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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 Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices And for Tariff Approvals)	Case No. 07-551-EL-AIR Case No. 07-552-EL-ATA Case No. 07-553-EL-AAM Case No. 07-554-EL-UNC

POST-HEARING BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY, THE NEIGHBORHOOD ENVIRONMENTAL COALITION, THE EMPOWERMENT CENTER OF GREATER CLEVELAND, AND CONSUMERS FOR FAIR UTILITY RATES.

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On Behalf of Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, and The Empowerment Coalition of Greater Cleveland

March 28, 2008

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Introduction

The three FirstEnergy Corporation Ohio operating companies – Cleveland Electric Illuminating Company ("CEI"), The Ohio Edison Company ("OE"), and The Toledo Edison Company ("TE" and collectively "FirstEnergy" or "the Companies") have returned to the Public Utilities Commission of Ohio ("PUCO" or "the Commission") for base rate cases, the first since 1989 for OE and 1996 for CEI and TE. Much has changed since parties visited these rates. Ohio has restructured the regulatory framework covering electric utilities and this proceeding will deal with distribution costs only. Electricity prices have increased significantly under rate stabilization plans and, in the case of FirstEnergy, a rate certainty plan. Ohio's economy has continued to slide with income, jobs and industrial demand evaporating. Utilities have disinvested in their distribution systems while reliability has declined, as would be expected. Costs for bad debt have soared as the economy has floundered. Nationally, commissions and utilities have embraced energy efficiency programs, a/k/a demand side management programs, to protect customers from rate increases and mitigate risks associated with rising fossil fuel costs and stricter environmental standards including likely controls on carbon emissions. The times are certainly changing.

The FirstEnergy operating companies, electric distribution utilities, remain regulated monopolies under Ohio law. The reevaluation of existing base rates must factor in outside forces the give meaning to the requirement that rates be just and reasonable. Customers pay for everything in the utility system, particularly the monopoly distribution services. Customers should be able to purchase and pay for what they need to control overall costs now and into the future. With the specter of electricity prices being set through a dysfunctional market on the horizon, investments made by customers in distribution service must focus on minimizing and mitigating increased prices on the generation side of the ledger.

Ohio Partners for Affordable Energy ("OPAE"), the Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, and Consumers for Fair Utility Rates, (collectively "Consumer Advocates") respectfully request that the PUCO significantly reduce the size of the rate base proposed by the Company, reduce the allowable rate of return, and require the investment in demand side resources to ensure captive customers are not chained to high generation prices.

Procedural History

FirstEnergy filed a notice of intent to file an application to increase distribution rates on May 8, 2007. The Application was filed on June 6, 2007. The Staff Reports covering the three operating companies were filed on December 4, 2007. Objections were filed by most parties on January 3, 2008. Hearing in this matter began on January 29, 2008 and public hearings are concluding this week. Per the direction of the Attorney Examiners, the Consumer Advocates hereby file their Post-Hearing Brief in this docket. The Consumer Advocates' initial brief focuses on the need to mitigate the impact of volatile and increasing generation prices through energy efficiency and on a particular consumer protection issue. Consumer Advocates reserve the right to address other issues in the reply brief.

Argument

I. FirstEnergy Rates must include Adequate Funding for Low-Income Energy Efficiency Programs.

Payment troubled customers are an increasing problem given mounting energy costs, economic malaise, and problems in the mortgage industry that are shaking the economy. Home energy bills for residential customers increased 40% from 2000 to 2005.[1] Increases in electric, natural gas, and bulk fuel prices over the past two years have undoubtedly increased this percentage. The implications of these price hikes for low-income customers are clear – energy, a major component of a families' housing expenses, is increasingly unaffordable.

[1] *Direct Testimony of Michael A. Smalz,* OPAE Exhibit I at 2.

The rate increases requested by the FirstEnergy operating companies will have a significant impact on customer costs. CEI is requesting an increase of 24.59 percent, OE is requesting 31.05 percent, and TE desires a 44.60 percent increase.[2] Increases of this magnitude will make customer bills much less affordable.

Rate increases have the greatest impact on customers with the lowest incomes. U.S. Census Bureau data shows that 21 percent of Ohioans have incomes below 150 percent of the poverty line. FirstEnergy had 1,916,748 residential customers during the test year. Based on this data, at least 402,517 FirstEnergy customers meet traditional low-income criteria.[3] The number of FirstEnergy customers participating in the Home Energy Assistance Program ("HEAP") has increased at 10 percent per year since 2000. As of March, 2007, 121,054 FirstEnergy customers were participating in the Percentage Income Payment Plan ("PIPP"), 52.5 percent of all electric PIPP customers statewide. The number of PIPP customers in the CEI service territory increased by 79.83 percent from January 2000 to March 2007. The number of OE customers participating in PIPP increased by 55.99 percent and the number of TE customers increased by 98.43 percent over the same period. The growth in the number of FirstEnergy customers that cannot afford electricity is astronomical.

Testimony at the public hearings attests to the hardship families' face in paying for essential energy services. Vesna Vukasinovich of Mahoning

[2] CEI, OE and TE Staff Reports at 2.
[3] CEI, OE, and TE Staff Reports at 28; *Direct Testimony of Michael A. Smalz,* OPAE Exhibit I at 3 and Attachment A ("Smalz"). FirstEnergy service territories probably have higher concentrations of low-income customers but data for individual company service territories is not available.

Youngstown Community Action Partnership ("MY-CAP"), Liz Hernandez of Cleveland Housing Network, and Cathleen Finn of Barberton Area Community Ministries testified to the struggles their low-income clients are having as they attempt to keep the lights and heat on.[4] Connie Korda testified that she is going without one of her medications to pay the electric bill.[5] Ruth Small testified that she has only "$143 per month to buy food, laundry supplies, paper products, gas for the car, repairs when needed." She cannot afford health insurance or a prescription plan.[6]

In the face of the documented need for affordability programs, FirstEnergy does not request any funding – bill payment assistance or energy efficiency funding -- to deal with this crisis. Tr. IX at 79 – 80. Company Witness Oullette testified that "[l]ow-income customers receive funds and assistance from multiple state agencies and programs such as the Percentage Income Payment Plan." Oullette Rebuttal Testimony at 4. On cross-examination, Mr. Oullette could not name any of these programs nor could he provide any information on funding levels. Tr. IX at 75 – 79.[7] The existing Company-funded programs will expire at the end of 2008.[8]

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[4] Austintown Public Hearing Transcript, March 6, 2008 at 27 - 28; Cleveland Public Hearing Transcript, March 15, 2008 at 97 - 99; Barberton Public Hearing Transcript, March 14, 2008 at 13 - 16

[5] Austintown Public Hearing Transcript, March 6, 2008 at 33.

[6] Cleveland Public Hearing Transcript, March 15, 2008 at 60.

[7] The only program Company Witness Oullette cited were the tariffs that levy a late payment charge on customers.

[8] Company Witness Oullette does acknowledge that there is and additional $1.5 million in funding for low-income energy efficiency activities that is earmarked for OPAE under Commission Orders in Case Nos. 04-1932-EL-ATA and 06-1125-EL-UNC but has not been provided to OPAE through a contract for that purpose. Tr. IX at 81. Public Witness Vukasinovich explained the impact of the failure of FirstEnergy to obligate the money on the clients served by MY-CAP, a reduction in funding from $200,000 to $88,000 for energy efficiency services to low-income households. The budget for next year is zero. Austintown Public Hearing Transcript, March 6, 2008 at 28.

The Companies' failure to respond is unconscionable given the unprecedented growth in the number of customers seeking assistance. Bill payment assistance through HEAP and payment plans like PIPP cover no more than 37 percent of eligible customers. Smalz at 5. Energy efficiency services are provided to far fewer numbers of customers. Id. For example, the existing Community Connections Program, funded by FirstEnergy and administered by OPAE, served roughly 0.64 percent of the eligible customers during the 2007 Program Year. Over four years, the program has served 2.56 percent of the eligible customers. It will take 156 years to serve all the customers eligible today if current funding levels of $2.7 million are continued. Since FirstEnergy stated it wants to provide no further funding, those customers may never be served.

Families who cannot afford their utility bills are not the only ones who pay a price. CEI's bad debt has risen by $7.64 million to $10.28 million in the test year. For Ohio Edison, the increase is $11.78 million to $15.63 million. TE bad debt has increased $4.90 million to $6.17 million. These unaffordable bills are paid by all customers. PIPP costs have soared as well, from $9.2 million in CEI in 2001 to $17.50 million in 2007, 102.46 percent. OE has seen an increase from $18.08 million to $38 million over the six years, or 110 percent. And, the cost of PIPP in TE service territory has increased from $4.03 million to $14.27 million, an astonishing 254.04 percent from 2001 to 2007.[9] Customers pay these system expenses in their rates.

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[9] See *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 01-2411, Supplemental Testimony of Donald A. Skaggs (November 28, 2001) and *In the Matter of the Application of the Ohio Department of Development*

Given the substantial costs incurred by ratepayers because essential electric services are unaffordable for many, public policy dictates that a monopoly utility seek to serve customers at the lowest cost. For rates to be just and reasonable they must embody the least-cost options for providing utility service. Energy efficiency is the least cost option and funding for effective programs should be included in the base rates paid by FirstEnergy customers.[10] Efficiency will reduce the effect of bad debt and the PIPP Rider while saving all customers money.

OPAE Witness Smalz offers uncontroverted testimony that electric efficiency programs save approximately 12 – 18 percent of the electricity consumed for baseload uses – lights, appliances, etc. – and cost-effective measures can also reduce the cost of heating and air conditioning. Smalz at 6. The measures all have a savings to investment ratio of greater than one, meaning they more than pay for themselves over the life of the measure. Investing to reduce customer nonpayment produces dividends to all ratepayers by minimizing the level of bad debt in rates and reducing the PIPP Rider, as well as reducing the level of investment necessary to achieve reliability in the distribution system. Absent the Commission requiring these investments on behalf of ratepayers, FirstEnergy clearly will not make them. The Company is isolated from the impacts of bad debt and PIPP costs and will collect for the

for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities, Case No. 07-661, Supplemental Testimony of Donald A. Skaggs (November 14, 2008).

[10] It is critical that programs funded by ratepayers be operated effectively. Ohio utilities oversaw the construction of Ohio's nuclear plants. That experience should serve as a testament to the fact that ineffective management will only cost customers more than they should otherwise pay for essential energy services.

infrastructure investments that should have been made years ago; FirstEnergy doesn't pay, ratepayers do. The Commission needs to act in the public interest.

The General Assembly identified the relationship between efficiency and arrearages when it passed Am. Sub. SB 3. R.C. §4928.51, *et.seq.,* provides ratepayer funding for bill payment assistance, energy efficiency, and customer education because efficiency and education on energy use are cost-effective options to achieve affordability. The investment is a sound one for ratepayers and is consistent with the public policy of keeping households connected to essential energy services at the lowest possible cost. Residential energy conservation is also promoted by R.C. §§4905.70 and 4928.02. State policy clearly supports investment in efficiency.

Effective program management is as important as adequate funding for energy efficiency. Again, the uncontroverted testimony of OPAE Witness Smalz indicates that in the four full program years since OPAE assumed management of the Community Connections Program services have been provided to 10,334 households at a cost of $873.58 per unit, leveraging $1,985 per unit from other weatherization and housing programs. Evaluations of comparable programs show savings of 12 – 18 percent per year. Administrative costs are 3 percent.[11] The program is an unqualified success in no small part because the nonprofits that manage it are committed to serving their clients, not reaping heady profits.

Compare this to other demand side management and low-income programs funded over many years by FirstEnergy and its predecessors. Prior to

[11] The incremental cost for administering additional program funding is negligible. As a result, the administrative costs will decline as a percentage of the total program should additional funding be provided.

passage of Am. Sub. SB 3, all three operating companies funded low-income efficiency programs. These programs evolved into the Community Connections Program now managed by OPAE. This program was funded via a $5 million annual commitment, $25 million in total, made by FirstEnergy in Case No. 99-1212-EL-ETP and an $8.75 total commitment as a result of the Commission Opinion and Order in Case No. 03-2144-EL-ATA. FirstEnergy spent approximately $3.75 million on Community Connections prior to OPAE assuming management in the fourth program year. OPAE has subsequently overseen the management of $13.75 million in funding through the Program. The balances of the funds, approximately $16.25 million, were awarded to Habitat for Humanity and other organizations. OPAE has been unable to locate any data to determine if low-income customers received any efficiency services as a result of these latter expenditures.

Currently, FirstEnergy is overseeing a $10 million Home Performance with Energy Star® ("Energy Star") program.[12] Company Witness Oullette could not say how many customers have been served by the program, though he did allow that only about $1 million had been spent since the Commission issued a second Finding and Order authorizing the program in Case No. 04-1132 on February 14, 2007.[13] Tr. IX at 80. OCC Witness Gonzalez noted that few if any customers have been served despite the $1 million outlay. Tr. V at 151. Oullette could not

[12] $1.5 million of the $10 million is earmarked to OPAE for low-income energy efficiency investments but FirstEnergy has been unwilling to provide a contract so the money can be spent for its intended purpose.

[13] Company Witness Oullette later notes that the Company is spending $28 million on efficiency programs overall, but has only spent $2 million as of the date of his testimony on February 25, 2008, a year after the programs were approved by the Commission. Tr. IX at 90.

describe the requirements by the U.S. Environmental Protection Agency for an Energy Star program; the Company contracts program design and management to a for-profit, out-of-state firm. Tr. IX at 82-83. The witness could not indicate whether the Community Connections Program was consistent with the requirements of the Energy Star Program. Id. He also did not know the administrative cost of the program, though he did acknowledge that "it will be high" and would exceed 10 percent. Id. Mr. Oullette was aware that OPAE's administrative costs are a paltry 3 percent. Id.

The testimony of OPAE Witness Michael Smalz justifies the investment of $5.5 million in ratepayer funds to control the cost of unaffordable bills. The investment will save ratepayers and low-income customers money. The need for assistance is at unprecedented levels. We can help ensure a seven year old doesn't have to worry about the lights being shut-off.[14] OPAE requests that the Commission approve expanded funding for the existing and successful Community Connections Program and require that current management of the program be retained.

II. FirstEnergy Application rates must include Funding for Demand Side Management Programs.

Low-income customers are not the only ratepayers requiring investment in energy efficiency. Demand Side Management ("DSM"), the term of art, has evolved significantly since utility programs were first introduced in the 1980s. DSM provides a number of advantages for customers: it reduces customer bills; it reduces demand, a key consideration in a generation market marked by

[14] Transcript of Cleveland Public Hearing, March 15, 2008 at 42.

increases in prices and price volatility[15]; it reduces air emissions of regulated pollutants and those likely to be regulated, thus reducing environmental compliance costs[16]; it reduces the need to make expensive capital improvements in the distribution infrastructure[17]; and, it produces jobs and economic activity by stimulating the growth of small businesses and the production of high efficiency appliances and related materials, many of which are produced in Ohio.

Ohio law and policy support investment in DSM, as noted in the previous section. The Staff Reports reflect this policy: "given this environment, conservation and energy efficiency have a positive role to play in controlling costs."[18] Legislation pending in the Ohio House, and passed by the Senate, requires significant investments in energy efficiency.[19]

FirstEnergy is dismissive of this imperative. Company Witness Oullette notes that there are currently two programs funded through 2008, though few dollars have been spent to this point.[20] He also agrees that funding for those programs will be expended by the end of 2009 and no other programs are contemplated in this Application nor are additional initiatives being discussed in other forums.[21] The Companies' position is not responsive to the needs of customers and the policy enunciated by the General Assembly.

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[15] This is particularly true since the highest price plant sets the hourly wholesale market price. Reducing demand can directly reduce prices.
[16] See *Direct Testimony of Wilson Gonzalez*, OCC Exhibit 3 & 3A, at 4.
[17] Id. at 5.
[18] Id. at 4, quoting the Cleveland Electric Illuminating and Toledo Edison Staff Reports at 87, and the Ohio Edison Staff Report at 86.
[19] See Sub. SB 221 and HB 487.
[20] See *Rebuttal Testimony of Steven E. Oullette*, FirstEnergy Exhibit 16-C, at 2 – 3; and, Tr. IX at 80.
[21] Tr. IX at 102.

Consumer Advocates support the creation of a collaborative made up of interested parties to establish a framework for expanded DSM. The collaborative should be responsible for initiating DSM activities, evaluation, and revising programs as the opportunities for investment evolve. A DSM Rider should be established adequate to achieve targets for usage and demand reductions. The funding level and targets recommended by the Office of the Ohio Consumers' Counsel is a good starting point.

A monopoly utility must provide customers with least-cost services. The record establishes that DSM investments have numerous advantages which financially benefit customers and the State of Ohio. Energy efficiency is the least expensive option for consumers. These investments are most appropriately made through the distribution rates of a monopoly charged with ensuring just and reasonable rates for customers.

III. FirstEnergy must eliminate the Use of Payday Lenders as Authorized Payment Stations.

The economic problems faced by the State of Ohio and the increases in the number of low-income and payment troubled customers is self-evident. The data cited in previous sections is testament to the challenges Ohio families face. It is critical that public utilities not contribute to the difficulties faced by these struggling households.

Payday lending has become a scourge in Ohio. The uncontroverted testimony of OPAE Witness Bill Faith establishes that payday lenders provide short-term loans at a 391 annual percentage rate ("APR"). The testimony establishes that 450,000 people use payday lenders and two-thirds of those become trapped into a cycle of borrowing taking out an average of 12.6 loans per year. The industry collected $318 million in interest, fees and penalties last year. The average loan is $328. If a consumer takes out the average number of loans, he or she will pay $637 in fees and interest to borrow the same $328. The industry has grown phenomenally since the General Assembly modified Ohio's usury laws in 1995 eliminating the 36% APR cap.[22]

Payday lenders are harming this state. There is a direct link between public utilities using payday lenders as authorized payment stations and the bills ratepayers pay. Payday lenders seek out the opportunity to replace the local utility offices that have been closed. This increases the likelihood that a customer will take out a payday loan to pay a utility bill. Based on the data, while a loan may permit that monthly bill to be paid, the long-term cost of payday loans to the borrower reduces his or her ability to pay utility bills in future months. Consumer Advocates have noted previously the massive increase in bad debt and PIPP costs. How much of this is related to payday lending reducing the disposable income of ratepayers is difficult to quantify, but the logic is indisputable.

The Commission has the authority to ensure that customer service activities benefit consumers. The data indicates that payday loans are harmful to 300,000 borrowers statewide. Those who rely on the loans have difficulties paying their bills. The public utility system should not encourage customers to use destructive payday loans and the Commission should require FirstEnergy to cease using payday lenders as authorized payment centers.

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[22] *Direct Testimony of Bill Faith*, OPAE Exhibit 2 at 3.

Conclusion

The Consumer Advocates support affordable energy costs for low- and moderate-income Ohioans. Numerous issues in this case will affect the affordability of FirstEnergy distribution rates for years to come. The Consumer Advocates have chosen to focus on three critical issues, two of which will assist customers in coping with whatever increases are ultimately approved. Low-income energy efficiency and DSM directly address and mitigate the impacts of rate increases. These investments produce numerous benefits for customers and for the State as a whole. The Companies' Application fails to address these issues. And the use of payday lenders as authorized payment stations is simply inappropriate; collocation of these services encourages destructive borrowing practices the Commission should not sanction.

OPAE and OCC have established through testimony appropriate mechanisms to maximize customer efficiency and minimize costs. The successful Community Connections Program should be continued at an increased funding level. A DSM collaborative charged with meeting usage and demand reduction targets through an appropriate funding rider is necessary. Ratepayers, not the Company, will pay for these investments. It will be money well spent, reducing customer costs both short- and long-term. No other issues in this case directly affect the affordability of electricity the way that energy efficiency does.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Post-Hearing Brief was served by electronic means upon the parties of record identified below on this 28th day of March, 2008.

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