

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Energy Efficiency and)	
Peak Demand Reduction Program)	Case No. 09-384-EL-EEC
Portfolio of Ohio Edison Company, The)	Case No. 09-385-EL-EEC
Cleveland Electric Illuminating Company,)	Case No. 09-386-EL-EEC
and The Toledo Edison Company.)	

ENTRY

The Commission finds:

- (1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) Section 4928.66, Revised Code, requires electric utilities, beginning in calendar year 2009, to meet certain annual energy efficiency and peak demand reduction benchmarks specified in the statute.
- (3) On May 8, 2009, FirstEnergy filed an application, pursuant to Section 4928.66(A)(2)(d), Revised Code, for approval of certain transmission and distribution (T&D) projects for inclusion as part of its compliance with the 2009 energy efficiency benchmarks set forth in Section 4928.66(A)(1)(a), Revised Code.
- (4) On June 2, 2009, the Natural Resources Defense Council (NRDC) filed a motion to intervene in this proceeding. In addition, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene on June 5, 2009, and the Ohio Environmental Council (OEC) filed a motion to intervene on June 8, 2009. On June 30, 2009, Ohio Partners for Affordable Energy (OPAE) filed a motion to intervene and a motion for admission *pro hac vice* on behalf of David C. Rinebolt. Finally, Citizen Power, Inc., (Citizen Power) filed a motion to intervene and a motion for admission *pro hac vice* on behalf of Theodore S. Robinson on July 1, 2009. No party opposed the motions to intervene or the motions for admission *pro hac vice*.

- (5) The Commission finds that the motions to intervene are reasonable and should be granted. Further, the Commission finds that the motions for admission *pro hac vice* are reasonable and should be granted.
- (6) On June 24, 2009, OCC, OEC and NRDC (Joint Movants) filed a motion to dismiss, or, in the alternative, motion for hearing. Joint Movants argue that the application violates Ohio law because the application relies upon projects completed before 2009. Joint Movants contend that Section 4928.66(A)(1)(a), Revised Code, requires electric utilities to implement energy efficiency programs “[b]eginning in 2009.” Joint Movants claim that past improvements in energy efficiency may be used to meet the benchmarks only when such past improvements are customer-sited by mercantile customers, pursuant to Section 4928.66(A)(2)(c), Revised Code.

Moreover, Joint Movants note that, in the application, some of the past transmission projects were not indentified as projects undertaken by the FirstEnergy electric utilities. Joint Movants argue that Section 4928.66(A)(1)(a), Revised Code, requires the implementation of energy efficiency programs by the “electric distribution utility” and that there is no provision in the law that permits an electric utility to count the activities of another company that provides services in the electric services industry, whether affiliated with the electric utility or otherwise.

- (7) FirstEnergy did not file a memorandum contra the motion to dismiss.
- (8) The Commission finds that the motion to dismiss should be granted. The Commission agrees that Section 4928.66(A)(1)(a), Revised Code, does not authorize electric utilities to rely upon transmission and distribution improvements implemented before January 1, 2009, to meet the statutory energy efficiency benchmarks. The application contains projects completed through December 31, 2008. Therefore, these projects may not be used to meet the benchmarks set forth in Section 4928.66(A)(1)(a), Revised Code, and the application should be dismissed.

It is, therefore,

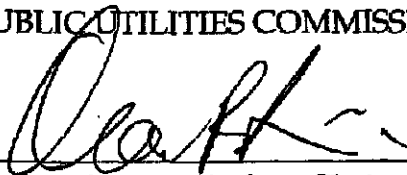
ORDERED, That the application filed by FirstEnergy be dismissed. It is, further,

ORDERED, That the motions to intervene filed by NRDC, OEC, OCC, OP&E, and Citizen Power be granted. It is, further,

ORDERED, That the motions for admission *pro hac vice* submitted on behalf of David C. Rinebolt and Theodore S. Robinson be granted. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

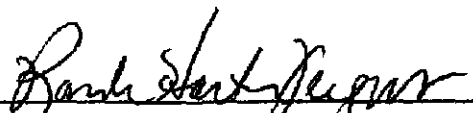
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



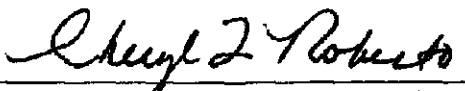
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

GAP:ct

Entered in the Journal

DEC 16 2009



Renee J. Jenkins
Secretary