

RECEIVED-BROCKETING DIV

2010 APR 12 PM 3:34

BEFORE THE PUBLIC UTILITY COMMISSION OF OHIO PUCO

- 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 Demand Reduction Program Portfolio Plans for 2010 and Associated Cost Recovery Mechanisms.) Case No. 09-1947-EL-POR) Case No. 09-1948-EL-POR) Case No. 09-1949-EL-POR)
- 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 No. 09-1942-EL-EEC) Case No. 09-1943-EL-EEC) Case No. 09-1944-EL-EEC)
- 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 No. 09-580-EL-EEC) Case No. 09-581-EL-EEC) Case No. 09-582-EL-EEC)
- POST HEARING REPLY BRIEF OF THE COUNCIL OF SMALLER ENTERPRISES**

The Council of Smaller Enterprises ("COSE") filed its Initial Post Hearing Brief on March 29, 2010. Briefs were also filed by FirstEnergy and the following interveners: Staff of the Public Utilities Commission of Ohio ("PUCO"), the Environmental Law and Policy Center ("ELPC"), the Ohio Energy Group, Material Sciences Corporation, the Ohio Manufacturer's Association ("OMA"), the Ohio Hospital Association ("OHA"), the Neighborhood Environmental Coalition, NUCOR, the Ohio Environmental Council, and the Ohio Consumers Council.

Pursuant to the schedule set by the attorney examiners assigned to this matter, COSE now files its Reply Brief.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
 Technician DM Date Processed APR 12 2010

A. Energy Efficiency and Peak Demand Response Plans (EE&PDR)

The main issue raised by COSE in its Initial Post Hearing Brief is in regard to FirstEnergy's EE & PDR program design. COSE has asserted both in its objection and in its Initial Brief that the programs for residential customers can and should be available and utilized for small enterprise customers. Chief among the programs which should be available to small commercial customers are the companies CFL program, the online efficient products program, the online audit program, and the energy efficient products program.

The Post Hearing Brief, as filed by FirstEnergy, indicates that the testimony provided before the commission focuses not on the design of the EE & PDR programs, but on TRC calculations, cost recovery and allocation.¹ However, during the cross examination of company witness John Paganie², Mr. Paganie was specifically asked:

Q. Is there a reason why the company didn't identify the residential programs it feels will be utilized by small businesses with Section 2.3 and specifically, the small enterprise programs summaries?

A. I can't think of any particular reason. We are trying to identify the programs in the right sectors and then allocate the budgets to those sectors where the programs primarily will be evolving. I can't think of any other reasons.

Q. Would there be an objection by the company to identify those programs within the residential, i.e., the online audit program, the CFL program, the online efficient products program for example, as applying also specifically to the small enterprise programs?

A. I'm not entirely sure how we would do that. We would have to revise the portfolio plan and reallocate budgets accordingly, which can be done, its certainly something we could take a look at.

¹ See Post Hearing Brief of FirstEnergy in support of their energy efficiency and peak demand restructure reduction program portfolio plans for 2010 through 2012 and initial benchmark reports page 4.

² TR. Volume 1, p. 134, 135. (Discussion between Mr. John Paganie and Eric Weldele, counsel for the Council of Smaller Enterprises.)

Testimony by Mr. Paganie clearly indicates that FirstEnergy can easily redesign the EE & PDR programs such that the residential programs conducive to use by small commercial customers can be redesigned accordingly to provide the opportunity for the small commercial customers to access these programs.

B. Other Issues

COSE supports the arguments raised by the OMA and the OHA in their Joint Initial Post Hearing Brief pp. 2-3. The OMA & OHA argue that the proposed 15% shared savings proposal by FirstEnergy is allowable pursuant to 4901; 1-39-07(A). However, OMA & OHA aptly point out that unless there is a clear, unambiguous benefit to FirstEnergy's customers from any such shared savings mechanism, the value of any annual overage should belong entirely to the customers that paid the cost of achieving that annual overage. Without evidence of a benefit, it would be unfair to FirstEnergy's rate payers to increase the costs of compliance with ORC 4928.66. COSE agrees with the OMA & OHA position and urges the Commission to approve FirstEnergy's overall compliance portfolio without the inclusion of a shared savings mechanism, and the suggested changes to the EE&PDR programs.

For the reasons stated above, COSE requests that this Commission adopt the position of COSE on the issues as set forth in its Initial Brief and Reply Brief.

Respectfully submitted,



Eric D. Weldele (0077276)
eric.weldele@tuckerellis.com
Tucker Ellis & West LLP
1225 Huntington Center
41 South High Street
Columbus, Ohio 43215-6197
Telephone: 614.358.9717
Facsimile: 614.358.9712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Post Hearing Reply Brief of The Council of Smaller Enterprises was served upon the parties of record listed below this 12th day of April, 2010 via first class mail.

Kathy T. Kolich
Arthur Korkosz
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

Jeffrey L. Small
Gregory J. Poulos
Christopher Allwein
Associate Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

James F. Lang
Laura C. McBride
N. Trevor Alexander
Kevin P. Shannon
Calfee, Halter & Griswold LLP
1400 KeyBank Center
700 Superior Avenue
Cleveland, OH 44114

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

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

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

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

Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113

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

Tom Lindgren
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad St., 9th Floor
Columbus, OH 43215

Michael E. Heintz
Environmental Law and Policy Center
1207 Grandview Ave., Suite 201
Columbus, OH 43204

Ted Robinson
Staff Attorney and Counsel
Citizen Power
2121 Murray Ave.
Pittsburgh PA 15217

Will Reisinger
Nolan Moser
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449

Richard L. Sites
Ohio Hospital Association
155 East Broad St., 15th Floor
Columbus, OH 43215

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third St.
Columbus, OH 43215

Respectfully submitted,



Eric D. Weldele (0077276)
eric.weldele@tuckerellis.com
Tucker Ellis & West LLP
1225 Huntington Center
41 South High Street
Columbus, Ohio 43215-6197
Telephone: 614.358.9717
Facsimile: 614.358.9712