



Office of the Ohio Consumers' Counsel

Your Residential Utility Consumer Advocate

Janine L. Migden-Ostrander
Consumers' Counsel

June 17, 2010

Renee Jenkins
Chief of Docketing
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43266-0573

Re: *Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company* ("FirstEnergy" or "Companies"), Case Nos. 09-1947-EL-POR, et. al., Case Nos. 09-1942-EL-EEC, et. al., and Case Nos. 09-580-EL-EEC, et. al.

Dear Ms. Jenkins:

On June 2, 2010, FirstEnergy filed a *Letter of Concern* addressing the timeliness of the Commission's review of FirstEnergy's pending Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2010-2012. FirstEnergy asserted that the Commission's "delay[ed]" ruling on the Portfolio Plan removed any "meaningful opportunity" the Companies had to meet the 2010 energy efficiency benchmarks. FirstEnergy's actions undermine this assertion.

The Commission must take into consideration FirstEnergy's conduct and efforts towards compliance.¹ FirstEnergy's decision to request the delay of the Commission's review of the revised lighting program and incorporate that program into a subsequent three-year energy efficiency program portfolio is a significant and contributing factor to FirstEnergy's present predicament.² The Companies championed the position that delaying the final review of the revised CFL program was the preeminent option.³ This failure to take reasonable actions to meet the benchmarks – a decision made unilaterally by the Companies – should be considered by the Commission before approving a waiver of the Companies' energy efficiency benchmarks for a second year. The OCC and Natural Resource Defense Council predicted these exact circumstances seven months ago when FirstEnergy delayed the Commission's procedural review of the revised CFL program by requesting authority to combine that program with the Portfolio Program. OCC and NRDC stated:

¹ 4928.66(A)(2)(b) and 4928.66(C).

² *In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, Cleveland Electric Illuminating Company and The Toledo Edison Company*, Case No. 09-580-EL-EEC. et. al., Motion for an extension of time in which to file their high efficiency light bulb program as part of their three year portfolio plan and for a shorter period of time in which to file any response to this motion, at 1 (November 24, 2009). ("Request to Delay the FirstEnergy CFL Program").

³ *Request to Delay the FirstEnergy CFL Program*, Motion for Extension at 3 (November 24, 2009).

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The amount of additional time requested by FirstEnergy is unnecessary to comply with the Commission's entry and will cause a significant delay in [the CFL] program implementation and potentially result in FirstEnergy not meeting the 2010 energy efficiency benchmarks mandated by R.C. 4928.66.⁴

The Companies made the decision to delay the Commission's review of a program that would have significantly increased the Companies chances of meeting the 2010 benchmarks – recalcitrance should not be rewarded. OCC does not share FirstEnergy's view that the Companies' statutory compliance was compromised by this delay to the point that a waiver will be justified. FirstEnergy must bear the eventual consequences of its decision.

Notwithstanding the above, the Commission should nevertheless act promptly to issue an order with respect to FirstEnergy's portfolio plan to eliminate any ambiguity and any further arguments by FirstEnergy to justify noncompliance.

Sincerely,

/s/ Janine L. Migden-Ostrander

Janine L. Migden-Ostrander
Consumers' Counsel

JMO/GP/pjm
cc: Parties of Record via electronic service

⁴ *Request to Delay the FirstEnergy CFL Program*, Memorandum Contra FirstEnergy's motion for an extension of time to file the revised light-bulb program as part of the three-year portfolio plan at 6 (November 27, 2009).

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/17/2010 3:59:18 PM

in

Case No(s). 09-0580-EL-EEC, 09-0581-EL-EEC, 09-0582-EL-EEC, 09-1942-EL-EEC, 09-1943-EL-EEC,

Summary: Correspondence Response to FirstEnergy Letter of Concern docketed June 2, 2010 by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Poulos, Gregory