

**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  
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**MEMORANDUM IN RESPONSE TO  
JOINT MOTION FOR APPROVAL OF  
FAST TRACK PROGRAMS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
AND  
CITIZENS COALITION**

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**I. INTRODUCTION**

On December 15, 2009, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or the "Companies") filed an Application for approval of their three-year Energy Efficiency

and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms (“Plans”).<sup>1</sup> The Companies requested either a procedural schedule that would allow for approval of the Plans by mid-March 2010 or, alternatively, approval before April 1, 2010 of four specific programs -- the Appliance Turn-In Program, the Residential CFL Program (including low income), the C/I Equipment Program (Lighting component), and the C/I Equipment Program (Industrial Motors) -- referred to in the Plans as the “Fast Track” programs.<sup>2</sup>

On February 22, 2010, FirstEnergy joined with six other parties in a motion (“Joint Motion” by “Movants”) before the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to approve certain programs on an interim basis. The Joint Motion seeks approval of programs identified by FirstEnergy for “Fast Track” approval, subject to modification as stated in the Joint Motion (as modified, the “Identified Programs”).<sup>3</sup>

This pleading is submitted within the time frame permitted under Ohio Adm. Code 4901-1-12(C) for a responsive pleading.<sup>4</sup>

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<sup>1</sup> Also included in the Application was a request for approval of the Companies’ Market Potential Study and Initial Benchmark Report, neither of which is relevant to the issues addressed in this Memorandum.

<sup>2</sup> Plans at Company Exhibit 4, Direct Testimony of George L. Fitzpatrick at 9 (December 15, 2009).

<sup>3</sup> Joint Motion at 2, footnote 2. The footnote refers to a proposed modification of the Appliance Turn-In Program. *Id.* That modification is more fully described later in the Joint Motion. Joint Motion at 7 (“Modification to the Appliance Turn In Program”).

<sup>4</sup> The Joint Motion states that it is submitted pursuant to Ohio Adm. Code 4901-1-12(A) (i.e. not involving expedited treatment), and does not mention (other than in its title) a request for an expedited ruling. Nonetheless, this pleading is submitted in an effort to expedite treatment of the matters addressed in the Joint Motion.

## II. ARGUMENT

### A. The Commission Should Approve the Identified Programs on an Interim Basis.

R.C. § 4928.66 requires the Companies in 2010 to reduce energy consumption and peak demand, and customers should be able to gain access to energy efficiency and peak demand reduction programs as soon as practicable. Approval of the Identified Programs (i.e. including the modifications to FirstEnergy's original proposal<sup>5</sup>) would permit Ohioans to start reaping the benefits of these programs sooner than would otherwise be permitted under the current procedural schedule.

One program identified by the Companies as a "Fast Track" program, the CFL Program, was proposed during 2009 and later combined by FirstEnergy with the Companies' Plans that are at issue in these proceedings.<sup>6</sup> Parties opposed FirstEnergy's proposal to combine a revised CFL program with its three-year portfolio plan, stating that the change "would result in at least a three-month delay in the implementation of the CFL program."<sup>7</sup> This pleading further demonstrates the desire by the Office of the Ohio Consumers' Counsel and Citizens Coalition for more rapid roll-out of FirstEnergy's energy efficiency and peak demand reduction programs. The Commission's interim

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<sup>5</sup> The Appliance Turn-In Program, as proposed in the Companies' Plans, included an initial rebate of \$75 during the first six months after launch of the program. The Joint Motion appropriately modifies that proposal by reducing the rebate levels. Joint Motion at 7. Movants request modification of the program incentive to "\$50 initially, with a further reduction to \$35 six months after the launch of the program." Id.

<sup>6</sup> See, e.g., *In re FirstEnergy Energy Efficiency and Peak Demand Reduction Programs*, Case Nos. 09-580-EL-EEC, et al., FirstEnergy's Motion for Extension (November 23, 2009).

<sup>7</sup> Id., Memorandum Contra FirstEnergy's Motion for Extension by the Office of the Ohio Consumers' Counsel and the Natural Resources Defense Council at 2 (November 27, 2009).

approval of programs should not, however, pre-determine the consequences of FirstEnergy's decisions that have delayed implementation of the CFL program. The reservation of arguments concerning this contested matter appears to be provided for in the Joint Motion.<sup>8</sup>

**B. Arguments Should be Reserved.**

The instant pleading is submitted, in an abundance of caution and hopefully not in conflict with the material terms of the Joint Motion,<sup>9</sup> to confirm the remaining elements in the Joint Motion that concern conditions placed on approval of the Identified Programs. The conditions placed in the Joint Motion upon its approval are stated in puzzling fashion,<sup>10</sup> but do not seem to conflict with the positions stated in this pleading.

The Joint Motion seems to request that the Identified Programs (i.e. the modified version of FirstEnergy's proposed programs) be approved on an interim basis and that the Commission not retroactively treat reasonably incurred costs based upon later Commission modification (if any) of the Identified Programs that are partly the subject of

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<sup>8</sup> Joint Motion at 10, footnote 10 (“nothing in this request precludes a party from challenging the costs already incurred by the Companies”).

<sup>9</sup> This pleading is intended to be especially responsive to Commissioner Roberto's comments in this docket regarding the need for stating concerns on issues. *In re FirstEnergy Energy Efficiency and Peak Demand Reduction Programs*, Case Nos. 09-580-EL-EEC, et al., Oral Argument, Tr. at 69 (October 28, 2009).

<sup>10</sup> The Joint Motion itself asks that two elements be approved on its first two pages; four elements are contained in the Joint Motion on the third page; two elements are again featured in the introduction of the Memorandum in Support of the Joint Motion (Joint Motion at 7); three elements appear to be discussed in the argument of the Memorandum in Support, and a different three elements are stated in the summary of the Memorandum in Support (id. at 10-11). The request that “Findings 9 and 10 of the Commission's Order in Case No. 09-1004-EL-EEC et al . . . not [be] affected by the granting of the Motion,” is stated only in the Joint Motion itself (id. at 3) and in the summary of the Memorandum in Support (id. at 11), but is not controversial. The undersigned parties understand that the Joint Motion does not argue for any alteration or waiver of a rule, or argue for alteration of precedent related to the subject of these proceedings.

this proceeding. This condition reflects the necessity, in order to encourage FirstEnergy to implement programs in the near-term, for Commission assurances that reasonable costs incurred by the Companies in reliance upon approval of the Joint Motion would be recoverable. This condition also reflects the desirability of Commission review of the Identified Programs in these proceedings, including review during the scheduled evidentiary hearing.

The Joint Motion states that Movants do not seek to “negate the Commission’s ability to review any of these programs in detail,” only that any Commission modification “be made on a prospective basis” since the Companies would incur commitments before any modifications would be known.<sup>11</sup> The Joint Motion states that it does not attempt to “dictate[ ] how the ESP Stipulation should be interpreted,”<sup>12</sup> reserves for litigation “costs contemplated in Rule 4901:1-39-07(A)” other than reasonable program costs incurred by the Companies in reliance upon approval of the Identified Programs on an interim basis,<sup>13</sup> and does not “preclude[ ] a party from challenging the costs already incurred by the Companies through their prior CFL Program that is the subject of Case No. 09-580-EL-EEC.”<sup>14</sup> The Joint Motion appears to recognize that the parties to the above-captioned cases have taken varying positions in these cases and have the right to continue to take

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<sup>11</sup> Joint Motion at 8.

<sup>12</sup> Joint Motion at 7, footnote 5.

<sup>13</sup> *Id.*, footnote 10.

<sup>14</sup> *Id.* The treatment of costs associated with the CFL program proposed by FirstEnergy in 2009, and delayed for inclusion in the Companies Plans, is disputed. See, e.g., *In re FirstEnergy Energy Efficiency and Peak Demand Reduction Programs*, Case Nos. 09-580-EL-EEC, et al., Memorandum Contra FirstEnergy’s Motion for Extension by the Office of the Ohio Consumers’ Counsel and the Natural Resources Defense Council (November 27, 2009).

varying positions in these cases. All positions and arguments in these cases and in related cases appear unaffected by this Joint Motion, except that Movants request that the Commission not (at a later date) alter its ruling on the Identified Programs in a way that would result in retroactive treatment of costs reasonably incurred as the result of the interim approval of the Identified Programs.

The exception to maintaining all matters for litigation in these cases -- i.e. providing assurances regarding FirstEnergy's recovery of reasonably incurred costs in reliance upon approval of the Joint Motion -- should only apply to the Companies' cost recovery during the time period between the initial approval of the Joint Motion and the effective date of the Commission's first order regarding Identified Programs that follows approval of the Joint Motion (referenced for purposes of this pleading as the "Final Order"). The Companies' recovery of costs related to the Identified Programs that are not reasonably incurred in reliance upon the PUCO's granting of the Joint Motion should remain subject to the determinations in the Commission's Final Order. This appears to be the intent of the Joint Motion.

### **III. CONCLUSION**

The Identified Programs should be approved for implementation based upon the conditions and reservation of rights stated in this pleading. The conditions and the reservation of rights contained in this pleading appear to be consistent with those stated in the Joint Motion. Near-term implementation of the Identified Programs should proceed in order to provide benefits to Ohioans.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Jeffrey L. Small

Jeffrey L. Small, Counsel of Record  
Christopher J. Allwein  
Gregory J. Poulos  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-8574 (Telephone)  
(614) 466-9475 (Facsimile)  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[allwein@occ.state.oh.us](mailto:allwein@occ.state.oh.us)  
[poulos@occ.state.oh.us](mailto:poulos@occ.state.oh.us)

/s/ Joseph P. Meissner - JLS

Joseph P. Meissner, Counsel of Record  
Matthew D. Vincel  
The Legal Aid Society of Cleveland  
1223 West 6th Street  
Cleveland, Ohio 44113  
(216) 216-687-1900 (T)  
[jpmeissn@lasclev.org](mailto:jpmeissn@lasclev.org)  
[mvincel@lasclev.org](mailto:mvincel@lasclev.org)

**Citizens Coalition**

of the Neighborhood Environmental  
Coalition, The Empowerment Center of  
Greater Cleveland, United Clevelanders  
Against Poverty, Cleveland Housing  
Network, and the Consumers for Fair Utility  
Rates

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Memorandum in Response to Joint Motion was served electronically (hard copy available upon request) to the below-listed Service List this 24<sup>th</sup> day of February, 2010.

/s/ Jeffrey L. Small \_\_\_\_\_  
Jeffrey L. Small  
Assistant Consumers' Counsel

**SERVICE LIST**

Craig I. Smith  
2824 Coventry Road  
Cleveland, Ohio 44120

**Attorney for Material Sciences  
Corporation**

Will Reisinger  
Trent Dougherty  
Nolan Moser  
1207 Grandview Avenue, Ste. 201  
Columbus, OH 43212-3449

**Attorneys for Staff the Ohio  
Environmental  
Council**

Duane Luckey  
Thomas Lindgren  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 E. Broad St., 6<sup>th</sup> Fl.  
Columbus, OH 43215

Todd Jones  
Christopher Miller  
Andre Porter  
Gregory Dunn  
Schottenstein Zox & Dunn Co., LPA  
250 West Street  
Columbus, OH 43215

**Attorneys for the AICUO**



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

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

**Attorneys for Industrial Users Energy-Ohio**

Henry W. Eckhart  
50 West Broad Street, #2117  
Columbus, OH 43215

**Attorney for the Natural Resources Defense Council**

Richard L. Sites  
General Counsel & Senior Director of Health Policy  
155 East Broad St., 15<sup>th</sup> Fl.  
Columbus, OH 43215-3620

**Attorney for the Ohio Hospital Association**

Michael E. Heintz  
1207 Grandview Ave., Ste. 201  
Columbus, OH 43204

**Attorney for Environmental Law and Policy Center**

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

**Attorneys for the Ohio Energy Group**

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street

**Attorney for the Ohio Manufacturers' Association and the Ohio Hospital Association**

Glenn S. Krassen  
Bricker & Eckler LLP  
1375 East Ninth St., Ste. 1500  
Cleveland, OH 44114

**Attorney for Ohio Schools Council**

Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215

**Attorney for Ohio Schools Council**

Jacqueline Lake Roberts  
101 Federal Street, Suite 1100  
Boston, MA 02110

**Attorney for EnerNOC, Inc.**

Eric D. Weldele  
Tucker Ellis & West LLP  
1225 Huntington Center  
41 South High Street  
Columbus, OH 43215-6197

**Attorney for the Council for Smaller Enterprises**

Theodore Robinson  
Staff Attorney and Counsel  
**Citizen Power**  
2121 Murray Ave.  
Pittsburgh, PA 15217

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.**

Robert J. Triozzi  
Steven L. Beeler  
City of Cleveland  
Cleveland City Hall  
601 Lakeside Ave., Rm. 106  
Cleveland, OH 44114-1077

**Attorneys for the City of Cleveland**

Kathy J. Kolich  
Arthur E. Korkosz  
Ebony L. Miller  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308

**Attorneys for the FirstEnergy Companies**

[mkl@bbrslaw.com](mailto:mkl@bbrslaw.com)  
[gas@bbrslaw.com](mailto:gas@bbrslaw.com)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)  
[will@theOEC.org](mailto:will@theOEC.org)  
[nolan@theOEC.org](mailto:nolan@theOEC.org)  
[jroberts@enernoc.com](mailto:jroberts@enernoc.com)  
[mheintz@elpc.org](mailto:mheintz@elpc.org)  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[ricks@ohanet.org](mailto:ricks@ohanet.org)  
[kjkolich@firstenergycorp.com](mailto:kjkolich@firstenergycorp.com)  
[korkosza@firstenergycorp.com](mailto:korkosza@firstenergycorp.com)  
[elmiller@firstenergycorp.com](mailto:elmiller@firstenergycorp.com)  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[lmcbride@calfee.com](mailto:lmcbride@calfee.com)  
[Rtriozzi@city.cleveland.oh.us](mailto:Rtriozzi@city.cleveland.oh.us)  
[SBeeler@city.cleveland.oh.us](mailto:SBeeler@city.cleveland.oh.us)  
[Eric.weldele@tuckerellis.com](mailto:Eric.weldele@tuckerellis.com)  
[wis29@yahoo.com](mailto:wis29@yahoo.com)  
[Ned.Ford@fuse.net](mailto:Ned.Ford@fuse.net)  
[dsullivan@nrdc.org](mailto:dsullivan@nrdc.org)

[talexander@calfee.com](mailto:talexander@calfee.com)  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[lmcalister@mwncmh.com](mailto:lmcalister@mwncmh.com)  
[jclark@mwncmh.com](mailto:jclark@mwncmh.com)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)  
[drinebolt@ohiopartners.org](mailto:drinebolt@ohiopartners.org)  
[jpmeissn@lasclev.org](mailto:jpmeissn@lasclev.org)  
[mvincel@lasclev.org](mailto:mvincel@lasclev.org)  
[cmiller@szd.com](mailto:cmiller@szd.com)  
[aporter@szd.com](mailto:aporter@szd.com)  
[gdunn@szd.com](mailto:gdunn@szd.com)  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[robinson@citizenpower.com](mailto:robinson@citizenpower.com)  
[duane.luckey@puc.state.oh.us](mailto:duane.luckey@puc.state.oh.us)  
[Thomas.lindgren@puc.state.oh.us](mailto:Thomas.lindgren@puc.state.oh.us)

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Summary: Memorandum Memorandum in Response to Joint Motion for Approval of Fast Track Programs by the Office of the Ohio Consumers' Counsel and Citizens Coalition electronically filed by Ms. Deb J. Bingham on behalf of Small, Jeffrey L. Mr.