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| 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 Peak Demand Reduction Program Portfolio Plans for 2010 Through 2012 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 |
|   | ) |                         |
| 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.   | ) | Case No. 09-580-EL-EEC  |
|   | ) | Case No. 09-581-EL-EEC  |
|   | ) | Case No. 09-582-EL-EEC  |
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*disagreement on the focus and effectiveness of the portfolio, as evidenced by the initial briefs filed in these dockets. Nonetheless, the Company has put forward a fairly standard slate of demand side management (DSM) initiatives.*

The perceived shortcomings of these programs can be overcome by the development of an effective collaborative and greater consultation. Ideally, the collaborative group established through the SSO will review these programs as they are implemented. FirstEnergy has provided the collaborative with copies of the draft RFP's and seems to be doing a slightly better job of providing stakeholders with timely information. Adequate information can permit programs to be modified, scrapped, or expanded as dictated by results. This approach should be supported by all parties.

#### **ISSUES and ARGUMENTS**

FirstEnergy requests the Commission support the decisions and commitments from the SSO case when they support them, and suggest modifications where it suits them. OPAE will take the same approach.

The most egregious and expensive change proposed by FirstEnergy is the addition of shared savings recovery under Rider DSE2. There is simply no reason to permit this. First Energy committed to recovering only programs costs and lost distribution revenue in the Stipulation approved by the Commission in the ESP case. Case No. 08-835-EL-SSO, *Stipulation and Recommendation* (February 19, 2009) at 21. Requesting shared savings in this proceeding reneges on that commitment and should be rejected by the Commission.

A number of the parties object to FirstEnergy's proposal to collect shared savings for a variety of reasons. All those parties are correct.

There should be a minor modification to the DSE1 Rider to reflect the contributions of all customer classes to meet peak demand reduction requirements. Currently, the DSE1 shifts costs onto small customers. The riders need to reflect the activities paid for by those classes through DSE2 so small customers are not paying the cost of the demand reduction committed by industrial and mercantile commercial customers and for that from their own class. Ultimately, the continuation of the ELR and OLR programs should depend on their cost-effectiveness, contrary to the proposal of NUCOR to make them permanent. *Initial Brief Submitted by NUCOR Steel Marion, Inc. at 26.* Perpetuating a program that shifts costs among customer classes should be continued only if it is the least expensive approach to compliance.

OPAE also believes that an adjustment in how prospective riders are set should be adopted by the Commission. FirstEnergy proposes that Rider DSE2 be set based on projected costs and lost revenue with an annual true up. OPAE suggests instead that the prospective riders should be set based both on projections and on the actual expenditure in the prior period. The following example is the approach FirstEnergy wants approved by the Commission: FirstEnergy spends and sees of revenue reduction equal to only 50% of the funding collected during Year 1 via the Rider. In Year 2, the Rider would then be the projected cost and lost revenue, less the 50% not spent in Year 1. Given the

poor performance of Year 1, the subsequent Rider would likely also over-collect.

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This amounts to ratepayers providing interest-free loans to FirstEnergy.

Riders for Year 2 and beyond should be adjusted by refining projected costs and lost revenue based on the track record of the portfolio, discounting the Rider as appropriate given the effectiveness of program delivery. FirstEnergy collects either way, and gets to collect carrying charges on any under collections. The only question is how much customers pay up front. As a long time observer of DSM programs throughout the country, OPAE notes that programs requiring training and infrastructure – the types of programs that provide substantive reduction while producing high quality green jobs – require a longer lead time and a committed program manager. At this point, Ohio utilities have not demonstrated their capabilities to meet targets or their commitment to the programs. Thus, projected recovery should be based, at least in part, on actual spending patterns from prior years.

The Council of Smaller Enterprises (COSE) suggests that programs designed for residential customers should be made available to small business customers when appropriate. OPAE supports this concept. There is no need for a separate management layer when the program can be more efficiently managed across customer classes. However, the amount of funding spent on the small commercial customers must be collected from that class to avoid interclass subsidies.

The Environmental Law and Policy Center expresses dismay that the portfolio disproportionately relies on commitments of pre-existing mercantile and

industrial customer efficiency projects. OPAE agrees, but offers a slightly different perspective. The General Assembly, in its infinite wisdom, chose to allow mercantile and industrial customers to 'look back' for three years and commit previously installed efficiency measures to the utilities to meet portfolio requirements. Given that there was no way to get substantial residential and small commercial programs off the ground fast enough to provide significant savings in 2009, 2010, and probably through 2012, the previously installed efficiency measures serve the valuable purpose of minimizing the waivers necessary because the savings benchmarks have not been met. ELPC also notes that the impact of measures should be counted as installed, rather than through an annual count, the same approach included in the Green Rules. OPAE concurs in this position. Likewise, OPAE agrees that utilities should not collect lost distribution revenues for mercantile and industrial opt-in projects.

NUCOR argues that short-run capacity costs do not value the demand response appropriately and long-run costs of avoided capacity should be used; i.e., the costs of new capacity. NUCOR forgets the new regulatory paradigm we are operating in. Ratepayers are responsible for building new capacity only under very limited circumstances. In the case of FirstEnergy, the distribution companies own no generation. So, there is no long-run cost that is avoided. Using a PJM proxy designed to increase the profits of generation owners hardly justifies the use of that number to value demand reduction in Ohio. This State is awash in capacity; the PJM market proxy has nothing to do with the value of demand reduction to FirstEnergy customers. Moreover, at this point there is no

mechanism to pass the value of demand response back to customers through rates. This oversight needs attention from the Commission in a more formal way.

Finally, the Office of the Ohio Consumers' Counsel ("OCC"), along with Citizen Power, Natural Resources Defense Council, and the Citizens Coalition, restates a position shared by OPAE that electric and natural gas programs should be coordinated. OPAE believes it should go farther, and that stakeholders should seek to combine all available energy efficiency and weatherization programs into a coherent whole and provide utilities with credit for savings that are not directly paid for through rates. OPAE incorporates herein the comments recently filed in Case No. 09-512-GE-UNC. *Motion of Ohio Partners for Affordable Energy to Amend Comments Filed on July 24, 2009 and Amended Comments* (March 12, 2010).

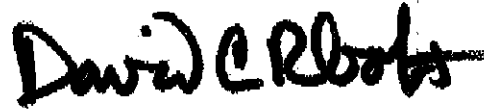
OPAE disagrees with the position taken by OCC and its allies that rate decoupling should be substituted for the lost revenue collection authorized by the Green Rules. SB 221 permits decoupling. FirstEnergy did not ask for it. Until an electric utility does ask for it and the issue is fully litigated, decoupling should not be considered by the Commission.

## **CONCLUSION**

FirstEnergy has offered a fairly standard portfolio of programs. The effectiveness of the implementation is what matters to customers. The jury is still out. Based on FirstEnergy's track record, the outlook is not good. As a result, the prospective riders should be set to reflect this lack of certainty and the incentive provided by shared savings should be taken off the table. In the latter

case, FirstEnergy has already agreed not to request shared savings and should not be permitted to unilaterally nullify a previous agreement with parties to the case, including OPAE.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Objections was served electronically upon the following parties identified below in these cases on this 17th day of February, 2010.



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