

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for the	)	
Energy Efficiency and Peak Demand	)	
Reduction Portfolio Status Report of Ohio	)	Case No. 16-941-EL-EEC
Edison Company, the Cleveland Electric	)	Case No. 16-942-EL-EEC
Illuminating Company, and the Toledo	)	Case No. 16-943-EL-EEC
Edison Company for the Period January 1,	)	
2015 to December 31, 2015.	)	

---

**COMMENTS<sup>1</sup>  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

The Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to the Public Utilities Commission of Ohio for the Period January 1, 2015 to December 31, 2015<sup>2</sup> (the "Status Report") contains several errors that must be corrected to protect consumers. The Public Utilities Commission of Ohio (the "PUCO") should not permit Ohio Edison Company ("OE"), the Cleveland Electric Illuminating Company ("CEI"), and the Toledo Edison Company ("TE", and collectively, "FirstEnergy" or the "Utilities") to (i) count savings from projects that the PUCO has not yet approved, (ii) collect profit from customers under the 2015 shared savings mechanism based on savings amounts that are unsupported (and which may include savings from the projects not yet approved), or (iii) calculate shared savings using the maximum incentive

---

<sup>1</sup> The Office of the Ohio Consumers' Counsel ("OCC") files these comments under Ohio Administrative Code ("OAC") 4901:1-39-06(A), which states: "Any person may file comments regarding an electric utility's initial benchmark report or annual portfolio status report filed pursuant to this chapter within thirty days of the filing of such report.").

<sup>2</sup> See Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to the Public Utilities Commission of Ohio for the Period January 1, 2015 to December 31, 2015, Case No. 16-941-EL-EEC (May 12, 2016).

percentage, which results in customers paying \$10 million (after taxes) in profits to the Companies.

**I. FIRSTENERGY FAILS TO PROVIDE SUPPORTING DATA FOR ITS CLAIMED ENERGY SAVINGS AND IMPROPERLY INCLUDES SAVINGS FROM PROJECTS NOT YET APPROVED BY THE PUCO.**

In Appendix A to its Status Report, FirstEnergy calculates the amount of shared savings profit that it claims customers should pay. The amount of profit is based, in part, on the amount of annual energy savings achieved through the Companies' energy efficiency and peak demand reduction ("EE/PDR") programs. FirstEnergy claims that CEI achieved 99,603 MWh of energy savings in 2015, OE achieved 190,614 MWh, and TE achieved 89,435 MWh.<sup>3</sup> FirstEnergy, however, does not explain anywhere in its Status Report how it arrived at these numbers. Without specific details on how those numbers were determined, neither the PUCO nor any other party can determine if they are accurate. FirstEnergy should not be permitted to collect any profits from customers under the shared savings mechanism until it provides a detailed explanation of how those numbers were calculated, including the amount of savings per program that is included in those numbers.

Furthermore, in section 2.2 of the Status Report, FirstEnergy includes in its cumulative benchmark calculations savings from programs not yet approved by the PUCO. There is no justification for claiming savings from programs that have not yet been approved. Furthermore, to the extent that any savings from programs not yet approved have been included in the cumulative or annual energy savings calculations for purposes of shared savings, they should be removed.

---

<sup>3</sup> See Status Report, Appendix A, Shared Savings Determination.

**II. FIRSTENERGY SHOULD NOT RECOVER PROFIT FROM CUSTOMERS AT THE HIGHEST INCENTIVE TIER IN THE SHARED SAVINGS MECHANISM BECAUSE IT ACHIEVED ONLY MINIMAL ENERGY SAVINGS IN 2015.**

In their 2012 EE/PDR portfolio case<sup>4</sup>, FirstEnergy asked the PUCO to approve a "shared savings mechanism" that required customers to pay additional profits to the Companies based on the results of the Companies' EE/PDR programs.<sup>5</sup> The PUCO entered an order on March 20, 2013 approving the Companies' portfolio (the "2013-2015 Portfolio"), including a shared savings mechanism.<sup>6</sup> The approved shared savings mechanism included the following tiered structure:<sup>7</sup>

Incentive Tier	Compliance Percentage	Incentive Percentage
1	<100%	0.00%
2	100-105%	5.00%
3	>105-110%	7.50%
4	>110-115%	10.00%
5	>115%	13.00%

The PUCO also ruled that the annual amount of shared savings would be capped at \$10 million across all three Companies.<sup>8</sup>

At the time that the PUCO approved FirstEnergy's 2013-2015 Portfolio, electric distribution utilities in Ohio were required to achieve annual energy savings of 0.9% of

---

<sup>4</sup> Case No. 12-2190-EL-POR.

<sup>5</sup> See Energy Efficiency & Peak Demand Reduction Program Portfolio, Appendix E, Case No. 12-2190-EL-POR (July 31, 2012).

<sup>6</sup> See Opinion and Order at 16, Case No. 12-2190-EL-POR (Mar. 20, 2013).

<sup>7</sup> *Id.*

<sup>8</sup> See *supra* note 6.

their "baseline"<sup>9</sup> energy sales in 2013, 1% from 2014 to 2018, and 2% thereafter.<sup>10</sup> The "Compliance Percentage" in the chart above refers to the percentage of the statutory energy savings benchmark under R.C. 4928.66 that each Utility was required to achieve annually.

In 2014, the General Assembly enacted SB 310, which modified R.C. 4928.66 and "froze" the annual benchmarks for 2015 and 2016. Electric distribution utilities were not required to achieve any annual energy savings in 2015 and 2016. The annual benchmark for 2015 and 2016 was reduced from 1% to zero. SB 310 also gave electric distribution utilities the opportunity to either continue their current EE/PDR programs or to modify them to account for the freeze.<sup>11</sup>

FirstEnergy filed an application<sup>12</sup> to cancel nearly all of its EE/PDR programs (the "Program Cancellation Application") almost immediately after SB 310 became effective.<sup>13</sup> Despite cancelling most of its EE/PDR programs, FirstEnergy maintained that it would still seek to recover profits from customers in 2015 and 2016 through the same shared savings mechanism that was approved by the PUCO's March 20, 2013 order.

Several parties, including OCC and the PUCO staff, objected to the Companies' request that the shared savings mechanism continue to operate in 2015 and 2016. These parties argued, among other things, that (i) the Companies should not receive any shared

---

<sup>9</sup> The "baseline" is the "total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in" Ohio. *See* Ohio Revised Code ("R.C.") 4928.66(A).

<sup>10</sup> *See* Ohio Senate Bill 310 ("SB 310"), modifying R.C. 4928.66.

<sup>11</sup> *See* SB 310 §6.

<sup>12</sup> *See* Verified Application for Approval of Amended Energy Efficiency and Peak Demand Reduction Plans for 2015 through 2016, Case No. 12-2190-EL-POR (Sept. 24, 2014).

<sup>13</sup> The modifications to R.C. 4928.66 became effective on September 12, 2014, and FirstEnergy filed its application to cancel its programs 12 days later on September 24, 2014.

savings at all in 2015 and 2016, (ii) the Companies should only be permitted to recover shared savings for "programs that require the Companies to actively influence customers," (iii) the Companies should only receive shared savings if they exceed the previous annual benchmarks (*i.e.*, the benchmarks in place before the freeze), and (iv) the \$10 million cap should be reduced.<sup>14</sup> The PUCO rejected these arguments.<sup>15</sup>

In the Status Report, the Companies report the following shared savings amounts: \$4,474,025 for CEI, \$6,497,447 for OE, and \$3,822,041 for TE, for a total of \$14,793,513 (to be capped at \$10 million).<sup>16</sup> The Companies arrive at these numbers by calculating the total discounted net lifetime benefits for each Utility, using the tiered structure described above to determine the "incentive percentage," and multiplying the net benefits by the incentive percentage to yield a profit amount.

Each of the Companies reports that it has achieved ">115%" annual compliance, and accordingly, each Utility claims that it is entitled to profits in the amount of 13.00% — the highest tier and maximum profit — of the total discounted net lifetime benefits. The Companies, however, do not explain how they have determined that they have achieved greater than 115% compliance.

Each Utility reports both an annual and a cumulative compliance percentage. The cumulative compliance percentage calculations are straightforward. For example, CE reports a "Cumulative Target MWh" of 737,547, "Achieved Cumulative Energy Savings

---

<sup>14</sup> See Finding and Order at 13-15, Case No. 12-2190-EL-POR (Nov. 20, 2014) (the "Program Cancellation Order").

<sup>15</sup> *Id.* at

<sup>16</sup> See 2015 Status Report, Appendix A.

MWh" of 1,509,065<sup>17</sup>, and "Cumulative Compliance" of 205%. This is simple math:  $1,509,065 / 737,547 = 2.046$ , which rounds up to 205%. The calculation for the annual compliance percentage, in contrast, cannot be explained.

CEI reports an "Annual Target MWh" of 0, "Achieved Annual Energy Savings MWh" of 99,603<sup>18</sup>, and "Annual Compliance" of ">115%." But there is no mathematical calculation that can be performed to arrive at CEI's claim that it has achieved greater than 115% compliance.  $99,603 / 0$  is undefined. It is not a number that is greater than 115%. Thus, the Companies' claim that they have each achieved greater than 115% annual compliance is mathematically impossible, and the Companies are not entitled to use the highest tier of 13% to calculate the amount of profit that customers will pay to the Companies.

Notably, FirstEnergy, PUCO staff, OCC, and other intervenors did not raise this issue in the 2013-2015 Portfolio case or in connection with the Program Cancellation Application. Nor did the PUCO address this issue in the Cancellation Order. The PUCO did not address how the words "compliance percentage" should be interpreted in the context of a zero benchmark. FirstEnergy apparently believes that as long as it achieved more than zero MWh of energy savings, it deserves the maximum incentive and maximum amount of profit under the shared savings mechanism. This interpretation has never been submitted to the PUCO for approval, nor has the PUCO approved it.

Shared savings are designed to give the utility an incentive to achieve greater energy savings for the benefit of customers. The tiered structure is designed to give

---

<sup>17</sup> As discussed above, if these reported cumulative savings include savings from programs that the PUCO has not yet approved, such savings should be removed, and the compliance percentage calculations should be modified accordingly.

<sup>18</sup> See *supra* note 17.

FirstEnergy a greater incentive if it demonstrates exemplary performance. FirstEnergy does not demonstrate exemplary performance simply by achieving more than zero MWh of energy savings. Accordingly, the PUCO should rule that FirstEnergy is entitled to shared savings using only the 5% incentive percentage in the tiered shared savings mechanism. This is the only equitable result in light of FirstEnergy's decision to cancel nearly all of its programs for 2015 and 2016.

Using the 5% incentive tier, the Companies should recover, at most, the following amounts:

Utility	Total Discounted Net Lifetime Benefits	Incentive Percentage	Shared Savings
CEI	\$34,415,580	5%	\$1,720,779
OE	\$49,980,360	5%	\$2,499,018
TE	\$29,400,312	5%	\$1,470,016
		<b>TOTAL</b>	\$5,689,813

FirstEnergy cites no authority for its use of the 13% incentive percentage for 2015 because there is none. FirstEnergy should not be rewarded with the maximum incentive and the maximum amount of profit in a year in which it canceled nearly all of its EE/PDR programs. The PUCO should find that an award of \$5,689,813 for shared savings is more than adequate and is consistent with the Program Cancellation Order.

Respectfully submitted,

BRUCE J. WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey

Christopher Healey (0086027)  
Counsel of Record

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: (614) 466-9571 (Healey direct)  
[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
(will accept service via email)



## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electric transmission this 13th day of June 2016.

/s/ Christopher Healey  
Christopher Healey  
Assistant Consumers' Counsel

## **SERVICE LIST**

Madeline Fleisher  
Environmental Law & Policy Center  
21 West Broad St., Suite 500  
Columbus, OH 43215  
[mfleisher@elpc.org](mailto:mfleisher@elpc.org)

James W. Burk  
Carrie M. Dunn  
Counsel of Record  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
[jburk@firstenergycorp.com](mailto:jburk@firstenergycorp.com)  
[cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com)

William Wright  
Ohio Attorney General's Office  
Public Utilities Commission of Ohio  
30 E. Broad St., 16<sup>th</sup> Fl.  
Columbus, OH 43215  
[William.wright@ohioattorneygeneral.gov](mailto:William.wright@ohioattorneygeneral.gov)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**6/13/2016 5:06:27 PM**

**in**

**Case No(s). 16-0941-EL-EEC, 16-0942-EL-EEC, 16-0943-EL-EEC**

Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.