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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Energy Efficiency and)	
Peak Demand Reduction Program)	Case Nos. 09-580-EL-EEC
Portfolio of Ohio Edison Company, The)	09-581-EL-EEC
Cleveland Electric Illuminating Company)	09-582-EL-EEC
and The Toledo Edison Company.)	

**APPLICATION FOR REHEARING AND MOTION FOR PROCEDURAL
SCHEDULE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

JANINE L. MIGDEN-OSTRANDER
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October 8, 2009

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The Office of the Ohio Consumers' Counsel ("OCC") is filing this Application for Rehearing¹ and Motion for Procedural Schedule² regarding the residential and small business compact fluorescent light bulb ("CFL") program requested by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "Companies"). OCC is filing on behalf of the approximately 2.1 million residential electric customers who would be the recipients of FirstEnergy's light bulbs. FirstEnergy's application was approved in a September 23, 2009 Finding and Order ("Order") of the Public Utilities Commission of Ohio ("Commission" or "PUCO").

The Commission's Order is unreasonable and unlawful in the following particulars:

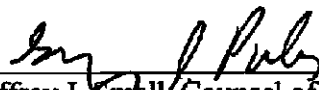
¹ Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

² Pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-14.

- A. The Order should be modified to allow an open, transparent process where “questions raised by the Governor, members of the Ohio General Assembly, and FirstEnergy customers related to program details and costs”³ can be addressed by OCC, the PUCO Staff, and others as part of the PUCO’s stated intention to address some of the details, including charges to customers, related to the compact fluorescent light program.

In the absence of the modifications sought by OCC, the Order is unreasonable and unlawful. Consistent with the concerns of the Governor, members of the General Assembly and Ohio consumers, the open, transparent process that OCC seeks should include a procedural schedule and hearing for the PUCO to consider the issues it will be addressing as stated in its news release of October 7, 2009. From a legal standpoint, this Application for Rehearing should assist the Commission with the process for its further considerations. The reasons for granting this Application for Rehearing and Motion for Procedural Schedule are set forth in the attached Memorandum in Support.

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³ PUCO press release, *Statement from PUCO Chairman on FirstEnergy’s compact fluorescent light bulb program*, (October 7, 2009).

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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND STATEMENT OF THE CASE

On July 9, 2009, FirstEnergy requested Commission approval of a compact fluorescent light bulb (“CFL” or “light bulbs”) program and an on-line home energy education tool program for residential and small business customers.⁴ FirstEnergy proposed the two programs as part of its energy savings programs for inclusion as part of the Companies’ compliance with the 2009 energy-efficiency benchmarks set forth in R.C. 4928.66.⁵ The Companies further requested approval to collect from customers all costs associated with the implementation of these two programs through the Companies’ Rider DSE – Demand Side Management and Energy Efficiency.⁶

The Companies also stated that they would deliver 3.75 million CFLs through the program (two per customer), with an estimated savings of 80 kilowatt-hours per bulb and an overall program-induced reduction in peak demand of 8.4 megawatts.⁷ Initially, the Companies proposed a budget of \$5.00 per bulb, and \$0.75 per bulb in administrative

⁴ See Application at 1 (July 9, 2009)

⁵ See Id.

⁶ See Id.

⁷ See Id. at Attachment A.

fees,⁸ program benefits of \$39.8 million and \$18.8 million in program costs.⁹ The Companies proposed to distribute the light bulbs, to residential and small commercial customers utilizing an on-line store, home delivery and through the mail.¹⁰ Each customer would include a customer distribution package with an introduction letter, CFL instructions, a brochure providing energy savings recommendations, and discount coupon for the customer's future CFL purchases.¹¹

On August 10, 2009, OCC filed a motion to intervene in the case and recommendations for modifications to the application. In the pleading OCC established that it supports a CFL program but recommended that FirstEnergy make a significant modification to the program to provide incentives to retailers to lower the incremental cost of CFLs at the point of sale – similar to the Duke and AEP.¹² “The approach recommended by OCC more directly addresses informational, financial, and technical market barriers facing consumers, delivering more savings at a lower cost.”¹³

On September 16, 2009, FirstEnergy filed a letter in the docket that modified some of the terms in the initial application.¹⁴ The modifications were made after discussions with the PUCO Staff and several interested intervenors (including OCC and the Natural Resource Defense Council) along with other “factors.”¹⁵ FirstEnergy

⁸ See *Id.* at Attachment D.

⁹ See *Id.* at Attachment C.

¹⁰ See *Id.* at Attachment A.

¹¹ See Letter from William R. Ridmann to Daniel R. Johnson at 2 (Filed September 16, 2009).

¹² See Motion to Intervene and Recommendation for Modifications by the Office of the Ohio Consumers' Counsel at 5 (August 10, 2009).

¹³ *Id.*

¹⁴ See Letter from William R. Ridmann to Daniel R. Johnson, (Filed September 16, 2009).

¹⁵ *Id.* at 1.

“refine[d]” its original application with eleven refinements to the proposal.¹⁶ The “refinements” made as a part of the discussions included a reduction in the total per bulb cost from \$5.75 to \$3.50 per bulb and that in the future FirstEnergy would implement CFL programs through coupon, buydown, or customer discounts type programs.¹⁷

On September 23, 2009, the PUCO issued an Order that, among other things, determined that the CFL and on-line home energy education tool programs were reasonable and approved the programs.¹⁸ Additionally, the Commission found that FirstEnergy’s request for recovery of the costs associated with the implementation of these programs did not appear unjust or unreasonable and therefore approved the cost recovery request.¹⁹

On October 7, 2009, Governor Strickland sent a letter to the Commission seeking information regarding the cost of the FirstEnergy CFL program to residential customers and seeking immediate postponement of the program.²⁰ Governor Strickland issued the request to the Commission in response to the concerns his office received from the public.²¹ The Governor asked why the program was thrust upon customers without their approval or prior knowledge.²² Finally, the Governor requested information about supplying the bulbs through U.S. suppliers.²³

¹⁶ See Id. at 1 and 2.

¹⁷ See Id.

¹⁸ See Order at 2.

¹⁹ Id..

²⁰ Governor Strickland press release, Governor Calls for Postponement of First Energy Light Bulb Program (October 7, 2009)(attached).

²¹ See Id.

²² See Id.

²³ See Id.

On October 7, 2009, the PUCO issued a press release where Chairman Schriber stated that the September 23, 2009 PUCO order permitted FirstEnergy to implement the program but did not approve all of the related charges that will appear on a customer's monthly bill.²⁴ The Chairman specifically identified a three-year, sixty cent per month charge for the program (or \$21.60 over the life of the program) that was not requested or approved by the Commission in the Order.²⁵

II. STATUTORY BASIS FOR APPLICATIONS FOR REHEARING

Applications for rehearing are governed by R.C. 4903.10. In considering an application for rehearing, Ohio law provides that the Commission "may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear." Furthermore, if the Commission grants a rehearing and determines that "the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may abrogate or modify the same"²⁶ OCC meets the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10. Accordingly, OCC respectfully requests that the Commission hold a rehearing on the matters specified below and abrogate or modify the Entry as requested herein.

²⁴ See Id.

²⁵ See Id.

²⁶ R.C. 4903.10.

III. THE PUCO SHOULD GRANT OCC'S APPLICATION FOR REHEARING AND MOTION FOR PROCEDURAL SCHEDULE

- A. The Order should be modified to allow an open, transparent process where "questions raised by the Governor, members of the Ohio General Assembly, and FirstEnergy customers related to program details and costs"²⁷ can be addressed by OCC, the PUCO staff, and others as part of the PUCO's stated intention to address some of the details, including charges to customers, related to the compact fluorescent light program.**

The Commission has stated that there will be additional steps taken to address the implementation and related costs of FirstEnergy's compact fluorescent light bulb program. Consistent with the concerns of the Governor, members of the General Assembly and Ohio consumers, OCC seeks to ensure the PUCO's next steps will be part of an open and transparent public process. From a legal standpoint, this Application for Rehearing should assist the Commission with instituting such a process.

The implementation of FirstEnergy's CFL program has been met with confusion and anger by many of FirstEnergy's residential customers.²⁸ After hearing the outcry of FirstEnergy's customers, Governor Strickland and members of the Ohio General Assembly acted to find answers and address the situation. As a result of those efforts Chairman Schriber stated that:

The PUCO will gather information regarding the program and its related costs. Until the PUCO has specific details regarding the program costs, FirstEnergy should not deploy its compact fluorescent light bulb program.²⁹

²⁷See PUCO press release, *Statement from PUCO Chairman on FirstEnergy's compact fluorescent light bulb program*, (October 7, 2009).

²⁸ See Governor Strickland press release, *Governor Calls for Postponement of First Energy Light Bulb Program* (October 7, 2009).

²⁹ PUCO press release, *Statement from PUCO Chairman on FirstEnergy's compact fluorescent light bulb program*, (October 7, 2009).

In addition, the Chairman stated that the Commission “did not approve the charge [for the program] that will appear on monthly bills as a result”³⁰ and that the PUCO has not approved the additional costs associated with the program.³¹ The Chairman did not identify the process by which those charges will be reviewed.

OCC and others have the statutory right to participate during the PUCO’s additional review of any part of FirstEnergy’s CFL program, including charges to customers and requests that the process be made available to all interested parties. R.C. 4901.12 states that all proceedings of the PUCO (and all documents and records in its possession) are public records. Furthermore, in accordance with R.C. 4905.07, all facts and information provided to the Commission to address questions by the Governor, members of the Ohio General Assembly and FirstEnergy customers should be made available to the OCC. The intent of R.C. 4901.12 and R.C. 4905.07 is to ensure that the public has the information needed to make an informed decisions and the opportunity to be heard. OCC asserts that in a case like this, where the Governor, members of the Ohio General Assembly, and FirstEnergy customers have all made pleas for more information and accountability, an open and transparent review process should be strictly adhered to.

³⁰ Id.

³¹ See Id.

B. A Procedural Schedule Should Be Established To Help Ensure That the process established by the PUCO to address “questions raised by the Governor, members of the Ohio General Assembly, and FirstEnergy customers related to program details and costs”³² will be open and transparent and will only permit recovery of costs that are prudent and reasonable.

The Commission should establish a procedural schedule that affords interested parties the opportunity for a hearing related to the PUCO’s stated intention to address some of the details of FirstEnergy’s CFL program, including charges to customers. Such a procedural schedule and hearing will assist the Commission in its ongoing evaluation of FirstEnergy’s CFL program proposal, and provide a process that properly involves interested parties regarding these matters

OCC requests that the Commission establish a procedural schedule in the instant proceeding to ensure that interested parties have both a forum and an opportunity to provide FirstEnergy and the Commission information, advice, comments, and recommendations related to the costs and benefits of a CFL program.

A hearing ultimately may not be necessary in this proceeding, but OCC is requesting that a hearing date be scheduled to ensure that the parties have adequate time to prepare, in the event a hearing is needed. OCC’s motion should be granted.

III. CONCLUSION

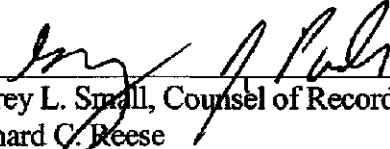
On rehearing, the Commission should modify its Order according to OCC’s Application for Rehearing. The Commission should grant OCC’s Motion for a Procedural Schedule. These actions will further the public interest in addressing

³² PUCO press release, *Statement from PUCO Chairman on FirstEnergy’s compact fluorescent light bulb program*, (October 7, 2009).

concerns of the Governor, the members of the General Assembly, Ohio consumers, and parties such as OCC with regard to FirstEnergy's energy efficiency program.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

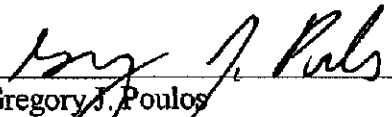


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Rehearing was served by regular mail, postage prepaid to the following parties of record, this 8th day of October, 2009.



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For Immediate Release:
Wednesday, October 7, 2009

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Governor Calls for Postponement of First Energy Light Bulb Program

Columbus, Ohio – Governor Ted Strickland today issued the following letter requesting the Public Utilities Commission of Ohio postpone First Energy’s light bulb program:

Dear Commissioner Schriber,

I am proud of the work you and your fellow commissioners and staff have accomplished since the passage of S.B. 221, Ohio’s comprehensive energy reform bill that ensures predictability of affordable energy prices and serves as a catalyst to enhance energy industries in Ohio. The energy efficiency mandate in this bill is set to reduce our energy consumption and to create jobs in the process.

However, since Tuesday, October 6, my office has received a very high volume of calls as a result of media reports regarding a conservation program to be implemented by First Energy. According to the articles, the PUCO approved a program wherein the First Energy operating companies are to supply customers with two compact florescent light bulbs at a cost of sixty cents per month over three years for a total of \$21.60.

Ohioans are confused and angry and are looking for answers. First, the bulb program has been thrust upon them without their approval or prior knowledge. Second, it is my understanding that two bulbs will be provided at a cost in excess of \$21.00. It is common knowledge that the efficient bulbs can be purchased for significantly less at popular retail outlets. Third, I am interested to know if there are any U.S. suppliers of these bulbs, or if First Energy had considered the use of bulbs manufactured in the United States.

Since First Energy’s program is under the purview of the PUCO, I am asking that you provide to me and members of the General Assembly answers to these questions and more details as to how these programs were developed.

In the mean time, I am asking you to postpone this program until these questions are answered.

I look forward to your immediate response.

Sincerely,

Ted Strickland