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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM CONTRA FIRSTENERGY'S MOTION FOR EXTENSION OF TIME TO FILE THE REVISED LIGHT-BULB PROGRAM AS PART OF A THREE-YEAR PORTFOLIO PLAN
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND THE NATURAL RESOURCES DEFENSE COUNCIL

I. INTRODUCTION

On November 23, 2009, the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "Companies") moved the Public Utilities Commission of Ohio ("Commission" or "PUCO") for an extension of time, until December 31, 2009, to submit their revised compact fluorescent light bulb ("CFL") energy efficiency program. While styled as a motion for an extension of time, the filing is also a vehicle for FirstEnergy to seek the ability to combine the light-bulb plan filing with its portfolio plan filing.

By an Entry on Rehearing dated November 4, 2009, the Commission ordered FirstEnergy to submit the revised CFL plan by November 30, 2009. The PUCO also provided interested parties the opportunity to comment upon the revised CFL plan, by December 7, 2009.[1]

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[1] Entry on Rehearing at 3 (November 4, 2009).

The Office of the Ohio Consumers' Counsel ("OCC") and the Natural Resources Defense Council ("NRDC") file this Memorandum Contra to oppose the FirstEnergy Motion. OCC and NRDC recommend that the Commission instead grant the Companies one additional week to collaborate with the parties and to file the revised CFL program information in this docket—and correspondingly reset the deadline, to December 14, for interested parties to comment.[2]

The additional week for FirstEnergy's filing would provide the members of the collaborative a reasonable amount of time to review FirstEnergy's proposal to combine the CFL program with its other programs -- a proposal that would result in at least a three-month delay in the implementation of the CFL program. FirstEnergy's proposal to combine the CFL program with its other energy-efficiency programs was first raised with the collaborative last Friday, November 20, 2009, and clearly created some confusion regarding the three-month delay that would result from the proposal.[3] .

FirstEnergy's Motion is, at the eleventh hour – and with almost no notice to the members of the collaborative – a proposal that is counter-productive for the public on almost all counts. The revised light-bulb plan and the intended usefulness of energy efficiency for Ohioans should not be subjected to the further delays inherent in FirstEnergy's proposal. And FirstEnergy's proposed structural change to combine

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[2] This Memorandum Contra is not a statement of positions on the revised plan that FirstEnergy will be filing. The OCC and NRDC positions on the CFL program will be filed after further review of information recently provided by the Companies, and after FirstEnergy files its revised proposal.

[3] For example, the Sierra Club now opposes FirstEnergy's motion. Footnote 2 (page 2) of the Companies' Motion states: "While not a party, the Sierra Club has actively participated in the collaborative process and has indicated that it will not take a position on the contents of this motion." This reflected the Sierra Club's position at the collaborative meeting on November 23, 2009. Subsequent to FirstEnergy's filing of its motion, Sierra Club concluded that FirstEnergy's proposal would result in a three-month delay in the implementation of the CFL program. Accordingly, the Sierra Club authorized OCC to state the Sierra Club's opposition to the extension in this memorandum.

program filings has the inherent potential for unintended consequences that, for obvious reasons, is a potential that should have been minimized by FirstEnergy through a much earlier introduction of its proposal as part of a deliberative process in the collaborative. For example, the Companies have already filed a request for a waiver of the 2009 energy-efficiency benchmarks and the Companies' proposal to delay the implementation of the CFL program for even the first two months of 2010 raises additional concerns about FirstEnergy's commitment to complying with the statutory benchmarks.

Accordingly, any extension should be limited to no more than one week for the purpose of permitting collaborative members to mutually consider final details of the stand-alone light-bulb plan and the combination proposal prepared by FirstEnergy and then prepare and file any comments to the PUCO for a determination. The time can also be spent discussing best practices regarding marketing and communications elements of the program, elements of which have only recently been presented by the Companies.

If the Companies and the Commission expect the collaborative process to be useful, the collaborative must be given a reasonable time frame to provide input[4] and information that can be used to make decisions. Therefore, an extension should be granted only for one week and for the purposes described by OCC and NRDC herein. Otherwise, granting FirstEnergy's request as filed would further weaken the collaborative process and would be detrimental to Ohio customers.

[4] The Companies presented their decision to combine the CFL program with the comprehensive programs on Friday, November 20, 2009. FirstEnergy filed its request to combine the programs as part of its Motion for an Extension on Monday, November 23.

II. ARGUMENT

A. FirstEnergy Has Failed to Demonstrate Why the Commission Should Approve Its Request for an Extension that Would Delay the Implementation of the CFL Program by Months.

FirstEnergy requests that the Commission: (1) grant its request to extend the period for filing its revised CFL program;[5] (2) allow the Companies to incorporate the CFL program into the Companies' three-year portfolio plan (as one filing);[6] and (3) limit to two days the response time opposing parties have to respond to the Motion for Extension.[7] The Companies also assert that the proposed extension will avoid duplicative filings and create a more comprehensive view of the Companies' overall long-term plan.[8]

Notably missing from FirstEnergy's request is the suggestion that more time is needed to develop the CFL program. The request for an extension is in reality a request for the Commission to approve the Companies' strategy of filing and communicating the CFL program as part of FirstEnergy's three-year energy efficiency portfolio plan that is due by December 31, 2009.

On November 4, 2009, the Commission directed FirstEnergy to: provide additional details to members of the collaborative regarding the proposed alternative CFL Program and how it would be communicated to the public,[9] promptly begin discussions

[5] Motion at 3.

[6] Id.

[7] Id. at 4. Ironically, the Companies specifically ask that the Commission order opposing parties to file their responses five days early -- *on the eve of Thanksgiving* -- so that the Companies' filing obligations will not impose on their Thanksgiving plans.

[8] Id.

[9] Entry on Rehearing at 3 (November 4, 2009).

with its residential energy-efficiency collaborative,[10] and file a revised CFL program by November 30, 2009, to which each intervening party would have seven days to respond.[11]

The FirstEnergy residential collaborative met (in person or through a conference line) approximately twice each week since the Commission's November 4 Entry on rehearing to discuss the Companies' revised CFL program. As a result of the customer backlash from FirstEnergy's first proposal the collaborative was forced to find a suitable solution to effectively and efficiently deliver 3.75 million bulbs that FirstEnergy had in storage. Recognizing the less than ideal circumstances, the collaborative was asked to work together to develop a reasonable solution.

For OCC and NRDC that solution would include: (1) a reasonable light-bulb distribution plan, (2) a review of the detailed description of the costs for which the Companies expect residential customers to reimburse them; (3) a detailed plan on the communications/marketing approach for the public that the Companies expect to use in implementing the program; and (4) review by the Commission of the lost revenues that FirstEnergy claims it should be awarded for this program. The Companies have worked with the members of the collaborative for the past three weeks to develop a more reasonable distribution plan given the circumstances.

However, until Wednesday, November 25, the Companies refused to provide a detailed breakdown of the expected costs of the program. The marketing/communications plan was presented, as part of its request to the collaborative for the extension, for the first time on November 20, 2009. FirstEnergy waited until then to reveal its proposal to combine the CFL program with its portfolio plan and gave the members of the

[10] Id.

[11] Id.

collaborative no reasonable opportunity to address the proposal or documents to support the plan. FirstEnergy's decision to reveal the extension request and the Companies' unilateral decision to propose combining the CFL program with the comprehensive portfolio plan on Friday, November 20, 2009, has allotted the parties little time for consideration of the matter prior to the Companies' filing for an extension on Monday, November 23, 2009. As noted by the Companies, OCC and other collaborative participants have been working diligently with FirstEnergy to quickly improve the CFL program in order to begin implementation as soon as possible.[12]

Early implementation of the program will result in reduced costs to consumers (e.g. such as costs of warehousing of the bulbs and corresponding material), energy savings for the Companies and their customers, and compliance with the Commission's Entry, which presented a specific, expedited schedule for this program. The amount of additional time requested by FirstEnergy is unnecessary to comply with the Commission's entry and will cause a significant delay in program implementation and potentially result in FirstEnergy not meeting the 2010 energy efficiency benchmarks mandated by R.C. 4928.66.

B. Combining the CFL Program with the Other Programs in the FirstEnergy Portfolio Would Cause a Significant and Unnecessary Delay in Program Implementation.

As noted, OCC would like a reasonable opportunity to address the concept of combining the CFL program with the other programs in the three-year portfolio plan, if that is something worth considering with other things being equal. But other things are not equal at this late date for northern Ohioans. As proposed, the implementation of the

[12] Motion at 3: "The Companies have been diligently meeting with their energy efficiency collaborative...." (November 23, 2009).

CFL program will be needlessly delayed by approximately three months, depending on the length of time necessary to approve the entire three-year plan. FirstEnergy has until December 31, 2009 to file the portfolio plan,[13] followed by a sixty-day comment period.[14] A hearing shall then be scheduled and post-hearing briefs may be filed.[15] Afterwards the Commission will issue an order. The length of time needed for each of these procedural components means it will be several months before these programs are approved.

As noted above, the collaborative has completed a revised program design. Distribution is lined up and the bulbs are ready to be deployed for customers. The only remaining issues include whether or not there can be an agreement on lost revenues, and a discussion on the marking/communication approach.

Additionally, delay will increase the cost of an already costly program. There is no reason for FirstEnergy's customers to shoulder the burden of additional costs that will result from bulbs being stored in a warehouse for several months, while proceedings commence on matters in addition to, and unrelated to this program. The sooner the CFLs are distributed, the sooner the warehouse costs can be reduced or eliminated. In addition, CFL distribution means that the Companies will be pursuing their benchmarks. Customers will use less energy, which will help to offset program costs. This could be happening while the Commission considers FirstEnergy's other programs instead of occurring after all programs have been considered, several months from now. Combining the marketing of the CFL program, but not the filing, with other programs can still be done without delaying the implementation of the program. A delayed implementation

[13] Ohio Adm. Code 4901:1-39-04(A).

[14] Ohio Adm. Code 4901:1-39-04(D).

[15] Ohio Adm. Code 4901:1-39-04(E).

means increased costs and a longer period of time until customer benefits can be realized once the bulbs are employed. Therefore, the Commission should grant an extension, but only for one week and for the purposes recommended above.

III. CONCLUSION

FirstEnergy's Motion for Extension and request to include the CFL program into the three-year comprehensive portfolio plan: were not addressed with the collaborative until the eleventh hour and therefore are not the result of a true collaborative process, would reduce FirstEnergy's chances of meeting the 2010 energy efficiency benchmark in Ohio law, and would provide no benefits to its customers. The extension only delays the implementation of the revised program. The PUCO should grant an extension for only one week and for the purposes recommended above.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum Contra FirstEnergy's Motion for Extension was served, by regular U.S. Mail (and electronically upon FirstEnergy), postage prepaid, to the following parties of record, this 27 day of November, 2009.

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