

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 No. 11-126-EL-EEC
Edison Company to Amend Their Energy )	Case No. 11-127-EL-EEC
Efficiency and Peak Demand Reduction )	Case No. 11-128-EL-EEC
Benchmarks. )	

FINDING AND ORDER

The Commission finds:

- (1) Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (TE) (collectively, FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) Section 4928.66, Revised Code, requires electric utilities to meet certain annual energy efficiency and peak demand reduction (EE/PDR) benchmarks specified in the statute.
- (3) On January 11, 2011, FirstEnergy filed an application, pursuant to Section 4928.66(A)(2)(b), Revised Code, to amend its 2010 EE/PDR benchmarks.

In its application, FirstEnergy notes that, when the Commission approved FirstEnergy's proposed amendment of its 2009 energy efficiency benchmarks, the Commission held that revised energy efficiency benchmarks for 2010, 2011, and 2012 would be established in FirstEnergy's energy efficiency program portfolio plan proceeding, *In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison 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 Mechanism*, Case Nos. 09-1947-EL-POR et al. (*FirstEnergy Portfolio Case*). FirstEnergy claims that, since the Commission has not issued an order in that proceeding, the Companies are unable to report on their compliance with respective energy efficiency benchmarks for 2010. In addition, the Companies report that it appears that OE will not meet its 2010 energy

efficiency benchmark or its 2010 peak demand reduction benchmark.

Therefore, the Companies seek amendments to their 2010 energy efficiency benchmarks if and only to the degree such amendments are deemed necessary to bring each of them into compliance with their modified energy efficiency benchmarks. Further, OE requests that its 2010 peak demand reduction benchmark be amended to its actual 2010 peak demand reduction levels.

- (4) In addition, by Finding and Order dated March 9, 2011, the Commission extended the date for FirstEnergy to file its 2010 benchmark status report from March 15, 2011, to May 15, 2011. On May 15, 2011, FirstEnergy filed a motion for an extension of the deadline, to ten days after the Commission rules on the Companies application in this proceeding. The Commission finds that this request is reasonable and should be granted. Accordingly, FirstEnergy shall file its 2010 benchmark status report by May 29, 2011.
- (5) On February 10, 2011, the Ohio Consumers' Counsel (OCC) filed a motion to establish a comment period. Moreover, OCC, Ohio Environmental Council, the Environmental Law and Policy Center, and the Natural Resource Defense Council (collectively, OCEA) filed comments regarding the application, on February 25, 2011. FirstEnergy filed a memorandum contra the motion to establish a comment period on February 25, 2011, contending that no statute or rule provides for the filing of comments regarding applications to revise EE/PDR benchmarks pursuant to Section 4928.66(A)(2)(b), Revised Code. FirstEnergy also filed reply comments on March 8, 2011. Although the Commission did not establish a comment period prior to the filing of comments in this proceeding, the Commission finds that FirstEnergy has not been prejudiced by the filing of comments and that such comments should be considered by the Commission.
- (6) In its comments, OCEA argues that the Commission should find that FirstEnergy's failure to achieve its benchmarks was not due to "regulatory, economic, or technological issues beyond its reasonable control" and that FirstEnergy is ineligible for an amendment of its benchmarks under Section 4928.66(A)(2)(b), Revised Code. OCEA claims that FirstEnergy

chose to pursue certain mercantile customer programs prior to Commission approval and that third-party administrators of these programs spent considerable time and effort on these programs at their own risk.

- (7) OCEA claims that, since the Companies were willing to embark on these mercantile customer programs prior to receiving Commission approval, FirstEnergy has no justification for failing to launch four programs, the Appliance Turn-in Program, the CFL and CFL Low Income Program, the C/I Equipment Program (Lighting), and the C/I Equipment Program (Industrial Motors), prior to receiving Commission approval. OCEA notes that FirstEnergy requested pre-approval of these four programs from the Commission during the pendency of the *FirstEnergy Portfolio Case* and that these four programs were supported by all parties in the proceeding. In addition, OCEA claims that uncertainty regarding portfolio approval or cost recovery is not a regulatory, economic, or technological issue justifying an amendment or waiver of the benchmark contemplated by Section 4928.66(A)(2)(b), Revised Code, and that other Ohio electric utilities have gone forward with programs prior to receiving Commission approval and met their statutory benchmarks.
- (8) In its reply comments, FirstEnergy claims that the Companies have engaged in good faith efforts to comply with the EE/PDR benchmarks. The Companies argue that the mercantile programs identified by OCEA are specifically authorized by Section 4928.66(A)(2)(c), Revised Code, and that the Companies and mercantile customers have sought specific approval from the Commission for each individual project. Further, FirstEnergy claims that OCEA misrepresented the facts surrounding the implementation of EE/PDR programs by other Ohio electric utilities because each of those utilities obtained approval for their EE/PDR programs prior to launching them.
- (9) On March 23, 2011, the Commission issued its Opinion and Order in the *FirstEnergy Portfolio Case*. In the Opinion and Order, the Commission determined that it was not necessary to further amend FirstEnergy's 2010 energy efficiency benchmarks. In the Opinion and Order, the Commission held that:

On October 27, 2009, FirstEnergy filed an application, pursuant to Section 4928.66(A)(2)(b), Revised Code, to amend its 2009 energy efficiency benchmarks, requesting that its 2009 benchmark be set to zero. On January 7, 2010, the Commission approved the application contingent upon FirstEnergy meeting amended benchmarks, with the level of the revised benchmarks to be determined in the instant proceeding. *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Amend Their Energy Efficiency Benchmarks*, Case No. 09-1004-EL-EEC et al., Finding and Order (January 7, 2010) at 4.

Based upon the record of this proceeding, the Commission finds that it is unnecessary to further revise the specific statutory benchmarks for 2010, 2011 and 2012, provided that FirstEnergy meets the cumulative energy efficiency savings for the three years implicit in Section 4928.66(A)(1)(a), Revised Code.

*FirstEnergy Portfolio Case*, Opinion and Order (March 23, 2011) at 6.

FirstEnergy argues that, in light of this decision, any shortfalls in energy efficiency results for any of the Companies in either 2009 or 2010 may be made up no later than the end of 2012 and that its request for an amendment of its 2010 energy efficiency benchmarks is moot.

FirstEnergy's interpretation is incorrect. The Commission declined to require the Companies to make up any of the 2009 energy efficiency shortfall in 2010. The Commission did not amend the Companies' 2010 statutory energy efficiency benchmarks in the *FirstEnergy Portfolio Case*, and the Companies were required to achieve those benchmarks or to seek an amendment from the Commission.

- (10) Upon review of the application and the comments filed in this proceeding, the Commission finds that the application for a waiver of CEI's and TE's energy efficiency benchmarks is moot. FirstEnergy represents that CEI and TE met their statutory

energy efficiency benchmarks and that the application for an amendment was only necessary if the Commission amended their statutory 2010 energy efficiency benchmarks. Since those benchmarks were not amended by the Commission, it is unnecessary to grant the application for an amendment of CEI's and TE's 2010 energy efficiency benchmarks.

- (11) With respect to the application for amendments of OE's EE/PDR benchmarks, the Commission finds that the application should be granted. Section 4928.66(A)(2)(b), Revised Code, states:

(a) The commission may amend the benchmarks set forth in division (A)(1)(a) or (b) of this section if, after application by the electric distribution utility, the commission determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control.

The Commission notes the stipulation approved by the Commission for FirstEnergy's current electric security plan specifically provides that the Companies should request approval from the Commission of proposed EE/PDR programs. *In re FirstEnergy*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (March 25, 2009) at 13-14. Further, OE's comprehensive program portfolio was not approved by the Commission until March 23, 2011. For this reason, the Commission finds that OE could not reasonably achieve its EE/PDR benchmark due to regulatory reasons beyond its control.

- (12) Although the Commission will amend OE's 2010 EE/PDR benchmarks to the actual amount of energy savings achieved by OE, the Commission finds that the amendment should be contingent upon OE meeting the cumulative energy savings mandated by statute by 2012, consistent with our decision in the *FirstEnergy Portfolio Case*. This will ensure that customers receive the full benefit of the energy savings mandated by law.

It is, therefore,

ORDERED, That FirstEnergy's motion for an extension of the filing date for its 2010 benchmark status report be granted. It is, further,

ORDERED, That FirstEnergy's application be granted, in part, and denied, in part, as set forth herein. It is, further,

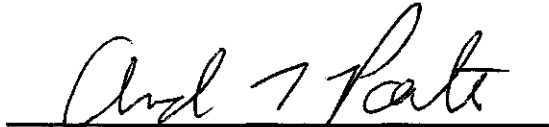
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

  
Steven D. Lesser


  
Andre T. Porter

  
Cheryl L. Roberto

GAP/sc

Entered in the Journal

MAY 19 2011

  
Betty McCauley

Betty McCauley  
Secretary