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 Approval of Ohio Site Deployment of the Smart Grid Modernization Initiative and Timely Recovery of Associated Costs.	)	Case No. 09-1820-EL-ATA Case No. 09-1821-EL-GRD Case No. 09-1822-EL-EEC Case No. 09-1823-EL-AAM

INITIAL COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Ann M. Hotz, Counsel of Record
Jeffrey L. Small
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
hotz@occ.state.oh.us
small@occ.state.oh.us

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INITIAL COMMENTS
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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility customers, files these Initial Comments with the Public Utilities Commission of Ohio ("PUCO" or "Commission") on the Ohio Site Deployment[1] application filed by Ohio Edison Company ("OE"), the Cleveland Electric Illuminating Company ("CEI"), and the Toledo Edison Company ("TE," and collectively with OE and CEI, "FirstEnergy" or "Company" or "Applicant"). The Company filed its application on November 18, 2009, and asked that the Commission approve the application by December 9, 2009. OCC[2] and the Ohio Partners for Affordable Energy[3] ("OPAE") filed comments ("OCC First Comments") requesting the Commission to provide a due process opportunity

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[1] FirstEnergy's Ohio Site Deployment is its proposal to implement a SmartGrid pilot project in its CEI service territory.

[2] Comments on Ohio Edison Company's, The Cleveland Electric Illuminating Company's Request that the Commission Approval its Application by December 9, 2009 by the Office of the Ohio Consumers' Counsel. (December 10, 2009).

[3] Motion for a Hearing of Ohio Partners for Affordable Energy (December 24, 2009).

because the application provided so little information about the program and the line item costs that FirstEnergy proposes to recover from their customers.

FirstEnergy filed comments in response to OCC's First Comments on December 21, 2009 ("FirstEnergy's Response").[4] The Commission issued an Entry on December 30, 2009, seeking public comment on FirstEnergy's application. In that Entry the Commission set the filing date for Initial Comments to be January 13, 2009.

OCC issued discovery to FirstEnergy on December 17, 2009, both through regular mail and e-mail, and FirstEnergy responded to those discovery requests on January 11, 2010. Although OCC's discovery requests asked for numerous documents relating to project costs, FirstEnergy provided actual project cost answers in response to only one OCC request.

In FirstEnergy's Response, FirstEnergy complains that OCC did not reflect the meetings and communications that OCC had with FirstEnergy before FirstEnergy filed its application.[5] OCC has met with FirstEnergy and discussed the SmartGrid with FirstEnergy on numerous occasions. During that time OCC expressed numerous concerns about FirstEnergy's plans. In any case, such communications and meetings have never been the basis for testing the prudence and appropriate accounting of the costs associated with a new program and the recovery mechanism through which those costs are recovered.

[4] Comments in Response to the Office of the Ohio Consumers' Counsel Comments on FirstEnergy's Application Related to a Pilot Program For Deployment of SmartGrid, Smart Meters and Peak-Time Rebate Pricing and Collection of Costs From Customers (December 21, 2009).

[5] FirstEnergy's Response at 2.

Additionally, FirstEnergy relies upon a typo in OCC's First Comments to claim that OCC has confused FirstEnergy's Smart Grid filing with another utility,[6] even though it is clear that the numbers identified in the comments are those presented in the FirstEnergy Application. In order to set the record straight—FirstEnergy rather than Duke has not met its burden of proof to show that the rate that would result from this application is just and reasonable.

II. COMMENTS

A. The Department of Development Did Not Conduct a Prudency Review of FirstEnergy's Project When It Granted FirstEnergy Money for The Project.

FirstEnergy also appears to be claiming that the U.S. Department of Energy's selection of FirstEnergy's application for Smart Grid grants on the basis of its technical expertise should supplant the Commission's statutory requirement to review the prudence, the costs and the recovery mechanism associated with a $36 million rate increase under R.C. 4909.18.[7]

The Commission should pay attention to the criteria the Department of Energy used in selecting the FirstEnergy pilot program. Most (85%) of the criteria used were not related to costs or benefits. Only 15% was related to "adequacy of the plan for data collection and analysis of project costs and benefits."[8] Moreover, FirstEnergy stated that the Department of Energy will not be able to award the Companies grant funds without

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[6] Id.

[7] Id. at 3.

[8] FirstEnergy's Response at 3.

the Companies having regulatory approval to commence the project.[9] Clearly, the Department of Energy is relying upon the state regulatory agencies to review the costs and benefits for prudence.

FirstEnergy also related that it will not accept the Smart Grid grant nor start the project without Commission approval of their Application.[10] If that is the case, than FirstEnergy should not proceed until a proper review of the costs, prudence and cost recovery mechanism is completed to protect customers, especially since the application is rudimentary, summary and includes costs that are much higher than the industry average.

B. FirstEnergy's Information Reflects That Its Proposed Meter Costs Are Very High Compared To The Industry Average.

In OCC's First Comments OCC pointed out that the industry average of the "all-in" cost[11] of AMI meters is $250 per meter.[12] FirstEnergy's estimated cost per meter minus communications backhaul/WAN costs is $936 per meter or three times the industry average.[13] Before the Commission approves FirstEnergy collecting $936 per meter from customers, FirstEnergy should be required to file detailed data explaining the basis for the estimate of $936 per meter, followed by discovery and hearing. OCC requested that the Commission require FirstEnergy to file data that would support this very high cost for meters.

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[9] Id at 4.

[10] Id.

[11] Meter, communication, consumer portal, disconnect, installation, engineering, and project management.

[12] Testimony of Steven W. Pullins, Case No. 08-1094-EL-SSO, based upon industry data from several utilities, including Consumers Energy, San Diego Gas & Electric, Southern California Edison, Public Service Gas & Electric, and others, at. 5.

[13] Application, Exhibit B at 37, Figure 1.6.3-3 "Estimated Costs," 44,000 meters at $41.2 million = $936 per meter.

In FirstEnergy's Response, FirstEnergy claims that the $936 per meter cost is reasonable because it includes not just meters but also in-home displays, thermostats, power switches and certain software to enable the devices.[14] If that is the case, FirstEnergy should be willing to provide much more cost detail on how these other items contribute to the total of $936 per meter. The inclusion of those items in the cost was certainly not clear from FirstEnergy's Application nor from any of the other information available to interested parties.

FirstEnergy stated that 40% of the $936 per-meter cost relates to non-meter items.[15] The conclusion is that with 60% of the $936 cost, the meters are costing $561. $561 is more than twice the cost of the industry average of $250 per meter. The Commission should not allow FirstEnergy to collect from customers twice the amount for meters that is being charged industry wide. FirstEnergy has not demonstrated the prudence of these costs that it proposes to collect from customers.

C. The Application Contains Feeder Costs That Appear Very High Compared To Another Utility In Ohio.

As OCC pointed out in its First Comments, an initial comparison of the estimated average cost of feeders (circuits) in FirstEnergy's application[16] to the average cost of feeders in other utilities' applications indicates that FirstEnergy's estimate is too high. FirstEnergy's estimate of the average cost of 21 feeders is $514,286 and for the other 13 meters the average cost is $300,000. In Dayton Power & Light Company's ("DP&L") application for approval of a Smart Grid program, DP&L estimated a feeder cost of

[14] FirstEnergy Response at 4.

[15] Id.

[16] Application, Exhibit B, Figure 1.6.3-3 at 37.

$287,000.[17] Because the cost that FirstEnergy estimates for feeders is so much higher than DP&L's, the Commission cannot determine that rates resulting from FirstEnergy's application are just and reasonable as required under R.C. 4909.18, and the Commission should insist that FirstEnergy explain its high estimated cost for feeders.

FirstEnergy gives numerous reasons why DP&L's cost for feeders cannot be compared to FirstEnergy's. But FirstEnergy provides no specifics as to how each of the differences contributes to such a difference in costs. FirstEnergy simply cannot show how the amount of money it proposes to collect from customers for feeders is prudent, just or reasonable as it must do under R.C. 4909.18 before the Commission can approve its application.

D. The Application Does Not Sufficiently Address Operational Benefits That Should Be Netted Against The Costs Of The Smart Grid Implementation.

Although the application does address the character of some benefits that will accrue to customers through the Smart Grid deployment,[18] the Company's discussion is limited. In FirstEnergy's Response, FirstEnergy claims that it has provided a detailed description of the operational benefits of their project plan. But the sections referred to provide no monetization of benefits, either operational or societal benefits. FirstEnergy must provide some monetization of benefits before it can show that its project is prudent.

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[17] *In the Matter of the Application of the Dayton Power and Light Company for Approval of Its Electric Security Plan et. al.*, Case Nos. 08-1094-EL-SSO et. al., Revised Filing, Work paper WPI-1 and WPO-1.1. Distribution automation capital cost is $114 million, communication cost is $23 million which is split between distribution automation and substation automation, with approximately $11 million for the $436 circuits, which results in $287,000 per circuit or feeder.

[18] Application at 5-7.

The application does not explicitly state that these benefits will be netted against the costs the Company seeks to collect from customers. The Commission's Opinion and Order in the Company's distribution rate case, No. 07-551-EL-AIR, agreed with the recommendation of the PUCO Staff that "the recovery of such costs through the AMI/Modern Grid rider be net of any utility benefits associated with AMI/Modern Grid deployment ." [19] The revised Rider AMI does not reflect this net-of-benefits recovery.

In FirstEnergy's Response, the Companies note that the Department of Energy will be monitoring FirstEnergy's progress on the plan and will require FirstEnergy to provide reports and to participate in cost-benefits analysis across programs. This monitoring will be important for identifying benefits but it will not provide the prudence review that the Commission should provide and if nothing else the Commission should at least require an after-the-fact prudence review of the dollar amounts attributed to benefits.

E. The Application Does Not Justify Allowing Only Customers In One Service Territory To Benefit From The Smart Grid Deployment But Charging Customers In All Service Territories For The Deployment.

All of the smart grid deployment will be in the CEI service territory[20] and will therefore most directly affect CEI customers. Yet, the Company proposes to collect the costs of the limited program across all three of FirstEnergy's Ohio service territories.[21] This is an issue that the Commission should consider in greater detail in order to identify all public policy ramifications. The functions of all the costs categories included in this

[19] Opinion and Order in Case No. 07-551-EL-AIR, (January 21, 2009), pages 44-45.

[20] Application at 4.

[21] Id. At 9.

application should be considered carefully before determining that all cost categories should be collected from all of the Company's service territories. Some of the cost categories may have sufficient Company-wide benefits to justify Company-wide recovery. Other cost categories may not.

F. Implementation of the Pilot Program May Be Better Suited to A City In Which The Distribution System Could Better Accommodate an Expansion of the Program.

Additionally, OCC has already voiced serious concerns to FirstEnergy about its decision to have the pilot program in the CEI service territory because of FirstEnergy's limited ability to expand the program to customers across Cleveland because of Cleveland's older and lower capacity distribution lines. If FirstEnergy chose instead to start the program in Toledo or in Akron, expansion of the program for more customers would be easier because those cities' distribution systems would be better able to accommodate an expansion of a pilot program.

G. The Application Does Not Show Detailed Dollar Costs Or Benefits By Beneficiary And Thus Provides Insufficient Evidence For Collecting Costs From Customers.

The application includes a section that discusses costs and benefits.[22] Although the discussion includes some identification of projected costs, it provides no detail of the costs and provides no projection of operational benefits. FirstEnergy's application involves either an establishment of a new service or an increase in rates under R.C. 4909.18. FirstEnergy has not demonstrated that the rates requested are unjust or unreasonable. Under R.C. 4909.18, the Commission must set the matter for hearing and

[22] Id. Exhibit B, Smart Grid Modernization Initiative at 31-37.

give notice of such hearing if it appears that the proposals in the application "may be unjust or unreasonable."

The application does not provide the type of evidence needed to show that the resulting rates to be charged to customers are just and reasonable and are required for cost recovery approval under R.C. 4909.18. Nor does the application provide the type of evidence needed to show that the resulting rates are the result of adequate, efficient or proper management policies and practices as required for cost recovery approval under R.C. 4909.154.

FirstEnergy claims that it has provided sufficient itemization of costs because the Department of Energy determined that it was sufficient in rewarding the grant to FirstEnergy. But the Department of Energy grants were awarded by national lab engineers who do not have a sense of whether the associated costs are prudent. That is probably the reason that the Department of Energy will not permit FirstEnergy to proceed without regulatory permission. The Commission should not neglect its prudency review simply because FirstEnergy was granted an award—the Department of Energy is counting on regulatory bodies to ensure that neither the taxpayers or the ratepayers pay too much.

FirstEnergy also claims that OCC has the details for the FirstEnergy Smart Grid Investment Grant Application. But FirstEnergy's August 16, 2009 filing of the narrative does not include the Smart Grid Investment Grant Budget File. If FirstEnergy would provide the Smart Grid Investment Grant Budget File, many of the questions that parties have about line item costs may be answered.

H. The Application Does Not Provide A Clear And Consistent Breakout Of Ohio Costs Beyond Broad Categories.

The application provided little itemization of costs. At most the application broke out the total $66.9 million estimate in costs by only four categories: "34 DA feeders"; "21 Volt/VAR control feeders"; "44,000 AMI/DR meters"; and "Backhaul/WAN Communications".[23] The sum of the cost of those categories did not equal the total cost of $72.2 million the Company estimated in its previous filings at the Commission.[24]

In OCC's Request to Produce No. 5, OCC requested: "Please provide all documents and materials in electric format that were used to create Figure 1.6.3-3 on page 37 of Exhibit B." Figure 1.6.3-3 on page 37 of Exhibit B is a breakdown of the estimated projected costs by state. FirstEnergy responded by stating "See budget spreadsheets provided as a separate attachment" but did not provide the spreadsheets. So, FirstEnergy did not respond to that Request to Produce.

Accordingly, the Commission should not allow FirstEnergy to collect any costs from Ohio customers until the Commission is sure that Ohio customers will not be paying costs associated with cost items benefiting ratepayers in other states. The setting of rates should be subject to a hearing.

III. CONCLUSION

The Commission should protect consumers by not approving FirstEnergy's application in this docket for approval of a new service or an increase in rates under R.C.

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[23] Application, Exhibit B, Figure 1.6.3-3 at 37.

[24] Supplemental Report of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison company -- AMI and Smart/Modern Grid Technologies --, *In the Matter of the Commission-Ordered Workshop Regarding Smart Metering Deployment*, Case No. 07-646-EL-UNC (August 14, 2009) at 3.

4909.18 until interested parties have an adequate opportunity for discovery and a hearing under R.C. 4909.18. The costs FirstEnergy asks to collect from customers for meters and feeders are unusually high, indicating that the rates requested are unjust and unreasonable and should be investigated. The application is not sufficiently detailed, and is not sufficiently justified to ensure that the charges resulting from the application are just and reasonable under R.C. 4909.18. While a hearing before the rates are collected from customers is appropriate (and OCC waives no right to claim a hearing is required), an after the fact management and financial audit could be an appropriate regulatory tool. Nor are the policy decisions underlying the application sufficiently analyzed to ensure that they represent good management practices under R.C. 4909.154.

FirstEnergy insists that the Department of Energy's award to FirstEnergy is sufficient evidence that its expenditures and cost recovery amounts are prudent for the benefits it will provide. The criteria relied upon by the Department of Energy indicate that the Department of Energy was not making a prudency review that would ensure that the costs are just and reasonable. Such a review is for the state regulator, here the PUCO, to make. Moreover, the Department of Energy will not reward the grant without the Commission's approval. Accordingly, the Department of Energy is counting on this Commission's prudency review, which is fundamental to protecting customers.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Ann M. Hotz_____________

Ann M. Hotz, Counsel of Record
Jeffrey L. Small
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
hotz@occ.state.oh.us
small@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Comments* was served on the persons stated below, via First Class U.S. Mail, postage prepaid, this 15th day of January, 2010.

/s/ Ann M. Hotz__________________
Ann M. Hotz
Counsel of Record

SERVICE LIST

Ebony L. Miller
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

William Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Attorneys for Ohio Energy Group

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793

Attorneys for Ohio Partners for Affordable Energy

Samuel C. Randazzo
Lisa G. McAlister
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17TH Floor
Columbus, OH 43215

Attorneys for IEU

Michael K. Lavanga
Garrett A. Stone
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007

Attorneys for Nucor Steel Marion, Inc.

John W. Bentine,
Mark S. Yurick
Matthew S. White
Chester, Willcox & Saxbe LLP
65 East State St., Ste. 1000
Columbus, OH 43215-4213

Attorneys for The Kroger Co.