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July 1, 2010

Alan R. Schriber, Chairman
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Dear Chairman Schriber:

As you are aware, FirstEnergy Corp.'s President and Chief Executive Officer, Anthony Alexander, sent you a letter on June 2, 2010, in which he expressed his concern over the Commission's delay in ruling on the three year Energy Efficiency and Peak Demand Reduction Program Portfolio Plan ("Plan") submitted by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (Companies") in Case No. 09-1947-EL-POR et al ("EEPDR Case"). On June 11, 2010, the Ohio Environmental Council ("OEC") and the Office of the Ohio Consumers' Counsel ("OCC") both filed responses. While I am not inclined to enter into a "paper war" with either the OEC or the OCC, I feel that it is necessary to clarify certain misleading statements made in each of those letters.

OEC's letter advocates a denial of a *future* request to amend the 2010 benchmarks which may become necessary as each day passes without an Order. It goes without saying that any such arguments are premature, given that no such request has been made by the Companies.¹ Moreover, such arguments are misplaced in the EEPDR Docket.² Finally and importantly, OEC's arguments in support of its assertion that the Companies are obligated under Senate Bill 221 to launch programs without proper Commission approval are simply in error.

As a preliminary matter, the Companies, along with OCC, OEC and many other parties, entered into a stipulation in the Companies' Electric Security Plan that was approved by the Commission in Case No. 08-935-EL-SSO. Paragraph E.6(a) of that stipulation states: "[I]t is essential that any programs pursued to ensure that the Companies meet their statutory requirements are based on sound program evaluation, garner general support from stakeholders, and *are pre-approved*

¹ OEC June 11, 2010 Letter, pp. 1-2.

² *If* and when the Companies file such a request, it will be made in a separate docket consistent with both Ohio law and Commission rules, thus giving OEC, as well as any other interested party, an opportunity to raise their concerns in that docket, based upon specific facts. However, while Mr. Alexander's letter did indicate that a request for a waiver or amendment is becoming more likely as time continues to lapse without an order from the Commission, he also indicated that the Companies would prefer to avoid such a filing if at all possible. (AJA June 2, 2010 Letter, p. 1.)

² OEC June 11, 2010 Letter, p. 1.

for statutory compliance and cost recovery.” (Emphasis added.) Clearly all signatory parties contemplated Commission approval prior to the Companies launching energy efficiency programs. For OEC to now claim otherwise is simply an attempt to circumvent a provision of a Commission-approved stipulation to which OEC is a party.

In support of its position, OEC argues that Ohio utilities, including the Companies, have launched energy efficiency programs prior to formal approval from the Commission.³ It cites the fact that the Companies “continue to file mercantile applications, designed to assist in the 2010 compliance period, even though FirstEnergy’s administrative [sic] agreements for mercantile programs have not yet been formally approved by the Commission.” While OEC cites the Commission’s February 11, 2010 Entry on Rehearing in Case No. 09-553-EL-EEC as support, a closer review of that Entry does indeed approve the payment of an administrator fee for mercantile projects and recovery of the same by the Companies.⁴ Inasmuch as no payment is made to an administrator prior to the Commission approving the mercantile applications, the Companies’ actions are consistent with the stipulated agreement. OEC also claims that the other Ohio utilities “all began to deploy 2009 energy efficiency programs prior to formal approval from the Commission.”⁵ What OEC fails to mention, however, is that these utilities received general approval of these programs in their respective Electric Security Plans.⁶

OCC, while asking the Commission to act promptly and issue an order on the Plan,⁷ devotes a significant portion of its letter to claiming “I told you so” by reiterating its arguments from its brief in the EEPDR Case. OCC argues again that the incorporation of the CFL Program into the 3-year Plan, rather than the launch as an individual program, “is a significant and contributing factor to FirstEnergy’s present predicament.”⁸ OCC, however, forgets several significant facts. First, the Commission approved the Companies’ request for inclusion of the CFL Program in the 3-year Plan, thus indicating its agreement with such an approach. Second, OCC has presented no evidence that would suggest that the Commission would have already approved the CFL

³ OEC June 11, 2010 Letter, p. 1.

⁴ *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 09-553-EL-EEC, Entry on Rehearing, p. 4 (Feb. 11, 2010) (the Commission will “permit recovery by [the Companies] of the per kWh administration fee for energy efficiency projects implemented prior to January 1, 2009, provided that the projects for which compensation will be paid are contained in a joint application submitted to the Commission by [the Companies] and the mercantile customer and provided that such application is approved by the Commission.”)(approval is limited “to existing mercantile customer programs which are filed with the Commission prior to the issuance of a final, appealable order in the [EEPDR Case]”); *see also*, OCC Application for Rehearing, Case No. 09-553-EL-EEC, p. 2 (Mar. 15, 2010)(The commission’s reversal in its February 11 Entry on Rehearing allows administrators to collect a fee of \$0.01 per kWh and the Companies to recover such fees from their customers.)

⁵ OEC June 11, 2009 Letter, p. 1.

⁶ *See generally In re application of Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, Opinion & Order, pp. 18-19 (Dec. 17, 2008); *In re Application of Columbus Southern Power Company*, Case No. 08-917-EL-SSO, Opinion & Order, pp. 44-45 (Mar. 18, 2009); *In re Application of Dayton Power and Light*, Case No. 08-1094-EL-SSO, Opinion & Order, (June 24, 2009)

⁷ OCC June 17, 2010 Letter, p. 2.

⁸ OCC June 17, 2010 Letter, p. 1.

program had the Companies submitted it as a single program. Indeed, the evidence is quite to the contrary, given that all parties to the EEPDR Case except OCC either submitted or agreed not to oppose a joint motion in which the moving parties requested Commission approval to launch four programs, including the CFL program, on or before April 1, 2010.⁹

In sum, OEC's letter echoes Mr. Alexander's concerns about the delay in the issuance of an Order in the EEPDR Case. OCC likewise reiterates concerns over the delay in the issuance of an Opinion and Order in the EEPDR Case. Their respective comments about a prospective filing that may or may not be made are irrelevant to the issues at hand, especially when such comments distort the facts. Another month has passed since Mr. Alexander voiced his concerns. I reiterate those concerns in this letter. Each day that passes further jeopardizes the Companies' ability to fully implement the state policy embodied in the energy efficiency requirements of Senate Bill 221. I urge the Commission to issue its ruling in the EEPDR Case so that the Companies have an opportunity to try to meet their statutory benchmarks for 2010.

Sincerely,



c: Commissioner Paul A. Centolella
Commissioner Valerie A. Lemmie
Commissioner Steven Lesser
Commissioner Cheryl Roberto

⁹ *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, et al (Joint Motion, Feb. 23, 2010). Although OCC did not agree to the Joint Motion, it filed a Memorandum in Response to the Joint Motion in which it essentially reiterated the same points as those included in the Joint Motion. (Id., Memorandum in Response, Feb. 24, 2010).

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Case No(s). 09-1948-EL-POR, 09-1947-EL-POR, 09-1949-EL-POR, 09-1944-EL-EEC, 09-1942-EL-EEC,

Summary: Comments in a letter from John Paganie in response to letters to the Chairman submitted by Ohio Environmental Council and the Office of the Ohio Consumers' Counsel electronically filed by Ms. Kathy J Kolich on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company