1-39-

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<sup>8</sup> See for example, *In. the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Entry at (5) noting the hiring of an independent auditor.

05(C)(2)(b) requires that an electric utility state any modifications to an approved program that is recommended to be continued:

A recommendation for whether each program should be continued, modified, or eliminated. The electric utility may propose alternative programs to replace eliminated programs, taking into account the overall balance of programming in its program portfolio plan. The electric utility shall describe any alternate program or program modification by providing at least the information required for proposed programs in its program portfolio plan pursuant to this chapter.

No explanation is offered as to why certain programs did not achieve the planned efficiency savings, or any modifications that will be made to improve the performance of these programs. For example, regarding the Community Connections Program, the Companies simply recommend that the program continue as described in the Portfolio Plan.<sup>9</sup> There is no accountability for the underachievement of savings by this program and no reasoning provided for the recommendation offered by FirstEnergy.

In Exhibit 4 to the Report, the Companies show that the Community Connections program met 52 percent, 41 percent, and 30 percent of its energy savings goal for CEI, TE, and OE respectively. This exhibit goes on to show that a total of \$1,434,037 was spent in 2009 for the program in the three service territories. However, the Electric Security Plan stipulation in Case No. 08-935-EL-SSO provides for \$5 million per year in funding for this program.<sup>10</sup> In addition, the amended stipulation provides for an additional \$1 million in shareholder dollars that may be used by OPAE to fund the Community Connections program.<sup>11</sup> Although the program spent a mere 24% of the allowed amounts, FirstEnergy offers a blanket recommendation that the program

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<sup>9</sup> Status Report at 8.

<sup>10</sup> 08-935-EL-SSO Stipulation at E(4) on page 22 (February 19, 2009).

<sup>11</sup> 08-935-EL-SSO Supplemental Stipulation at 3(ii) (February 26, 2009).

continue at the same level of funding. No explanation is offered for the significantly low savings and spending amounts. No modifications are recommended to improve the delivery, and use of the available funding, for Ohio customers.

With respect to any funding of the Community Connections program, the shareholder dollars contributed should be depleted before any additional funding is charged to the Companies' residential customers. Given that FE has committed to making the \$1million in shareholder funding available, per the Stipulation, that obligation should be honored before digging into customer wallets. Further, the Commission should enforce compliance with the rule by asking for additional information on why the potential of this program was not maximized, and what modifications will be made to improve its delivery to low-income residential customers. The other programs presented in this filing by FirstEnergy should receive the same scrutiny.

**C. The Lack Of A Technical Reference Manual Did Not Prevent FirstEnergy From Evaluating The Companies' Energy Efficiency Programs.**

In the Companies' EE/PDR Program Portfolio Status Report, FirstEnergy states that "inasmuch as the Technical Reference Manual for Ohio (the "TRM") remains under development, specific guidelines for program EM&V for the information required by Section 4901:1-39-05(C)(2)(b) are not yet available."<sup>12</sup> The report further goes on to blame the Commission for having not yet issued a decision on the Companies' portfolio of programs which were presented on December 15, 2009.<sup>13</sup> In addition, the Companies argue that even if the programs were approved, the lack of a final TRM limits their ability

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<sup>12</sup> Report at Page 5, paragraph B.

<sup>13</sup> Report at page 8. Section IV.

to provide the information requested under the rules.<sup>14</sup> Regardless of the stage of development of a TRM, the Companies were faced with no obstacles preventing documentation and evaluation of the programs being employed by FirstEnergy in 2009.

Further, other Ohio utilities faced the same challenge. However, as noted previously, these other utilities were able to comply with the Rule. Therefore, the lack of a TRM and the still-pending portfolio case offer no reason for a waiver in this case. This waiver should not be granted. The PUCO should enforce the Rule, and require the Companies to provide the stated information on their programs.

### **III. CONCLUSION**

For the reasons stated above, the PUCO should deny the waiver requested by FirstEnergy in this case. The Status Report as filed does not provide sufficient information for any of the programs presented and thus it is out of compliance with Ohio Adm. Code 4901:1-39-05(C). Therefore, the PUCO should require FirstEnergy to supplement or re-file the Portfolio Status Report with the information required by the Rule.

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<sup>14</sup> Report at page 8, section IV.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Comments were served, by via regular U.S. Mail Service, postage prepaid to the following parties of record, this 7<sup>th</sup> day of April, 2010.

/s/ Christopher J. Allwein

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Summary: Comments Comments on the FirstEnergy Status Report for Energy Efficiency and Peak Demand Reduction Programs by the Office of the Ohio Consumers' Counsel and the Natural Resources Defense Council electronically filed by Ms. Deb J. Bingham on behalf of ALLWEIN, CHRISTOPHER J