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Ohio Environmental Council

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June 11th, 2010

Keith Dimoff
Executive Director
The Ohio Environmental Council

Chairman Alan Schriber
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company ("FirstEnergy"), 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 Chairman Schriber:

I am writing today to echo the concerns of Anthony J. Alexander and various stakeholders regarding the Commission's delay in issuing an Opinion and Order in FirstEnergy's Energy Efficiency and Peak Demand Reduction Program proceedings for 2010-2012. Delay could hamper efforts to deploy low-cost, job-intensive efficiency investments in the FirstEnergy service territory. In particular, there are some controversial provisions in the FirstEnergy proposal on which all intervenors would appreciate guidance from the Commission.

That noted, the OEC wishes to emphasize that under Senate Bill 221's provisions, energy efficiency targets are binding, and enforced by penalties. These targets are binding regardless of whether or not an efficiency plan authored by an investor owned utility is formally approved by the commission before it is carried out. Ohio utilities, even FirstEnergy, have at one time or as a matter of practice deployed energy efficiency programs for S.B. 221 compliance purposes *without* formal commission approval.

Duke Energy, American Electric Power, and Dayton Power and Light all began to deploy 2009 energy efficiency programs prior to formal approval from the Commission. This practice was continued in 2010, when Duke Energy and American Electric Power deployed programs in the early part of the year to comply with 2010 energy efficiency targets prior to the issuance of a formal Opinion and Order by the Commission.

FirstEnergy has itself engaged in this practice. For instance, FirstEnergy continues to file mercantile applications, designed to assist in the 2010 compliance period, even though FirstEnergy's administrative agreements for mercantile programs have not yet been formally approved by the Commission.[1] These administrative agreements are controversial for a host of reasons, yet FirstEnergy sees fit to move forward to achieve compliance with mercantile program implementation, without formal approval.

Accordingly, as Ohio's investor owned utilities have all engaged in the practice of development and deployment of energy efficiency programs designed to achieve S.B. 221 benchmarks without formal approval of those programs, lack of formal approval can never be a justification for failure to achieve benchmarks or for the issuance of a wavier. Waivers may only be granted in cases where an amendment is necessary because a utility cannot reasonably achieve benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control.[2]

Ohio utilities have proven that the lack of formal approval of programs from the Commission is not a "regulatory" barrier beyond their control. Utilities, including FirstEnergy, have on numerous occasions moved forward with programs absent Commission approval. Many energy efficiency programs deployed by Ohio utilities are common-sense, well established programs that have been implemented many times in other states with considerable success. Most of these programs are non-controversial, and can be initiated at any time by a utility without Commission approval. This is the established practice in Ohio.

In conclusion, the OEC notes that Commission guidance on the more controversial aspects of FirstEnergy's plan is appreciated and desired, but delays in Commission approval do not abrogate the responsibility of utilities to meet S.B. 221 targets and benchmarks.

Thank you for your consideration,

Keith Dimoff
Executive Director

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[1] See Case No. 09-553-EL-EEC; Entry on Rehearing, February 11th, 2010, p. 4.

[2] Section 4928.66(A)(2)(b) Revised Code, states: "(b) The commission may amend the benchmarks set forth in division (A)(1)(a) or (b) of this section if, after application by the electric distribution utility, the commission determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control."