

**FILE
FAX**

24



The
Legal Aid Society
of Cleveland
Since 1905

RECEIVED-DOCKETING DIV

APR 30 PM 4:00

PUCO

Chief of Docketing
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

April 30, 2010

SUBJECT: Case No. 10-388-EL-SSO

Dear friends:

We are enclosing a Post-Hearing Brief for the above referenced case, filed on behalf of the Citizens Coalition.

We are also faxing this. Please file it today. We are mailing by regular overnight express mail. Other parties are being served by email and/or regular mail. We have also enclosed an envelope addressed back to us. Please time-stamp one of the enclosed copies and return this to us. Let us know of any problems.

Thank you.

Very truly yours,

JOSEPH P. MEISSNER, 0022366
ATTORNEY AT LAW

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 AK Date Processed 4-30-2010

www.lasclev.org

Main Office
1223 West Sixth Street
Cleveland, OH 44113
Phone: 216.687.1900
Fax: 216.687.0779

Ashtabula County
121 East Walnut Street
Jefferson, OH 44047
Phone: 866.873.9665
Fax: 440.576.3021

Lake & Geauga
8 North State St - Ste 300
Painesville, OH 44077
Phone: 888.808.2800
Fax: 440.352.0015

Lorain County
538 West Broad St - Ste 300
Elyria, OH 44035
Phone: 800.444.7348
Fax: 440.323.8526



**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 Authority to) Case No. 10-388-EL-SSO
Establish a Standard Service Offer)
Pursuant to R.C. § 4928.143 in the Form)
of an Electric Security Plan.)

**POST-HEARING BRIEF
BY
CITIZENS COALITION**

Joseph P. Meissner, 0022366
Matthew D. Vincel, 0084422

Counsel of Record

The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
(216) 216-687-1900 (Telephone)
jmeissn@lasclev.org
mvincel@lasclev.org
Citizens Coalition

April 30, 2010

TABLE OF CONTENTS

	PAGE
I. TABLE OF CONTENTS.....	i
II. INTRODUCTION AND STATEMENT OF THE CASE	1
III. ARGUMENT.....	5
FIRST ARGUMENT: THE CITIZENS COALITION URGES THE PUCO NOT TO BE BLACKMAILED BY THE CURRENT LEGAL SITUATION INTO APPROVING FIRSTENERGY'S DEFECTIVE STIPULATION. WE APPLAUD YESTERDAY'S ACTIONS BY THE PUCO TO INSURE MORE TIME AND GREATER INVESTIGATION FOR THIS PROCEEDING. WE URGE THE PUCO TO REJECT THIS ONE-SIDED STIPULATION	
.....	5
SECOND ARGUMENT: THE CITIZENS COALITION URGES THE PUCO TO REJECT THE PROPOSED STIPULATION AND ESP AT THIS TIME UNTIL THE PUCO HAS INSURED THAT ITS LEGAL PROCESSES AS WELL AS FIRSTENERGY'S FINANCIAL ACTIVITIES AND ACCOUNTS MEET THE GENERALLY ACCEPTED PRINCIPLES FOR UTILITY REGULATION.	
.....	8
THIRD ARGUMENT: THE CITIZENS COALITION URGES THE PUCO TO INSURE THE PUBLIC HAS AN ADEQUATE NOTICE AND OPPORTUNITY TO PARTICIPATE IN THIS ESP PROCEEDING AND COMMENT ON THE FIRSTENERGY DEFECTIVE STIPULATION.	
.....	11
FOURTH ARGUMENT: THE CITIZENS COALITION URGES THE PUCO TO REJECT THE PROPOSED STIPULATION IN THIS ESP PROCEEDING BECAUSE THE STIPULATION DOES NOT MEET THE THREE-FOLD CRITERIA FOR THE PUCO ADOPTING A STIPULATION AND THIS DEFECTIVE PARTIAL STIPULATION IS NOT SIGNED BY REPUTABLE REPRESENTATIVES OF ALL THE MAJOR CUSTOMER INTERESTS IN THIS PROCEEDING	
.....	12

FIFTH ARGUMENT:THE CITIZENS COALITION URGES THE PUCO TO REJECT THE PROPOSED STIPULATION IN THIS ESP PROCEEDING BECAUSE THE STIPULATION DOES NOT CONTAIN ANY ADEQUATE FUEL FUND PROVISIONS AS ARE CONTAINED IN THE PRESENT ESP WITH ITS STIPULATIONS.

.....16

IV. CONCLUSION.....**Error! Bookmark not defined.**

I INTRODUCTION AND STATEMENT OF THE CASE

On March 23, 2010, the operating companies of FirstEnergy --Ohio Edison Company, the Cleveland Electric Illuminating Company ("CEI"), and the Toledo Edison Company--filed an application ("ESP Application") in an attempt to "blitzkrieg" approval of their proposed electric security plan ("ESP") that could determine prices consumers will pay for generation, transmission, and distribution service for 2012, 2013, and 2014 as well as perhaps a decade or more into the future. The ESP filing included a Stipulation and Recommendation ("Stipulation") that provided that an unbending FirstEnergy "may render th[e] Stipulation and ESP null and void" if it was not approved as filed by May 5, 2010 (just 43 days after filing).

In its haste, FirstEnergy filed a Motion for Waiver with its ESP Application, requesting that the PUCO and other parties waive and surrender most of the filing requirements that pertain to an ESP. Capitulating to this demand, an Attorney Examiner Entry was issued on March 24, 2010 ("AE Entry") that, among other matters, summarily set April 13, 2010 as the date for intervenor testimony (only 21 days after the filing) and set April 20, 2010 as the hearing date (only 28 days after the filing). On April 6, 2010, an Entry by the Public Utilities Commission of Ohio ("PUCO" or "Commission") cravenly granted most of the waiver requests, but denied FirstEnergy's request for waiver of the filing requirements regarding financial projections. (In light of the rushed schedule of this proceeding, this appropriate denial on this very crucial question of financial projections means little.)

Then yesterday in a surprise announcement the PUCO seemingly decided that it would not rush its decision in this case for an entry on May 5, 2010. What this means or

how this case will proceed forward has not been presented to the Citizens Coalition and other parties. The Coalition is hopeful that many of its suggestions and recommendations as well as those of the OCEA will be adopted.

Another case before the PUCO that figures prominently in the record of this case ("ESP Case") is the Company's filing of a market rate offer ("MRO") application on October 20, 2009 (Case 09-906-EL-SSO, "MRO Application" in the "MRO Case"). There is also another case before the Federal Energy Regulatory Commission ("FERC") that also figures prominently in this ESP Case. That was filed by the Company in August 2009 to switch the transmission operations from one regional transmission organization ("RTO") to another -- from the Midwest Independent System Operator ("MISO") to PJM Interconnection, Inc. ("PJM"). The Citizens Coalition did participate early in that proceeding, particularly regarding any cost issues and arguing that the current customers of the FirstEnergy operating companies should not be burdened with any costs resulting from this switch of RTO partners. The Company's request before FERC to waive legacy regional transmission expansion plan ("RTEP") charges by PJM was turned down on December 17, 2009. FERC decided that a transmission owner that switches RTOs "should be prepared to assume the costs attributable to [its] decisions." The Citizens Coalition and others were hoping--up until the Stipulation in this case--that this meant FirstEnergy customers would not be saddled with any Costs from this RTO switch.

Here are the Five Arguments which the Citizens Coalition respectfully present for the Commission's consideration.

FIRST ARGUMENT: THE CITIZENS COALITION URGES THE PUCO NOT TO BE BLACKMAILED BY THE CURRENT LEGAL SITUATION INTO APPROVING FIRSTENERGY'S DEFECTIVE STIPULATION. WE APPLAUD YESTERDAY'S ACTIONS BY THE PUCO TO INSURE MORE TIME AND GREATER INVESTIGATION FOR THIS PROCEEDING. WE URGE THE PUCO TO REJECT THIS ONE-SIDED STIPULATION.

This proceeding is brought pursuant to SB 221 and the various provisions of the Ohio Revised Code spawned by passage of SB 221. But SB 221 has many flaws. The most egregious is that a utility company can completely reject the Commission's considerate decision about a proposed ESP. The utility company can then resort to an MRO and there is no way according to the statute's provisions ever to return to an ESP. The ESP at least allows for some limited oversight and regulation by the PUCO in order to protect customers and issue even-handed decisions.

But once a company passes into the MRO process, the PUCO will have no opportunity to oversee rates which will then be set by rolling the dice in auctions. Furthermore, as already pointed out, there is no possibility however much it might be desired and even if necessary to protect the utility company or its stockholders, for the PUCO ever to return to the ESP monitoring and regulation.

Let us consider a court trial in which the evidence has already been presented, the lawyers have made their final arguments and presented their briefs, the judge has issued her rulings, and the jury has decided that the defendant is guilty. Now the judge must sentence the defendant. But wait! Suppose the law allowed the guilty defendant to completely overturn the court's decision for any or no reason at all. Suppose the defendant had unfettered power, not subject to the court, not subject to an appeals court,

not even subject to the highest courts in America, to reject the legal verdict? What would we think of such a process? This is the power a utility company has regarding any ESP decision by this PUCO.

But somebody may object that a utility company is not like a defendant found guilty, say, of robbery. That is true, however the situation is actually worse. At least, we can usually find out how much a robber took. But in an ESP proceeding with all its limitations and the possibility that the ESP case may lead to MRO's forever, it is likely the customers and the public, the PUCO and other parties in the proceeding, will never find out the inner financial activities and computations of the utility company.

Would a utility company, someone might inquire, actually risk possible public reactions and reject an ESP ruling by the PUCO? The answer is that this company FirstEnergy and its subordinate operating companies in December 2008 have already shown they can and will exercise their absolute veto.

So where does this legal situation leave the PUCO as well as the other parties in any proceeding? The PUCO as the statutory guardian of the public's interest most definitely will want to preserve as much regulatory power as possible. Other parties will also want to protect their individual interests. But SB 221 leaves the PUCO's regulatory capability in tatters. This means that our Commission has to "tread very softly" or else an arrogant and power-hungry utility company can wipe out all efforts by a Commission. In other words, the State allows a situation where the PUCO is virtually black-mailed into accepting a company's proposed ESP under threat of the company forever eluding any real commission oversight. (On this grounds alone SB 221 deserves to be repealed and amended.)

And then what about other parties in an ESP proceeding? Normally, they could be expected to investigate a company's activities using their considerable power of discovery, calling of witnesses, sponsoring experts, and cross-examination. But SB 221 also limits them and ties their hands. If they "push too hard" and expose too many flaws in a company's ESP proposal and thus leading to a more considered PUCO decision, the utility company can thwart their efforts at seeking justice and reject an ESP ruling the company does not like. Again remember SB 221 allows the utility company to do this without any explanation or justification.

So what should we expect in this situation? Will not the PUCO, in an effort to preserve something of its jurisdictional rate-making powers, be expected to "bend over backwards" to accommodate the arrogant utility company? Will not the PUCO allow for all sorts of deviations and shortcuts in a proceeding? Isn't that exactly what has happened up to now (yesterday's enlightened PUCO decision may change this) as FirstEnergy and its operating companies have dominated and controlled these proceedings, speeding up everything so no one can look too closely or see too much of the company's books!

Also what could be expected of the parties? Why should they litigate when that can only lead to the utility company rejecting whatever justice they seek to gain from PUCO rulings? Will not a "smart" party seek out a special deal? Will they not be willing to sign any overall stipulation, giving up their birthright so long as they gain their modest "mess of pottage?" (See Genesis 25:29-34.)

It is true that the last major case of FirstEnergy's filing for an ESP did lead to two stipulations and an auction last February 2009. It is even true that OCC and other

consumer parties, including the Citizens Coalition signed the second stipulation. But now OCEA--the consumers' coalition including the Citizens Coalition that is led by OCC--are saying, "enough is enough." We will not be blackmailed because of a deficient SB 221 into approving a Stipulation and the resulting ESP, especially when the Stipulation contains so many bad provisions and is being "blitzkrieged" through the PUCO at a frenetic pace. Even lemmings racing toward the cliff's edge have more choice.

The Citizens Coalition would urge other parties who have signed the stipulation to reconsider their actions. The Coalition would urge them to find their honor and courage, and stand up to the bully that has been created by SB 221. The Coalition would most of all ask the PUCO to reject the Stipulation as well as the ESP filed by the FirstEnergy companies. Furthermore, it is time to inform the General Assembly the evil they have created in SB 221 and the need to drastically reform that act.

SECOND ARGUMENT: THE CITIZENS COALITION URGES THE PUCO TO REJECT THE PROPOSED STIPULATION AND ESP AT THIS TIME UNTIL THE PUCO HAS INSURED THAT ITS LEGAL PROCESSES AS WELL AS FIRSTENERGY'S FINANCIAL ACTIVITIES AND ACCOUNTS MEET THE GENERALLY ACCEPTED PRINCIPLES FOR UTILITY REGULATION.

The following quote from Lord Chief Justice Hale (United Kingdom, 1609-1676) provides the basic principle that underlies our entire system of rate regulation: "When, therefore one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled...." This

quotation should be posted on the wall of every PUCO Commissioner as well as every executive of every utility company, including the top floor FE offices in Akron, Ohio.

The Commission of Ohio has a long and illustrious history of rate regulation. While the Citizens Coalition and its predecessors have disagreed with various PUCO decisions, there is no disagreement about the need for the PUCO and a respect for the work of the Commission, its hearing examiners, and the PUCO staff. It is essential in this major case (while all PUCO cases are "major," this particular case may be the most important PUCO case in the last decade) that the Commission insure the utmost adherence to proper accounting principles and thorough rate-making investigation and discovery.

Here are the more important principles that must guide the rate making process including the analysis of a utility company and its proposals:

ACCOUNTING PARADIGMS AND PRINCIPLES

- **CREDIBILITY** - financial reports must be accepted as fully and fairly reflecting the financial position and operations of the entity;
- **COMPLIANCE** - financial statements, accounting and auditing practices, together with related operations, must follow all legal and regulatory requirements.
- **CONDUCT** - the entity and its officials should be able to demonstrate high standards of conduct, with particular emphasis upon their respect for integrity and competence;
- **COMPREHENSIVENESS** - financial statements should cover all material activities of the entity, without seeking to hide or obscure matters which it would prefer not to be fully disclosed;
- **CERTIFIABILITY** - the accounts and financial records must be prepared, operated, maintained and supported by credible evidence, so that they may be readily and competently certified by qualified, independent and experienced auditors,

- **CERTIFIABILITY** - the accounts and financial records must be prepared, maintained and supported by credible evidence, so that they may be competently certified by qualified, independent and experienced auditors;
- **CONSISTENCY** - information is recorded and presented by following practices which are consistent; account the various domains of activity of the entity; over time; and, within the publicly declared standards relating to its role;
- **COMPETENCY** - the statements should demonstrate, to the extent possible, that the operations of the entity have been carried out with efficiency, economy and effectiveness - that the stakeholders (INVESTORS, LENDERS, EMPLOYEES, CUSTOMERS AND TAXPAYERS) are receiving "value for money" in return for payments or personal toil;
- **COHERENCE** - the financial statements must demonstrate that the entity, as a whole, is working together, in a fully integrated way, for the fulfillment of its stated purposes;

These principles are taken from "Public Utility Regulation: History, Rationale, Strengths and Weaknesses" by David C. Jones. (http://kiev.ballonoffconsulting.com/download/public_utility_regul_en.pdf)

Given the Commission's action yesterday in "slowing down the pace" of this case, the Citizens Coalition urges the PUCO to apply the above stated criteria. The Commission must insure that its decision relative to First Energy's defective stipulation and ESP filing meet these criteria. Moreover, all the parties in this proceeding including the OCEA and OCC must be provided adequate time to conduct proper discovery and investigation. Again the Citizens Coalition applauds yesterday's decision by the Commission and encourages the Commission to issue guidance to all the parties on how to proceed as early as possible.

THIRD ARGUMENT: THE CITIZENS COALITION URGES THE PUCO TO INSURE THE PUBLIC HAS AN ADEQUATE NOTICE AND OPPORTUNITY TO PARTICIPATE IN THIS ESP PROCEEDING AND COMMENT ON THE FIRSTENERGY DEFECTIVE STIPULATION.

There are a considerable number of due process shortcomings in this proceeding. Many of these were brought on by the "blitzkrieg" activities of the FirstEnergy companies to rush for a decision. These due process shortcomings have been highlighted in the OCEA Post-Hearing brief in which the Citizens Coalition is joining. The Citizens Coalition in particular has concerns about the involvement of the public and the general residential customers in this proceeding.

The PUCO did make an effort to invite public participation in this case. Eight public hearings were held and members of the public did attend. The main problem is the failure to provide adequate notice and information to the public. The Citizens Coalition, its predecessors, and this counsel have been involved in community group activities for almost a half century. It is a simple matter that these groups need time to hear about an issue, to investigate and study it, to reach conclusions, and then to implement these through various actions including testimony before an agency such as the PUCO.

A minimum time for this is two months. This is not a question of delay nor procrastination. Ideally groups may need three or four months. That is why the nine months allowed for rates cases as well as the 275 days in SB 221 are very appropriate to insure public involvement. The 43 days set forth in this case with actual notice of the public hearings of about a week to ten days is totally inappropriate. In fact, the "message" of scheduling hearings this way is almost like saying, "The public be damned."

The Citizens Coalition urge the Commission to set dates, times, and places for more public hearings. Notice of these should provide from 45 to 60 days of advance notice. Also at the Public Hearings in this proceeding, materials were provided for public information. These should be provided in advance. At the very least, these could be posted on the PUCO website ten to two weeks before the scheduled hearings.

In conclusion, the Citizens Coalition urges the PUCO to adopt reasonable procedures and notices that will allow for public involvement in the proceedings. Furthermore, the transcripts from any such public hearings should be made available on the PUCO websites in sufficient time for public, counsel, hearing examiner, and PUCO commissioner consideration.

FOURTH ARGUMENT: THE CITIZENS COALITION URGES THE PUCO TO REJECT THE PROPOSED STIPULATION IN THIS ESP PROCEEDING BECAUSE THE STIPULATION DOES NOT MEET THE THREE-FOLD CRITERIA FOR THE PUCO ADOPTING A STIPULATION AND THIS DEFECTIVE PARTIAL STIPULATION IS NOT SIGNED BY REPUTABLE REPRESENTATIVES OF ALL THE MAJOR CUSTOMER INTERESTS IN THIS PROCEEDING.

A Stipulation has been filed by the FirstEnergy Operating Companies in this proceeding. This Stipulation is defective. The Citizens Coalition and this counsel are well aware of the Stipulation process in PUCO cases as well as the advantages this process can provide for everyone. The Citizens Coalition and its predecessors have themselves joined in various stipulations over the past several decades.

But the proposed stipulation in this case is defective "ab initio" and should be rejected from any consideration. The FirstEnergy stipulation does not include all the

parties in this proceeding. A number of PUCO cases have discussed the standard of review for consideration of a partial stipulation. The Ohio Supreme Court itself has provided some guidance in *Consumers Counsel v. Public Util. Comm.*, (1992), 64 Ohio St. 3d 123, 125. Referring to *Akron v. Public Util. Comm.* (1978), 55 Ohio St.2d 155, 157, our high Court in *Consumers' Counsel* held that:

The Commission, of course, is not bound to the terms of any stipulation; however, such terms are properly accorded substantial weight. Likewise, the commission is not bound by the findings of its staff. Nevertheless, those findings are the result of detailed investigations and are entitled to careful consideration.

In *Duff v. Pub. Util. Comm.* (1978), ...in which several of the appellants challenged the correctness of a stipulation, we stated:

A stipulation entered into by the parties present at a commission hearing is merely a recommendation made to the commission and is in no sense legally binding upon the commission. The commission may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing.

Of course, the Citizens Coalition wants to be careful not to violate any of confidentiality nor to publicly reveal the internal discussions. The Coalition does wish to thank all counsel from FirstEnergy as well as the other parties for all of their dedicated and diligent efforts at trying to forge an acceptable stipulation. But so far these efforts have failed. Because of the obvious defects both in the stipulation itself as well as in the stipulation process in this case, the stipulation should be rejected. The Commission, as held in the Ohio Supreme Court cited above, "must determine what is just and reasonable from the evidence presented at the hearing."

The Commission has used the following questions for analyzing whether a proposed stipulation has achieved a just and reasonable result:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?

The Citizens Coalition argue that the FirstEnergy Stipulation meets none of these criteria.

First, where was the "serious bargaining among capable, knowledgeable parties"? Look at the stipulation. The Companies wanted all sorts of goodies including settlement of all sorts of issues still pending in other proceedings. The Companies wanted all sorts of limitations for future investigations into their activities. One example will show this. In investigating one huge set of future costs, the PUCO is confined to "counting the dollars," but cannot apply any standards of prudence or reasonableness to those costs. Other issues have been stuffed into this stipulation. According to public witness David Hughes,

The other thing is we're concerned that the company's plan to move from MSO to PJM, to move from one regional transmission organization to another should not be part of this proceeding. We believe this move from the MSO to PJM should not be in the ESP, number one. Number two, PUCO has supposedly been investigating this move to make sure it's beneficial to First Energy customers. ESP calls for an end to that investigation and for no opposition to this move from MSO to PJM and we think that is completely inappropriate. That move from MSO to PJM could impact rate payers including me. And the costs associated with that should not be passed onto the rate payers. (See page 18 of Public Hearings, April 20, 2010, Cleveland, Ohio.)

Mr. Hughes further testified:

Also in this ESP is the First Energy Allegheny power merger proceedings, which we also think should not be part of the ESP. And the ESP is asking that

the commission not assert its jurisdiction to investigate that merger. That merger can have consequences for First Energy customers. We think that should be removed from the ESP. (See page 20 of Public Hearings, April 20, 2010, Cleveland, Ohio.)

Can anyone really argue that all of these stipulation terms resulted from “serious bargaining”? Let’s be honest. What has happened here is that the Companies wanted certain results. They then consulted with each individual party and bought them off. That may be blunt but this is the truth.

Second, it cannot even be determined if this Stipulation “benefit[s] ratepayers and the public interest.” The discovery process was so rushed and initial discovery efforts were blocked by utility company counsel that adequate discovery has not been completed. This is one reason why the OCEA which is the representative of the residential customers as well as energy efficiency and environmental groups have not and cannot—at this time—sign this stipulation.

Where is the “benefit” for ratepayers? Take the basic question of whether customer rates will go up, stay the same, or go down. Naturally the Citizens Coalition would like to see the rates of the FirstEnergy companies—which are among the highest in America—decrease. But it is not possible to determine what really will happen to rates from this defective stipulation. Furthermore, other PUCO proceedings—such as relating to the Regional Transmission Organizations concerns--have been rolled into this stipulation and are being resolved in favor of the FirstEnergy companies. How does this “benefit ratepayers”? Again, this question presently goes unanswered.

Thirdly, this defective stipulation “violate{s}...important regulatory principle{s}” and “practice{s}.” The main OCEA Post-hearing Brief discusses many of these. One

practice from the Ohio regulatory environment that is violated by this defective Stipulation is that no party generally representative of the residential customers has signed the stipulation. Some cities and a weatherization provider have signed the Stipulation and gained various "goodies." It can hardly be argued that these satisfy the principle that all major customer groups have been included in the parties signing this resolution. Given that—at this time—the Citizens Coalition and other parties cannot file Reply Briefs, it is not possible to provide the PUCO with sufficient argument and discussion that could have proven helpful for any decision. But since it is obvious that the present Stipulation lacks any reputable representative of the interests of residential customers, the PUCO must reject this proposed stipulation.

In conclusion, this defective stipulation satisfies none of the three criteria in Ohio for an acceptable stipulation. The Commission should thus reject FirstEnergy's proposed Stipulation and reopen investigation and discovery in this ESP case.

FIFTH ARGUMENT: THE CITIZENS COALITION URGES THE PUCO TO REJECT THE PROPOSED STIPULATION IN THIS ESP PROCEEDING BECAUSE THE STIPULATION DOES NOT CONTAIN ANY ADEQUATE FUEL FUND PROVISIONS AS ARE CONTAINED IN THE PRESENT ESP WITH ITS STIPULATIONS.

Currently, the FirstEnergy companies are operating under an ESP which also includes auction provisions. These are the result of two stipulations from early last year which include the OCEA and the Citizens Coalition as signatories. One of the major provisions of these stipulations is a Fuel Fund which provides \$6 million of help over three year time frame for customers who have used every other means of assistance and

still face utility terminations problems. The Citizens Coalition does thank FirstEnergy and its operating companies for establishing this fund.

Unfortunately this Fund ends in 2011. In the stipulation accompanying the current ESP filing there is no provision for continuing the Fuel Fund. At the Public Hearings, Mr. Tom Mendelsohn, the Executive Director of the Empowerment Center which is currently one of the agencies administering the Fuel Fund, testified as follows:

I work everyday with an office called Empowerment Center of Greater Cleveland, formally the Welfare Rights. As an administrator of a grassroots human service agency, I would like to first express a sincere thanks to anybody that is here from First Energy and CEI and if by any chance there's somebody here from Dominion East Ohio for the support that is has been provided to the low income people in the greater Cleveland area and actually throughout the state of Ohio for the fuel funds that are provided for low income residents. (See page 42 of Public Hearings, April 20, 2010, Cleveland, Ohio.)

Director Mendelsohn then went on to urge that the Stipulation must contain a Fuel Fund:

With the increases projected in this proposal, why is it in the proposal it's missing recommendation enabling the continuation of fuel fund assistance after 2011. It seems inappropriate to us there not be fuel funds included as past practices demonstrated. There should also be similar sums of money set aside as with the current cycle. During the past fuel fund support an amount was agreed to, I think in the amount of six million dollars that is divided amongst a number of different agencies³ and we're suggesting that over next three years⁴ a sum of 12 million dollars might be an⁵ inappropriate figure to be included as fuel fund⁶ support for those that are in need.

Here's an example of a consumer who received some assistance as a result of the fuel fund grant. KA came to our office for utility assistance. Over a year ago she was erroneously placed on a monthly payment plan. When she went to reverify this year, it was found she was dropped from the payment plan and was immediately billed for back usage in the amount of 4300.

The client had no support of income due to layoff and could not pay the bill. It was - - we were able to negotiate with the utility company to keep the utility on. We also negotiated a tracking and analysis and a framework plan where the consumer will pay her new payment plan amount on time every

month and then at the end of 12 months the utility company will match the payment amount and deduct it from the arrearages. Ultimately she's been able to keep up her utilities with the plan being set up to reduce her outstanding bill.

Without the fuel fund help and without the collaboration among organizations helping individuals in need, a plan that is being proposed is just not appropriate and should be amended to include a fuel fund as a mechanism to help those in need. (See pages 44 to 46, of Public Hearings, April 20, 2010, Cleveland, Ohio.)

Others wanted to testify about this Fuel Fund but because of the short notice for these public hearings, these knowledgeable people were unable to appear because of their busy schedules. (See page 57 of Public Hearings, April 20, 2010, Cleveland, Ohio.) The Citizens Coalition, while recognizing this is unsworn testimony, provides the testimony from Ms. Liz Hernandez who is a longtime consumer representative in Ohio and who is involved with administering the FirstEnergy Fuel Fund:

Testimony for Public Hearing April 20, 2010

The CEI Fund Funds have been instrumental in providing financial assistance to consumers who are currently shut-off or in the disconnection process due to being unemployed or underemployed. Cleveland Housing Network is currently one of the administrators of the CEI fuel fund in the Cleveland and surrounding area.

During the past grant season one of our intake staff documented the following story:

Mr. W. arrived at our office from Seven Hills as a walk-in for HEAP. Mr. W., age 52, is married with four children. Mr. W. stated during the interview that he was self-employed as a realtor, and since the market collapsed, he has had to take on doing 'odd jobs' to help support his family—his wife is unemployed, they have four teenage sons, and they are struggling to keep their home. At the time of the interview, Mr. W. received a call on his cell. It was his wife informing him that a Field Rep from CEI was at their home to disconnect their service at that moment.

Mr. W. was noticeably upset as he spoke. He bowed his head and spoke,

"I had a lot of business throughout the years, and never thought that I would be here. Due to the economy being bad, business is slow, and I did not meet the requirements to qualify for unemployment insurance. Now, I'm in a really bad place. My mortgage is past due, and despite my efforts to find a job, I haven't had a single callback. I've never thought I'd be the kind of person to have to apply for assistance, but here I am."

We assured Mr. W. that he would be able to get assistance for his family. We enrolled him in PIPP, completed the HEAP application, and stopped the disconnection on his electric bill through the CEI FUEL FUND PROGRAM.

During program year 2009 which started, Sept 2009 CHN was able to provide assistance to 577 household throughout our target services area which totaled \$134,869.00 in emergency funds. As of today's date we have provided an additional \$45,632.00 to 196 households that did not qualify for the Winter Crisis program. Since the end of the Winter Crisis program on March 31, 2010, CHN HEAP Staff has processed an average of 15 applications each day. At the current rate we are expecting to have spent our 2010 grant allocations by the end of summer.

Utility expenses, electric, gas and water, continue to be challenging for people from all walks of life during these economic times. The fuel funding provided by First Energy needs to be a component of the long term solution. There will always be a need for additional resources beyond what the HEAP program provides.

Respectfully submitted,
Liz Hernandez
Property Services Director
Cleveland Housing Network

FirstEnergy itself recognized the importance of the FuelFund for any Stipulation and ESP filing. Here is FirstEnergy Counsel Ebony Miller cross-examining Mr. Thomas Mendelsohn at the Public Hearings:

MS, MILLER: I have one question. If the agreement were amended to include the fuel fund provision that you articulated, would you support the agreement,

THE WITNESS: It would go a long way to bring us on board with that. There is a definite need for that fuel fund.

Without the Fuel Fund provisions, this Stipulation is definitely defective and unacceptable. If the present stipulation contains a Fuel Fund and all agree this is necessary, why should the operating companies neglect to include the provision for continuing the Fuel Fund under the new Stipulation and ESP? The Companies have provided no explanation for this. Furthermore, the testimony at the Public Hearings was that the Fuel needs not only to be extended but to be expanded. This would provide for a Fuel Fund of \$12 million administered in the same way and with the same guidance by the FirstEnergy Companies as now provided.

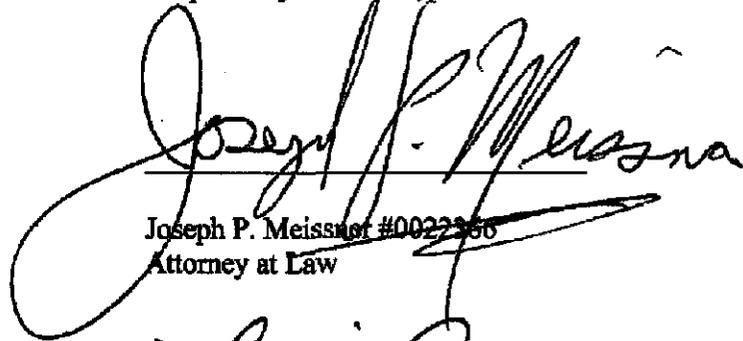
In conclusion, if the PUCO seriously considers adopting the proposed stipulation and the new ESP, the PUCO should add on provisions for a Fuel Fund modeled after the language in the ESP currently in effect and increasing the three year amount of \$6 million to \$12 million.

CONCLUSION

The Citizens Coalition praises the PUCO for taking more time in this proceeding. The Coalition requests that the Commission provide a time-table for further proceedings. In particular, the Citizens Coalition urges the PUCO to provide for more investigation and discovery in order to insure that parties have available and can present evidence and testimony for Commission consideration. The Citizens Coalition urges the Commission to schedule more public hearings and to provide adequate public notice of these. The Citizens Coalition urges the Commission --unless there are drastic revisions in it-- to reject the one-sided defective Stipulation submitted by the FirstEnergy operating companies. The Citizens Coalition also urges the Commission not to consider any Stipulation which fails to contain an adequate Fuel Fund that would build upon the

successes of the current FirstEnergy Fuel Fund and would increase the amount of funding from \$6 million for three years, to \$12 million for three years.

Respectfully submitted,



Joseph P. Meissner #0022356
Attorney at Law



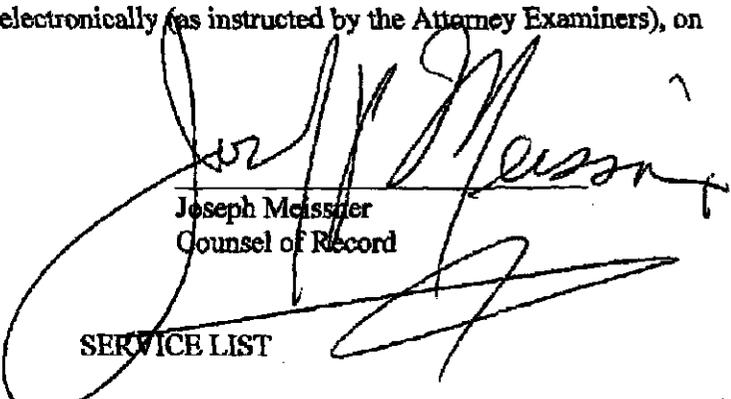
Matthew Vincel, 0084422
Attorney at Law

The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
Telephone: (216).687.1900, Ext. 5672
Email: jpmeissn@laslev.org
Email: mvincel@laslev.org

Counsel for the Citizens Coalition

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Post-Hearing Brief* was served on all parties in this proceeding, listed below, electronically (as instructed by the Attorney Examiners), on this 30th day of April, 2010.



Joseph Meissner
Counsel of Record

SERVICE LIST

burki@firstenergycorp.com
korkosza@firstenergycorp.com
haydenm@firstenergycorp.com
elmiller@firstenergycorp.com
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com
david.fein@constellation.com
Cynthia.brady@constellation.com
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
RTriozi@city.cleveland.oh.us
SBeeler@city.cleveland.oh.us
Cmooney2@columbus.rr.com
drinebolt@aol.com
Thomas.mcnamee@puc.state.oh.us
smhoward@vorys.com
mhpetricoff@vssp.com
mwarnock@bricker.com
wis29@yahoo.com
emiller@szd.com
aporter@szd.com
gduinn@szd.com
robinson@citizenpower.com
mheintz@elpc.org
dsullivan@nrdc.org
swolfe@viridityenergy.com
Ccunningham@Akronohio.Gov
cfaruki@fielaw.com

ricks@ohanet.org
tobrien@bricker.com
gkrassen@bricker.com
mwarnock@bricker.com
mkl@bbrslaw.com
gas@bbrslaw.com
jbentine@cwslaw.com
mwhite@cwslaw.com
myurick@cwslaw.com
dmancino@mwe.com
glawrence@mwe.com
lkeiffer@co.lucas.oh.us
nmoser@theOEC.org
will@theOEC.org
trent@theOEC.org
Williams.toddm@gmail.com
Amy.Spiller@duke-energy.com
mdortch@kravitzllc.com
mparke@firstenergycorp.com
beitingm@firstenergycorp.com
Dane.Stinson@BaileyCavalieri.com
henryeckhart@aol.com
jnmeissn@lasclev.org
mvincel@lasclev.org
jroberts@enernoc.com
eric.weldele@tuckerellis.com
afreifeld@viridityenergy.com
charles.dyas@btlaw.com
david.paragas@btlaw.com
Kim.Bojko@puc.state.oh.us
Gregory.Price@puc.state.oh.us