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BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO **PUCO**

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Energy Efficiency and Demand Reduction Program Portfolio Plans for 2010 and Associated Cost Recovery Mechanisms.))) Case No. 09-1947-EL-POR) Case No. 09-1948-EL-POR) Case No. 09-1949-EL-POR))
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Initial Benchmark Reports.) Case No. 09-1942-EL-EEC) Case No. 09-1943-EL-EEC) Case No. 09-1944-EL-EEC)) Case No. 09-580-EL-EEC) Case No. 09-581-EL-EEC) Case No. 09-582-EL-EEC)
In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company.) <u>POST HEARING REPLY BRIEF OF</u>) <u>THE COUNCIL OF SMALLER</u>) <u>ENTERPRISES</u>

The Council of Smaller Enterprises ("COSE") filed its Initial Post Hearing Brief on March 29, 2010. Briefs were also filed by FirstEnergy and the following interveners: Staff of the Public Utilities Commission of Ohio ("PUCO"), the Environmental Law and Policy Center ("ELPC"), the Ohio Energy Group, Material Sciences Corporation, the Ohio Manufacturer's Association ("OMA"), the Ohio Hospital Association ("OHA"), the Neighborhood Environmental Coalition, NUCOR, the Ohio Environmental Council, and the Ohio Consumers Council.

Pursuant to the schedule set by the attorney examiners assigned to this matter, COSE now files its Reply Brief.

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A. Energy Efficiency and Peak Demand Response Plans (EE&PDR)

The main issue raised by COSE in its Initial Post Hearing Brief is in regard to FirstEnergy's EE & PDR program design. COSE has asserted both in its objection and in its Initial Brief that the programs for residential customers can and should be available and utilized for small enterprise customers. Chief among the programs which should be available to small commercial customers are the companies CFL program, the online efficient products program, the online audit program, and the energy efficient products program.

The Post Hearing Brief, as filed by FirstEnergy, indicates that the testimony provided before the commission focuses not on the design of the EE & PDR programs, but on TRC calculations, cost recovery and allocation.¹ However, during the cross examination of company witness John Paganie², Mr. Paganie was specifically asked:

- Q. Is there a reason why the company didn't identify the residential programs it feels will be utilized by small businesses with Section 2.3 and specifically, the small enterprise programs summaries?
- A. I can't think of any particular reason. We are trying to identify the programs in the right sectors and then allocate the budgets to those sectors where the programs primarily will be evolving. I can't think of any other reasons.
- Q. Would there be an objection by the company to identify those programs within the residential, i.e., the online audit program, the CFL program, the online efficient products program for example, as applying also specifically to the small enterprise programs?
- A. I'm not entirely sure how we would do that. We would have to revise the portfolio plan and reallocate budgets accordingly, which can be done, its certainly something we could take a look at.

¹ See Post Hearing Brief of FirstEnergy in support of their energy efficiency and peak demand restructure reduction program portfolio plans for 2010 through 2012 and initial benchmark reports page 4.

² TR. Volume 1, p. 134, 135. (Discussion between Mr. John Paganie and Eric Weldele, counsel for the Council of Smaller Enterprises.)

Testimony by Mr. Paganie clearly indicates that FirstEnergy can easily redesign the EE & PDR programs such that the residential programs conducive to use by small commercial customers can be redesigned accordingly to provide the opportunity for the small commercial customers to access these programs.

B. Other Issues

COSE supports the arguments raised by the OMA and the OHA in their Joint Initial Post Hearing Brief pp. 2-3. The OMA & OHA argue that the proposed 15% shared savings proposal by FirstEnergy is allowable pursuant to 4901; 1-39-07(A). However, OMA & OHA aptly point out that unless there is a clear, unambiguous benefit to FirstEnergy's customers from any such shared savings mechanism, the value of any annual overage should belong entirely to the customers that paid the cost of achieving that annual overage. Without evidence of a benefit, it would be unfair to FirstEnergy's rate payers to increase the costs of compliance with ORC 4928.66. COSE agrees with the OMA & OHA position and urges the Commission to approve FirstEnergy's overall compliance portfolio without the inclusion of a shared savings mechanism, and the suggested changes to the EE&PDR programs.

For the reasons stated above, COSE requests that this Commission adopt the position of COSE on the issues as set forth in its Initial Brief and Reply Brief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Post Hearing Reply Brief of The Council of Smaller Enterprises was served upon the parties of record listed below this 12th day of April, 2010 via first class mail.

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