

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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| 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.) | |

**RESPONSE TO FIRSTENERGY'S FILING OF THE REVISED COMPACT
FLUORESCENT LIGHT-BULB PROGRAM
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE NATURAL
RESOURCES DEFENSE COUNCIL, CITIZEN POWER, AND
THE SIERRA CLUB**

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I. INTRODUCTION

The undersigned members of the Ohio Coalition of Environmental and Consumer Advocates (“OCEA”) file the instant pleading (“Response”) in accordance with the Entry of the Public Utilities Commission of Ohio (“Commission” or “PUCO”) dated November 4, 2009. These OCEA members request that the Commission deny the Companies’ request for lost revenues, protect customers from paying certain costs, ask the Commission to scrutinize whether the utilities have worked with the Collaborative efficiently and cooperatively in establishing energy efficiency programs, and redirect the Companies’ approach in order to increase the Collaborative’s effectiveness, participation, and potential for serving Ohioans.

On November 4, 2009, the Commission issued an Entry on Rehearing requiring the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) to submit a revised compact fluorescent light bulb (“CFL”) energy efficiency program by November 30, 2009. The Entry required all intervening parties to file a response within seven days of the Companies’ filing or “[t]he Commission will presume that the intervening parties are in agreement with the Companies’ proposal”¹ In a subsequent Entry, the Attorney-Examiner extended the revised CFL program filing date to December 15, 2009, and approved the Companies’ request to combine the CFL filing with its energy efficiency program portfolio filing.² This subsequent Entry did not modify or eliminate the seven-day response obligation of intervening parties. Therefore, OCEA members file this

¹ *In re FirstEnergy Energy Efficiency and Peak Demand Reduction Program Portfolio*, Case Nos. 09-580-EL-EEC, et al., Entry on Rehearing at 3 (November 4, 2009).

² *Id.* at 2 (November 30, 2009).

Response as directed by the Entry dated November 4 in order to request the disallowance of lost revenues, the disallowance of certain CFL program costs as presented to the Collaborative, and to highlight the continuing reluctance of the Companies to provide Collaborative members with sufficient cost and other information on a timely basis necessary for these members to render informed decisions on proposed programs.

Finally, this Response should not be viewed as OCEA's entire comments on the CFL program or the proposed program portfolio. This Response is a separate obligation created by the Commission's November 4 Entry. The Response is limited by the information provided by the Companies through the December 10, 2009 meeting of the full Collaborative. This limitation is necessary due to the combination of the CFL program with other portfolio programs -- which obscures information specific to the CFL program -- coupled with the brief timeframe provided for this Response. OCEA members may individually or jointly submit additional objections on the proposed portfolio programs, which may include further objections on the CFL program, within the sixty-day period of Ohio Adm. Code 4901:1-39-04(D).

II. ARGUMENT

A. The PUCO Should Not Allow The Companies To Collect From Customers Lost Revenues For The Proposed CFL Program.

1. *The CFL bulbs were purchased for a program that was not recommended by a collaborative process. Therefore, program costs, including lost variable distribution revenue, may not be “deemed to be reasonable” costs by the PUCO, because to do so violates the terms of a stipulation approved by the Commission.*

The Stipulation and Recommendation (“Stipulation”)³ approved by the Commission that established the Collaborative states that the Company’s Demand Side Management and Energy Efficiency Rider will recover costs of energy efficiency programs, “including program administration costs and recovery of lost distribution revenues as permitted by the Commission rules.”⁴ The Stipulation further states that “costs incurred associated with programs recommended by a collaborative process and approved by the Commission shall be deemed to be reasonable.”⁵ Therefore, costs incurred that were not recommended by a “collaborative process” are not “deemed to be reasonable.”

The modified CFL program⁶ that was approved⁷ by the Commission and led the Company to incur the costs of buying 3.75 million CFLs cannot be said to have been “recommended by a collaborative process.” For one, at the time the program was

³ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C.4928.143 in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, et al, Stipulation and Recommendation, (February 19, 2009).

⁴ Id. at 21, par. 2.

⁵ Id.

⁶ *In re FirstEnergy Energy Efficiency and Peak Demand Reduction Program Portfolio*, Case Nos. 09-580-EL-EEC, et al, Letter filed by FirstEnergy (September 16, 2009).

⁷ Id., Finding and Order (September 23, 2009).

discussed the Company employed no established mechanism for soliciting the recommendation of the Collaborative on programs. Furthermore, two active members of the Collaborative, NRDC and the OCC, opposed the give-away program design in regulatory filings. NRDC stated that the program design “has potential to inflict damage on the market for compact fluorescent light bulbs.”⁸ The OCC recommended “a design that provides incentives to retailers to lower the incremental cost of CFLs at the point of sale,”⁹ rather than the give-away program that the Company proposed. The letter filed by the Company did nothing to change the lack of a recommendation by NRDC and OCC for the program. In fact, the letter stated that future CFL program designs would be retailer-focused, rather than utilizing a mass give-away.¹⁰

FirstEnergy will likely argue that lost revenues are collected to reflect actual program impacts, and, to the extent that the revised CFL program saves energy, the Company should be allowed to collect lost distribution revenue. However, the Stipulation the Company and other parties signed connects the collection of program costs, administrative costs, and lost distribution revenue to the Collaborative recommendation of programs. FirstEnergy’s cost to buy CFL bulbs was incurred to support a program design that was not “recommended by a collaborative process.” Indeed, if the Company were starting a new CFL program similar to the recently-filed version, the Company would not have even bought bulbs at all -- the main cost would have been an incentive paid to retailers or manufacturers.

⁸ Recommendations by Natural Resources Defense Council (August 10, 2009).

⁹ OCC Motion to Intervene and Recommendations for Modification at 5 (August 10, 2009).

¹⁰ Letter filed by FirstEnergy at 2 (September 16, 2009).

The Commission should thus deny the Company's attempt to collect lost distribution revenue from customers for the 2010 to 2012 CFL program described in Section 3.8 of its Program Portfolio. The Company does not identify the energy savings from the CFL program in its "Summary of Costs from the Plan"¹¹ However, the Commission should ensure that any lost distribution revenues collected by the Company do not reflect energy savings from the bulbs bought to support the original CFL program. The Stipulation connects lost revenue collection and collaborative recommendation of programs, and provides assurances that the Company (which was inexperienced in delivering energy efficiency) will include the views of its stakeholders in program design and implementation. The Commission should fully utilize these protections provided by the Stipulation to deny the Company's efforts to collect lost distribution revenues from customers for the CFL program.

B. The Commission Should Protect Customers By Disallowing Costs Associated With The Previous Program That Have No Connection To The Currently Proposed Program.

1. The Advertising costs associated with the previous version of the CFL program should subtracted from program costs passed through to customers.

The Companies' want to collect over nine million dollars from FirstEnergy customers for expenses they attribute to this program. These costs were presented in an itemized list consisting of seven lines. This information was shared with the OCC -- and not the Collaborative members --for the first time on November 25, 2009, and only after repeated requests for the information. Pre-program advertising costs for the initial CFL program are listed as a total of \$427,140. These advertising costs were ineffective and not documented and therefore should not be collected from customers. In addition, these

¹¹ FirstEnergy's Energy Efficiency and Peak Demand Program Portfolio at 140 (December 15, 2009).

funds were expended for a program that was never employed by the Companies. Only reasonable advertising costs for the revised program that provide the benefit of increasing its energy savings potential should be allowed. The \$427,140 listed for advertising costs for the previous program should be subtracted from the Companies' cost recovery from FirstEnergy customers.

2. *The Administration costs for the previous version of the CFL program should be disallowed.*

The Companies' breakout of costs included a line simply labeled "Management Services." The amount listed is \$225,000. No explanation was provided as to why these costs were incurred, or how they relate or benefit customers for the proposed new program. In fact, in recent collaborative meetings, Ohio Partners for Affordable Energy has volunteered to distribute the bulbs at no charge to the Companies, thus eliminating some management costs. Further clarification was requested several times by Collaborative members. Since the Companies cannot justify these costs, the \$225,000 in administrative costs should not be approved by the Commission for recovery from FirstEnergy customers.

3. *The Companies' request to combine the filing of the CFL program with the comprehensive program portfolio created a delay that will increase the storage expenses for the CFL bulbs, and the expense caused by this delay should not be borne by the Companies' customers.*

Additional storage costs incurred due to the Companies' delay of program commencement should be disallowed and not be collected from customers. In the November 4 Entry, the Commission recognized that it was important for the Companies to revise and commence a revised CFL program as quickly as possible. The Commission emphasized this in several ways. The PUCO recommended that FirstEnergy "*promptly*

resume discussions” with the Collaborative.¹² The PUCO also limited the time period for the Companies to submit a revised plan to less than four weeks. In addition, the allowed response time by intervening parties, in order to promote the quick commencement of the revised program, was short.¹³ But, combining the CFL program with the portfolio programs, the Companies have delayed program commencement by several months. To this point, putting the CFL program aside for the moment, FirstEnergy refused to provide members of the Collaborative with anything more than a one-page summary regarding any of the other programs in the portfolio prior to filing the portfolio plan on December 15, 2009. Members of the Collaborative will likely need the full 60-day time period to review the information regarding these programs.

Even if FirstEnergy is able to separate the CFL program from the rest of the portfolio and expedite the implementation of this program, that implementation will still not take place until some time in March.¹⁴ The consequences of any delay were noted by OCC and NRDC in their Memorandum Contra to the Companies’ request for an extension of time.¹⁵

The Companies accepted and requested this delay. OCC and NRDC opposed it. It is not fair, just or reasonable for residential customers to now pay for FE’s inability to expedite program delivery. That is a function of management and is such is FirstEnergy’s responsibility. FirstEnergy should now bear the financial burden of the

¹² Entry on Rehearing at 3 (November 4, 2009) (emphasis added).

¹³ Entry on Rehearing at 3 (November 4, 2009).

¹⁴ Application for approval of Three Year Energy Efficiency & Peak Demand Reduction Plans at 11 (December 15, 2009).

¹⁵ OCC and NRDC Memorandum Contra FirstEnergy’s Motion for Extension of Time at 7 (November 27, 2009).

increased storage costs resulting from it. These costs should be disallowed and not borne by FirstEnergy's customers.

C. The PUCO Should Scrutinize Whether FirstEnergy's Interaction With Collaborative Members Was Adequate To Encourage The Potential Of The Collaborative Process.

The collaborative process employed by the Companies after the November 4 Entry focused on revising the light bulb distribution process. While this was an important part of the collaborative process, it is not the only part necessary to ensure the revised CFL program's success for serving customers. As noted previously, the collaborative process must also include detailed cost descriptions, the communications/marketing approach, and a review of the lost revenues the Companies expect to be rewarded by the Commission and collected from customers.¹⁶ Cost information and other information was not provided in a timely manner by the Company. Consumer and environmental advocates requested significant program information on several occasions from the Companies that was promised and not provided, or rationed to a point that it provided limited utility. The cost information as described above is a good example of this. The breakout and further explanation of these costs were provided only after repeated requests by Collaborative members, and what was provided, as noted above, was not accompanied by necessary, clarifying information. In addition, the proposed marketing information was also provided only after a significant delay. Recommendations for modification of this material were ignored for the filing.

FirstEnergy's one-day notice of its unilateral decision to combine the CFL program into its comprehensive portfolio is another example of a last-minute edict by the

¹⁶ Id.

Companies that significantly affected the program outcome. On Thursday, November 19, FirstEnergy contacted some of the Collaborative members to inform them that it intended to combine the CFL program with its other programs. One day later the residential Collaborative met and FirstEnergy informed the group of its decision. While presenting its decision to the group, FirstEnergy failed to mention that this decision would delay the implementation of the CFL program by months. Making decisions and then presenting them to the Collaborative transformed a diversified, knowledgeable working group into a simple communication mechanism that could be done more efficiently through e-mail. This important decision was made without the Collaborative's input and was presented with little time for evaluation. Thus, as opposed to working collaboratively, the Companies chose to abandon the process for significant portions of the CFL program in particular and the portfolio programs in general. These examples highlight continuing problems with the FirstEnergy Collaborative which prevent any kind of cooperative potential from being realized.

D. The PUCO Should Direct The Companies To Provide Sufficient And Timely Information To Collaborative Members In Order To Ensure Effective Participation In The Collaborative Process, And To Succeed In Providing FirstEnergy Customers The Benefit Of Quality Energy Efficiency And Peak Demand Reduction Programs.

As noted above, the Stipulation requires a Collaborative recommendation prior to Commission approval of energy efficiency and peak demand reduction programs. OCEA members strongly desire to continue to work with FirstEnergy Companies to develop programs that will be successful in reducing energy consumption and energy costs for consumers. These results are good for Ohioans. But to be successful, FirstEnergy should utilize the Collaborative resources available in the development and refinement of all aspects of these programs. This requires a consistent flow of information and ideas – not

only regarding distribution - but also cost information, marketing ideas, and program presentation. Information withheld or provided at the last minute increases uncertainty in the viability and potential of the program. This reduces the willingness of Collaborative members to provide recommendations to the Commission. Similarly, information presented by surprise, with insufficient time for review, disrupts the collaborative process and discourages cooperation among the parties.

OCEA recommends that the Commission review FirstEnergy's performance in the collaborative setting, contrast it with other more successful collaborative operations employed by other Ohio utilities, and ensure that best practices are utilized by FirstEnergy to increase the flow of information between the Companies and Collaborative members in a timely fashion that will assist in the success of future collaborative efforts. Alternatively, if FirstEnergy continues to be uncooperative, then the Commission should consider ordering FE to hire an experienced third party administrator to take over the implementation of its energy efficiency programs.

III. CONCLUSION

In order to reduce customer costs and promote a more productive collaborative process that complies with the Stipulation, the undersigned OCEA members request that the Commission disallow the costs as presented and review the collaborative process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response was served, by regular U.S. Mail, postage prepaid, to the following parties of record, this 22 day of December, 2009.

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Summary: Response Response to FirstEnergy's Filing of the Revised Compact Fluorescent Light-Bulb Program by the Office of the Ohio Consumers' Counsel, The Natural Resources Defense Council, Citizen Power and the Sierra Club electronically filed by Patti Mallarnee on behalf of Allwein, Christopher J. Mr.