BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for Update to the Demand Side Management and Energy Efficiency Rider Contained in the Tariffs of Ohio Edison, The Cleveland Electric Illuminating Company and The Toledo Edison Company.	))))))	Case No. 18-1646-EL-RDR

OBJECTIONS BY THE ENVIRONMENTAL LAW & POLICY CENTER

On December 3, 2018, the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy") filed an updated tariff for the rider recovering the costs of energy efficiency programs from customers, Rider DSE. If the Public Utilities Commission of Ohio ("Commission") allows this tariff update to go into effect, it will allow FirstEnergy to continue collecting costs for administering its energy efficiency programs, as well as "shared savings" incentive payments based on the performance of those programs. Considering this to be an application for cost recovery for those programs, the Environmental Law & Policy Center ("ELPC") hereby files these objections within 30 days of FirstEnergy's application in accordance with Ohio Administrative Code 4901:1-39-07. These objections explain that FirstEnergy is unreasonably seeking to recover shared savings payments based on inflated and unrealistic savings estimates that do not reflect actual customer energy savings.

Although FirstEnergy has failed to include any supporting documentation in this docket, the filings submitted in reporting on its 2017 efficiency programs in Case Nos. 18-841-EL-EEC *et al.* show that FirstEnergy is claiming shared savings in part by relying on *ex ante* savings estimates that are higher than the actual customer energy savings documented in its own *ex post* evaluations. In that docket, FirstEnergy explained that to determine energy savings values, it compares *ex post* "as found" values to *ex ante* "deemed" savings assumptions under the Ohio Technical Resource Manual ("TRM") and reports "energy savings (kWh) and peak demand reduction (kW) [that] represent the higher calculated value obtained from both methodologies . . . ." Case Nos. 18-841-EL-EEC *et al.* Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report for the period January 1, 2017 through December 31, 2017 (May 15, 2018) ("2017 Report"), App. H at 1-2.

The discrepancies between these *ex ante* assumptions and *ex post* actual savings numbers can be quite significant, in part because many are drawn from the Ohio TRM, which has not been updated for almost a decade. For example, FirstEnergy's evaluation of its Appliance Turn-In program shows an estimate of 803 kWh average annual savings achieved per recycled refrigerator. 2017 Report, App. F, Tbl. 5-7. Meanwhile, the Ohio TRM provides a savings assumption of 1376 kWh – more than 70% higher than the real-world evaluation figure. This discrepancy is not surprising, given that refrigerators have been getting more efficient over time. Because of such technological advances, the average old unit available to be recycled in 2010, when the TRM was developed, was likely less efficient than the average old unit available to be recycled in 2017 or later years.

FirstEnergy's practice of using higher numbers from years-old savings assumptions, even if those assumptions do not prove true in the current, real-life results from efficiency programs, is consistent with the determination of *compliance* with the annual energy efficiency savings benchmarks under R.C. 4928.66. Under R.C. 4928.662(B), each utility is supposed to use "deemed" savings values (under the Ohio Technical Resource Manual or otherwise) even if they are higher than the "as found" savings the utilities are observing in the real world. However, it is not consistent with Commission precedent to apply that same approach in determining whether a utility has earned a shared savings incentive payment based on the performance of its programs. As the Commission has previously stated with respect to the Companies' "Customer Action Program" (which documents energy savings achieved by customers outside the scope of FirstEnergy's efficiency programs), the "Commission has never allowed shared savings for programs like the historic mercantile customer program which involves no action by the Companies to achieve the energy savings." Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at 147. Similarly, FirstEnergy should not be able to earn shared savings based on overstated savings estimates rather than actual documented customer energy savings resulting from its efficiency programs. Otherwise, the Commission will be forcing customers to pay incentives for benefits that the utility has not actually provided.

In fact, it appears that if FirstEnergy is allowed to apply this approach in determining and collecting shared savings, customers will pay significant amounts for illusory energy savings that it programs have not actually achieved in real life. Most notably, looking at the shared savings claim for Cleveland Electric Illuminating Company ("CEI"), it is not clear that FirstEnergy should earn any shared savings based on the performance of CEI's efficiency programs in 2017. In that year, FirstEnergy's 2017 Report states that it is claiming 185,583 MWh of annual energy savings for CEI based on the performance of its residential and business programs excluding the Customer Action Program. *See* 2017 Report, App. D at 2; 2017 Report, Table 2-2 (244,932 MWh of total achieved annual energy savings for CEI); 2017 Report, App. C at 1 (45,851 MWh of annual energy savings under the residential Customer Action Program and 13,498 MWh of annual energy savings under the small and large business Customer Action Programs). That calculation would allow FirstEnergy to claim almost $6.5 million in shared savings based on having achieved 106.3% of its annual 174,528 MWh target. 2017 Report, App. D at 2.

However, that 106.3% savings level rests on using *ex ante* savings assumptions instead of actual documented *ex post* savings levels. Looking at the actual "realized" savings for the same programs, CEI only achieved 174,272 MWh of annual savings in 2017, per the following data extracted from FirstEnergy's 2017 Report, Appendix C:

	Ex Ante Gross Savings (MWh)	**Realization Rate**	**Ex Post Realized Savings (MWh) (Ex Ante Gross Savings x Realization Rate)**
Residential Programs			
Appliance Turn-In	15510	98%	15200
Energy Efficient Homes	37005	103%	38115
Energy Efficient Products	32138	88%	28281
Low Income Energy Efficiency	3659	100%	3659
Business Programs			
Energy Solutions for Business - Small	68331	88%	60131
Energy Solutions for Business - Large	16275	103%	16763
Government Tariff Lighting	27	100%	27
Mercantile	10850	95%	10307
Other			
T&D Improvements	1789	100%	1789
Total Savings	185584		174272

This table shows that, looking at *actual* savings resulting from CEI's programs, the utility **did not even achieve 100% of its compliance target**, let alone exceed its target so as to trigger shared savings. While CEI can rely on inflated savings assumptions for purposes of compliance pursuant to R.C. 4928.662(B), the same should not apply for shared savings since those savings assumptions are not a sufficient basis to find there have been real-life customer benefits. Customers should not have to pay FirstEnergy an incentive payment of more than $6 million for programs that did not actually deliver any additional benefits over and above those required by law.

Accordingly, ELPC requests that the Commission not approve FirstEnergy's updated Rider DSE tariff, and instead set a schedule for a hearing at which FirstEnergy must show actual energy savings as documented by current program evaluations, or at least reasonable savings assumptions based on current day program performance, in order to support any request for recovery of shared savings through Rider DSE.

January 2, 2019

Respectfully submitted,

/s/ Madeline Fleisher
Madeline Fleisher
Environmental Law & Policy Center
21 West Broad St., 8th Floor
Columbus, OH 43215
(614) 569-3827
mfleisher@elpc.org

Counsel for the Environmental Law & Policy Center

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Intervene submitted on behalf of the Environmental Law & Policy Center was served by electronic mail, upon all Parties of Record on January 2, 2019.

/s Madeline Fleisher
Madeline Fleisher