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
In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Initial Benchmark Reports.	)))))	Case Nos. 09-1942-EL-EEC 09-1943-EL-EEC 09-1944-EL-EEC
In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms.	))))))))	Case Nos. 09-1947-EL-POR 09-1948-EL-POR 09-1949-EL-POR

OBJECTIONS BY THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES

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OBJECTIONS BY THE
THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES

The undersigned members of the Ohio Consumer and Environmental Advocates (collectively "OCEA")[1] jointly and individually submit these objections to the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "the Companies" or "FirstEnergy") energy efficiency and peak demand reduction program portfolio plans for 2010 through 2012 ("EE/PDR Plan"),

[1] OCEA includes the Office of the Ohio Consumers' Counsel, Natural Resources Defense Council, Environment Ohio, Environmental Law and Policy Center ("ELPC"), Ohio Environmental Council, Citizen Power and Neighborhood Environmental Coalition, Consumers for Fair Utility Rates and the Empowerment Center of Greater Cleveland, and the Cleveland Housing Network.

including the revised Compact Fluorescent Light ("CFL") Program, and to the Companies' initial benchmark report that were filed on December 15, 2009. The objections are filed in compliance with Ohio Adm. Code 4901:1-39-04(D) and the Entry filed by the Legal Director of the Public Utilities Commission of Ohio ("Commission" or "PUCO") on January 14, 2010 and the Entry filed by the Hearing Examiner on February 17, 2010, in the above-captioned cases.

The undersigned members of OCEA urge the Commission to address the concerns and adopt the modifications set forth in these objections so as to avoid prematurely or unreasonably approving a program that FirstEnergy has yet to adequately justify. One critical consideration should be the current state of the economy in the entire Northeast Ohio region. The impact of the current recession on the residential customers and businesses in the region has been severe. Well-designed, cost effective energy efficiency programs can be an important part of the region's recovery, and further the state policy of ensuring the state's effectiveness in the global economy.[2]

The basis for these objections including proposed additions, alternative programs, or modifications to the FirstEnergy EE/PDR Plan and Benchmark Report are set forth below.

[2] R.C. 4928.02(N)

I. ARGUMENT

A. The Commission Should Limit Lost Revenue Collection To Energy Savings Occurring In Program Years 2009, 2010, And 2011, And Implement Revenue Decoupling In 2012.[3]

The section in the ESP Stipulation and Recommendation ("Stipulation")[4] related to the Energy Efficiency Collaborative, of which a lost revenue collection agreement is part, concerns program years 2009, 2010, and 2011. The Stipulation section that concerns lost revenue collection states that the "EE/PDR Program developed by the Stipulation is in effect for the period from 2009 through 2011,[5] unless extended by both the Companies and the Signatory Parties participating in the collaborative until the end of 2013.[6] Lost revenues for collaborative-developed energy efficiency programs implemented in program years 2009, 2010, and 2011 are eligible for lost revenue collection for a period not to exceed six years from the effective date of the ESP or the effective date of the Companies' next base distribution case. The Companies' proposed DSE rider attempts to collect program costs, inclusive of lost revenues, in Program Year 2012. This extends the terms of the Stipulation past the program years negotiated, violating the terms of the Stipulation.[7] In the current case, even if the Commission determines that lost distribution revenue recovery is appropriate for the CFL program, the Commission should not allow

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[3] ELPC and Citizen Power are not taking a position on whether the Companies should collect lost revenues related to the proposed CFL program.

[4] *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).

[5] *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, at 25, par 6a (February 19, 2009).

[6] Id. At 27, par. 6l.

[7] Id.

the Companies to collect lost revenues from incremental energy savings created in Program Year 2012.

To address the need for the Companies to collect its fixed cost of distribution service when the Program agreed to in the ESP Stipulation expires, the Commission should implement revenue decoupling in January 2012.[8] Revenue decoupling is a modest, regular true-up in rates to ensure that a utility collects no more and no less than its Commission-authorized fixed costs of distribution service, regardless of fluctuations in sales. Decoupling is preferable to lost revenue recovery because it removes the throughput incentive: under traditional ratemaking, between rate cases a utility has incentives to increase sales beyond the level that was assumed in the last rate case. Decoupling, unlike lost recovery, can generate refunds to customers if the utility over-collects its fixed costs of distribution service. Decoupling is preferable to increasing fixed charges (sometimes called "straight fixed-variable" rate design) because it leaves intact customers' incentives to implement energy efficiency and conservation, and doesn't punish those who have already taken action.

Recent decisions by Michigan Public Service Commission[9] indicate a decoupling model that could work well in Ohio. Consumers Energy and Detroit Edison were granted "pilot" revenue decoupling mechanisms that only continue if the utility exceeds statutory energy savings benchmarks, implements enhanced energy efficiency programs, and meets reliability standards.

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[8] ELPC and Citizen Power decline to take a position on the merits of revenue decoupling at this time.

[9] See Opinion and Orders, Michigan Public Service Commission Case Nos. U-15768 and U-15645.

B. FirstEnergy's Plan Does Not Comply With Law And Commission Order In That It Does Not Include Any Plan To Meet The 2009 Energy Efficiency Benchmark.

According to O.A.C. 4901:1-39-04, 4901:1-39-05, 4901:1-39-06 and 4901:1-39-07, electric utilities must file comprehensive energy efficiency and peak demand reduction plans, including descriptions of various mechanisms for cost recovery, and riders, along with benchmark estimates and reports. FirstEnergy's EE/PDR Plan is inadequate according to O.A.C. 4901:1-39-04(A), which requires that the portfolio plan include programs that "meet or exceed the statutory benchmarks for energy efficiency." Because the EE/PDR Plan filed by FirstEnergy on December 15, 2009 includes assumptions for 2009 savings achievements that are inaccurate and far higher than actually achieved, and because these inaccurate savings assumptions are relied upon in the plan to calculate and design the 2010, 2011, and 2012 programs and benchmarks, the plan is not calculated to "meet or exceed the statutory benchmarks for energy efficiency." As explained below, FirstEnergy's baselines for 2010, 2011, and 2012 are incorrect because of its faulty assumptions concerning its 2009 efficiency achievements. Additionally, the EE/PDR Plan includes no discussion, amendment, or revision to accommodate the increased savings FirstEnergy must achieve as a result of its failure to meet the 2009 benchmarks. FirstEnergy's Plan is deficient in its benchmark calculation and assessment. Therefore, it is also deficient because the underlying benchmark savings are inaccurate. Accordingly, FirstEnergy's plan must be revised or rejected and cannot be approved.

FirstEnergy's assumptions for 2009 savings levels are inaccurate. A review of the testimony and exhibits of George L. Fitzpatrick is instructive on this point. Attached to

Mr. Fitzpatrick's testimony is Exhibit FE-GLF-2. On page 3 of this exhibit is a table which examines The Toledo Edison Company's benchmarks and savings requirements. Importantly, for the column "Program year 2009", MWh and kWh Saved, in the row "Portfolio Plan Total – Cumulative Projected Savings" are the numbers 29,234 and 93,238, respectively.[10] In this row, numbers increase, cumulatively, on an annual basis; the 2009 projected savings from programs are added to the 2010 projected savings, which are then added to the 2011 project savings from programs, and then added to the 2012 projected savings from programs to culminate in numbers of 251,774 MWh saved and 78,630 kW saved respectively.[11] For the column "Program year 2009", MWh and kW Saved, in the row "Portfolio Plan Total – Cumulative Projected Savings" the numbers 29,234 and 93,238 are inaccurate. Moreover, FirstEnergy did not meet its 2009 benchmark; additionally, FirstEnergy was aware that the benchmark was not achieved when this testimony and exhibits were filed on the December 15, 2009.[12]

Consequently, Toledo Edison's actual savings for 2009 were not 29,234 MWh and 93,238 kW, respectively. Instead, Toledo Edison achieved a savings rate significantly below those numbers. FirstEnergy asserts in its application that the programs outlined in the plan will comply with statutorily required savings levels.[13] In other words, FirstEnergy has proposed programs for 2010, 2011 and 2012 that create savings that when added to the previous years savings purport to comply with the annual

[10] See Testimony of George L. Fitzpatrick, Exhibit FE-GLF-2, page 3 of 3.

[11] See Testimony of George L. Fitzpatrick, Exhibit FE-GLF-2, page 3 of 3.

[12] Application in Case Nos. 09-1004-EL-EEC, 09-1005-EL-EEC, and 09-1006-EL-EEC, filed October 27th, 2009.

[13] See Application, p.1-2: "As demonstrated by the EE/PDR Plans, the Companies have proposed a wide range of programs to achieve the energy efficiency and peak demand reduction ("EE/PDR") benchmarks set forth in R.S. sec. 4928.66 for years 2010 through 2012 and to provide those opportunities to customers."

benchmark for the current corresponding year. Yet, as demonstrated above, FirstEnergy's reported savings for the year 2009 in the Plan are inaccurate. Therefore, to the extent FirstEnergy is looking to add to those 2009 annual achievement savings numbers cumulatively to reach the 2010, 2011, and 2012 targets, FirstEnergy's savings goals are inaccurate, and the savings levels FirstEnergy is purporting to meet through these programs are inaccurate, due to the failure to properly assess the 2009 actual savings level. Accordingly, FirstEnergy, through this cumulative accounting of savings in 2009 that never actually occurred, has designed programs that are intended to meet inaccurate and artificially low annual and cumulative baselines.

Additionally, FirstEnergy cannot justify the inclusion of these inaccurate 2009 numbers in its Plan. As early as October 27, 2009, more than a month before the filing of the Plan, FirstEnergy was aware that the 2009 benchmarks would not be achieved, and for the Toledo Edison Company, that programs would not save 29,234 and 93,238 MWh and kW respectively. Yet FirstEnergy designed and filed a plan that assumed these savings for Toledo Edison, and similar inaccurate savings levels for the other FirstEnergy companies, that artificially lower the amount of savings that must be created by FirstEnergy in the 2010, 2011, and 2012 period. FirstEnergy also failed to attempt to correct this inaccurate assumption regarding the 2009 efficiency improvements. Since the December 15 Plan filing, no revision has been filed by FirstEnergy to correct these inaccurate 2009 benchmark assumptions.

Finally, FirstEnergy's EE/PDR Plan includes no discussion, amendment, or revision to accommodate the increased savings FirstEnergy must achieve as a result of its failure to meet the 2009 benchmarks, as required by Case No. 09-1004-EL-EEC, et al.

On January 7, 2010 the PUCO issued a Finding and Order in Case No. 09-1004-EL-EEC, et al, conditionally granting a waiver of FirstEnergy's 2009 energy efficiency benchmark.[14] In that January 7, 2010 Finding and Order, the Commission found that "FirstEnergy's application for a waiver should be granted and that FirstEnergy's energy efficiency benchmarks for 2009 should be amended to zero, contingent upon FirstEnergy meeting revised benchmarks for 2010 through 2012."[15] The Commission ordered that FirstEnergy should revise its 2010, 2011, and 2012 benchmarks to "meet the cumulative energy savings in the statute." Therefore, the Commission's approval of FirstEnergy's application was "contingent on FirstEnergy meeting revised benchmarks for 2010, 2011, and 2012."[16]

According to the testimony of George Fitzpatrick on behalf of FirstEnergy, the plan has been filed to "comply with all benchmarks" and "meet or exceed the targets imposed" in the period between January 1, 2010 and December 31, 2012.[17] FirstEnergy's Market Potential Study Report confirms that there is substantial cost effective energy efficiency beyond that contained in the three-year plan. Even in the conservative "Base Case," which assumes only the customers that expressed high interest in programs in customer surveys participate in programs, FirstEnergy has more than six times the achievable energy efficiency opportunity in 2010-2012 than the amount

[14] January 7, 2010 Finding and Order, Case No. 09-1004-EL-EEC, findings 9 and 10.

[15] Id. at Finding 10. (emphasis added).

[16] January 7, 2010 Finding and Order, Case No. 09-1004-EL-EEC, finding 10.

[17] See Direct Testimony of George L. Fitzpatrick, Page 4, Case No. 09-1097-EL-POR, et al.

required to comply with the law.[18] Given this large energy efficiency opportunity, the Commission should require FirstEnergy to amend its 2010-2012 portfolio of energy efficiency programs and meet the energy efficiency targets including the savings deficit incurred by not implementing energy efficiency programs in 2009.

However, the plan does not indicate that it was designed to account for the 2009 shortfall; and since it was filed, FirstEnergy has made no attempt to revise the Plan or the benchmarks as required by the January 7 order in 09-1004-EL-EEC. FirstEnergy's own market potential study suggests that complying with the Commission's order requiring it to make up 2009's energy savings is achievable. FirstEnergy should be ordered to adjust its plans to save the cumulative amount of energy required by R.C. 4928.66. Until FirstEnergy's plan is revised and demonstrates compliance with the benchmarks, the plan should not be approved.

C. The Commission Has The Authority to Deny Collection From Customers Of Lost Revenues From The Proposed CFL Program.

The Stipulation[19] approved by the Commission that established the Collaborative states that the Companies' Demand Side Management and Energy Efficiency Rider ("DSE Rider") will recover costs of energy efficiency programs, "including program administration costs and recovery of lost distribution revenues as permitted by the

[18] See Appendix D – Assessment of Potential (Market Potential Study), Page 3, Case No. 09-1097-EL-POR, et al. Table E1 indicates that the 2010-2012 energy efficiency goals are 487,945 MWh, while the Base Case DSM Savings in the same period are 3,255,182 MWh. From Tables E4 and E7, both the Cleveland Electric Illuminating Company and Toledo Edison have more than 6 times the achievable opportunity in 2010-2012 than the amount required to comply with the law.

[19] *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).

Commission rules."[20] The importance of the Collaborative is highlighted in the Stipulation by the statement that "it is *essential* that any programs pursued to ensure that the Companies meet their statutory requirement, are based on sound program evaluation, *garner general support from stakeholders*, and are pre-approved for statutory compliance and cost recovery from the Commission."[21] 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."[22] The Stipulation is also clear that the Companies and Signatory Parties are only requesting that the Commission approve for collection the reasonably incurred costs associated with the EE/PDR Program.

The CFL program[23] that was approved[24] by the Commission and led the Companies to incur the costs of buying 3.75 million CFLs was not "recommended by a collaborative process." First, at the time FirstEnergy presented the program to the Collaborative, FirstEnergy did not solicit the recommendation of the Collaborative. Furthermore, two active members of the Collaborative, NRDC, and 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."[25] The

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[20] Id. at 21, par. 2.

[21] Id. At 23, par 6a. (emphasis added).

[22] Id. at 21, par. 2.

[23] *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).

[24] Id., Finding and Order (September 23, 2009).

[25] *In re FirstEnergy Energy Efficiency and Peak Demand Reduction Program Portfolio*, Case Nos. 09-580-EL-EEC, et al, Recommendations by Natural Resources Defense Council (August 10, 2009).

OCC recommended “a design that provides incentives to retailers to lower the incremental cost of CFLs at the point of sale.”[26]

Because the CFLs were purchased for a program that was not “recommended by a collaborative process,” the Commission has the authority to deny or modify the Companies’ proposal to collect lost distribution revenue from customers for the 2010 to 2012 CFL program described in Section 3.8 of its Program Portfolio. The Stipulation connects lost revenue collection and collaborative recommendation of programs, and provides assurances that the Companies will include the views of its stakeholders in program design and implementation. By denying the Companies’ efforts to collect lost distribution revenues from customers for the CFL program, the Commission would be fully utilizing the consumer protections provided by the Stipulation.

D. The Commission Should Protect Customers By Disallowing The Collection Of Sunk Costs Associated With The Previous CFL Program That Are Not Providing Benefits To The Currently Proposed CFL Program.

The OCEA members object to FirstEnergy’s collection of management costs, advertising costs, and certain warehousing costs directly attributable to the original CFL program and the Companies’ request to delay the implementation of the program. Despite repeated requests, these costs have not been sufficiently itemized, explained, or justified to Collaborative members, therefore these costs should not be collected from residential and small business customers.

1. The Pre-program advertising costs for the original version of the CFL program should be disallowed.

[26] *In re FirstEnergy Energy Efficiency and Peak Demand Reduction Program Portfolio*, Case Nos. 09-580-EL-EEC, et al, OCC Motion to Intervene and Recommendations for Modification at 5 (August 10, 2009).

Pre-program advertising costs that have been spent for the initial CFL program are listed as a total of $427,140. This is less than 24 percent of the $1.8 million that the Companies had allocated for marketing this program, an amount that was estimated to be needed to properly market the benefits of the program.[27] These marketing costs were part of an insufficient campaign that accompanied a program launched without Collaborative approval. In addition, these advertising costs were associated with a program that was not recommended by the collaborative and these funds were expended for a program that was never employed by the Companies. For these reasons, these sunk marketing costs should not be collected from FirstEnergy's residential and small business customers. 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 any approved cost collection from FirstEnergy's residential and small business customers.

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

The Companies' breakout of costs also 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 to or benefit customers. In fact, in recent collaborative meetings, Ohio Partners for Affordable Energy volunteered to distribute the bulbs at no charge to the Companies, thus eliminating some management costs. Additional information regarding these costs was requested several times by Collaborative members and sufficient clarifying information justifying these costs was

[27] Section 3.2.

not provided, nor is it included elsewhere in this filing. Because the Companies have not justified these costs, the $225,000 in administrative costs should not be approved by the Commission for collection from FirstEnergy's residential and small business customers.

3. The Companies' request to combine the filing of the CFL program with the comprehensive program portfolio created a delay that has increased the warehousing expenses for the CFL bulbs, and the expense caused by this delay should not be borne by the Companies' residential and small business customers.

Additional warehousing 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, and emphasized in several ways, that it was important for the Companies to commence a revised CFL program as quickly as possible. The PUCO recommended that FirstEnergy "*promptly* resume discussions" with the Collaborative concerning the CFL program.[28] 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.[29] Despite these Commission directives, the Companies requested to delay re-filing the program until December 30, 2009 and to include it in the larger program portfolio filing. The Commission allowed the delayed filing, but limited FirstEnergy to December 15 to file the revised plan. By combining the CFL program with the portfolio programs, the Companies have delayed program commencement by several months.

[28] Entry on Rehearing at 3 (November 4, 2009) (emphasis added).

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

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 April.[30] The consequences of any requested delay were noted by OCC and NRDC in their November 27, 2009 Memorandum Contra to the Companies' request for an extension of time.[31] The Companies requested this delay. OCC and NRDC opposed it. It is not fair, just, or reasonable for residential customers and small business customers to now pay for FirstEnergy's request to delay. The inability of FirstEnergy to expedite program delivery in 2009 is a management failure and as such, the associated costs are FirstEnergy's responsibility. The approximately $120,000 in increased storage costs resulting from the requested delay from December 2009 through March 2010 should be disallowed and not borne by FirstEnergy's customers.

E. The Commission Should Not Approve The Shared Savings Mechanism As Proposed By FirstEnergy

A shared savings mechanism should provide the Companies with an incentive to ramp-up implementation of the energy efficiency programs it offers to customers. As proposed, the Companies' shared savings mechanism would reward the Companies for actions other than delivering energy efficiency to customers, including mercantile self-direct projects and transmission and distribution projects that reduce line losses. Mercantile self-direct projects are, by definition, the result of customer actions, not the

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

[31] OCC and NRDC Memorandum Contra FirstEnergy's Motion for Extension of Time at 7 (November 27, 2009).

Companies. According to Commission rule,[32] FirstEnergy is not allowed to collect costs from transmission and distribution projects that reduce line losses unless FirstEnergy shows that these investments were made for the purpose of increasing energy efficiency. FirstEnergy makes no such claim in this proceeding or in the Applications filed for energy savings from transmission and distribution projects. The Commission should ensure that a shared savings mechanism rewards FirstEnergy only for delivering energy efficiency programs to customers.

Further, because FirstEnergy proposes the Utility Cost Test ("UCT") as opposed to the Total Resources Cost Test ("TRC") for purposes of calculating net benefits the Companies are encouraged to lower incentives, rather than offering market-appropriate incentives for cost-effective programs. Finally, the Commission should assure that "banked" savings from a previous year's over-compliance cannot be used to trigger a shared savings mechanism in any subsequent year or be used to get shared savings a second time. Without addressing these issues, the Commission should not approve the EE/PDR Plan put forward by FirstEnergy.

F. FirstEnergy Failed To Establish A Meaningful Collaborative Process. Accordingly, The Commission Should Appoint An Independent Facilitator To Facilitate The Collaborative.

The Collaborative process undertaken by FirstEnergy has been ineffective. Collaborative members have consistently been given little or no time to review information, making it difficult to provide constructive feedback to FirstEnergy and other Collaborative members. As FirstEnergy has stated, the purpose of the Collaborative is to

[32] See O.A.C. Section 4901:1-39-07(1),

allow FirstEnergy and interested stakeholders the ability "work toward consensus on program portfolio to expedite implementation [and] savings."[33] FirstEnergy's Collaborative has not achieved these goals. On numerous occasions, FirstEnergy has not allowed Collaborative members sufficient time to review proposals, has not taken stakeholder advice on EE/PDR programs, and has sought to exclude stakeholders from the Collaborative. It has become apparent during the past year that the FirstEnergy Collaborative is not working. Therefore, OCEA recommends the Commission appoint an independent facilitator to direct FirstEnergy's Collaborative. OCEA recommends the Commission find FirstEnergy's Collaborative process deficient and utilize R.C. 4903.24 as a way to address the costs of an independent facilitator.

FirstEnergy has also excluded voices that would add value to the Collaborative. For example, FirstEnergy recently, without any justification, informed Environmental Law and Policy Center that it may not participate in the Collaborative. FirstEnergy's efforts to limit stakeholder involvement in its Collaborative will only exacerbate the fundamental problems with the Collaborative process and will not support the efforts of the Collaborative to potentially avoid lengthy litigation processes to develop programs.

OCEA recommends that the Commission appoint an independent facilitator to facilitate FirstEnergy's Collaborative and address the problems outlined above. An independent facilitator would provide an unbiased way to ensure that information is properly disseminated and that there is a fair process to determine which stakeholders are allowed to participate.

[33] FirstEnergy Collaborative PowerPoint Presentation (May 18, 2009.)

G. FirstEnergy Failure To Consistently Incorporate The PUCO Staff's Recommended Seven Customer Classification Template Undermines The Commission's Ability To Review The Plan.

FirstEnergy failed to incorporate the Commission's proposed seven-customer classification template that was filed in PUCO Case No. 09-714-EL-UNC. It is critical that the utilities report their Demand-Side Management ("DSM") efforts on a program *and* segment classification basis to achieve the Staff's (and OCC's) intended goal of establishing "precise program targeting" and minimizing "subsidies across customer classes"[4] The Commission should order FirstEnergy to supplement its Application to incorporate the seven-customer classification template outlined in PUCO Case No. 09-714-EL-UNC as recommended in the PUCO Staff's template – unless the Companies provide a justification for any deviations.

II. CONCLUSION

As stated above, FirstEnergy's Energy Efficiency and Peak Demand Reduction Portfolio Plan disregards Commission requirements, recommendations and circumvents items presented in the Companies' ESP Stipulation. The Commission must ensure that FirstEnergy complies with statutory requirements, follows the Commission rules, and honors the Stipulated agreement. For the reasons stated above, the undersigned members of OCEA respectfully request the Commission amend FirstEnergy's Application by implementing the modifications proposed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Objections By The Ohio Consumer And Environmental Advocates was served electronically (hard copy available upon request) to the below-listed Service List this 17th day of February, 2010.

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