

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case Nos. 12-2190-EL-POR
Illuminating Company, and The Toledo)	12-2191-EL-POR
Edison Company For Approval of Their)	12-2192-EL-POR
Energy Efficiency and Peak Demand)	
Reduction Portfolio Plans for 2013 through)	
2015)	

**INITIAL POST-HEARING BRIEF
BY THE
ADVANCED ENERGY ECONOMY OHIO**

I. INTRODUCTION

On July 31, 2012 Ohio Edison, the Cleveland Electric Company and the Toledo Edison (collectively “FirstEnergy” or the “Companies”) filed an application requesting approval for their updated Energy Efficiency (“EE”) and Peak Demand Reduction (“PDR”) Portfolio Plan for 2013-2015, pursuant to Ohio Rev. Code § 4928.66, Ohio Admin. Code 4901:1-39-04, 4901:1-39-05, 4901:1-39-06, 4901:1-39-07 and the Commission’s February 28, 2012, entry in Case No. 12-814-EL-UNC.

AEE Ohio is an Ohio-based organization representing a wide range of advanced energy businesses, with some members involved directly in renewable energy and related industries. AEE Ohio is the premier network of businesses and business leaders advancing renewable energy, energy efficiency and clean energy technology through effective communications, broad

advocacy and business development.¹ AEE Ohio's members have a financial interest in the development and expansion of the technology and equipment employed in distributed generation.

Advanced Energy Economy Ohio (AEEO) intervened and filed objections to FirstEnergy's EE/PDR portfolio. AEEO filed objections to FirstEnergy's EE/PDR proposals regarding program management and the implementation strategies of programs, the lack of information provided for the Conservation Voltage Study and the T & D Improvements Program, funding split for the Mercantile Customer Program, and the required ownership transfer to First Energy of energy efficiency rights to be bid into PJM BRA. The evidentiary hearing was held from October 22, 2012 to October 30, 2012.

The objections of AEE Ohio, filed in this case, still remain after the hearing, and we encourage the adoption of the recommendations contained therein.

II. Argument

The overall proposal by First Energy appears to be designed to meet the benchmark requirements. The programs need to be reviewed to ensure the continued growth of and adoption of energy efficiency throughout the Companies territory. The objections of AEE Ohio, filed in this case, still remain after the hearing, and we encourage the adoption of the recommendations contained therein. Of particular concern, and detailed below is the automatic ceding of ownership rights to energy efficiency required by First Energy.

¹ For more information, please see the AEEO website at: <http://ohiobusinesscouncil.com/>.

A. First Energy's Required Transfer of Energy Efficiency Ownership

First Energy was ordered in its most recent ESP case to ensure that it bid energy efficiency in to the PJM base residual auction ("PJM BRA"). Further, the Commission ordered that the "Companies should take steps to amend their energy efficiency programs to ensure that customers, knowingly and as a condition of participation in the programs, tender ownership of the energy efficiency resources to the Companies."²

First Energy witness John C. Dargie provided testimony that this required transfer of ownership as a condition of program participation could result in a chilling effect, especially among the Mercantile self directed program.³ Further, Dargie testified that fully half of Mercantile customers of First Energy's Pennsylvania Companies have opted to retain the rights to their energy credits, under similar terms as presented in Ohio.⁴

Under the Companies current interpretation of the Order in FE ESP 3, this would preclude Mercantile participation in any First Energy program. In fact, First Energy has changed all of their applications to reflect an automatic ceding of ownership rights in September of this year.⁵ There is no longer any option given to a customer wishing to implement energy efficiency; if they want to benefit from a First Energy program, they must give up their rights.

This seems like an excessive and narrow interpretation of the Commission's order. The Commission, and most parties to this proceeding, seem to be in agreement that the bidding of

² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish A Standard Service Offer*, Case No 12-1230-EL-SSO et al., Entry at 38, July 18th, 2012.

³ *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 for 2013 through 2015*, Case No 12-2190-EL-POR et al., Testimony of John C. Dargie at p.15.

⁴ *Id* p. 18.

⁵ Cross Examination of John C. Dargie, Hearing Transcript Volume I, page 97, Line 21.

energy efficiency into PJM BRA will result in a benefit to First Energy and the rate payers. AEE Ohio does not disagree, and would encourage the bidding of all energy efficiency resources in order to gain the resulting financial windfall, and lower overall cost of programs.

However, this windfall will be reduced greatly if the requirement to transfer ownership rights in the energy efficiency precludes participation; and in particular if it has the expected chilling effect among the C/I class. AEE Ohio recommends that the Commission clarify its Order in regard to participation in the proposed programs, and draw a clear distinction between First Energy and customer directed programs.

Mercantile customers are allowed to implement their own energy efficiency programs, and have the added carrot of avoiding the recovery mechanism which is utilized to pay for all of the First Energy directed programs. This is a fundamental difference. The mercantile customer is given the freedom to choose how to best implement energy efficiency programs, without the direct financial benefit from First Energy. Rather, they are able to avoid the cost of the First Energy directed programs by proving their own investment in energy efficiency.

The choice should rest with the Mercantile customer. They should be given the option to opt-in and commit the ownership rights to the energy efficiency attributes to First Energy for the purpose of bidding into PJM BRA.

Customer classes who participate in the direct programs of First Energy should be required to commit their ownership rights to First Energy as a prerequisite to participation. This

will allow First Energy to accurately plan, and anticipate the amount of energy efficiency available to bid into PJM BRA.⁶

III. Conclusion

The overall portfolio plan, as filed, seems set to allow First Energy to meet the benchmarks as required under the law. AEEO takes issue with First Energy's current interpretation of the Commission's Order in ESP 3, as it relates to the acquisition of ownership of energy efficiency rights to be bid into PJM BRA. AEEO recommends that the Commission clarify this requirement to extend only to those customers who take part in a First Energy directed program.

⁶ See Cross Examination of John C. Dargie, Hearing Transcript Volume I, page 81, lines 24-25, page 82, line 1. Witness Dargie expressed that First Energy would not have information on mercantile projects, "how would anyone know what projects they are going to do over the course of the next three years?" The Companies would only gain that information when the projects are implemented and the Mercantile customers applies to commit its resources to the Companies.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Initial Brief on behalf of the Advanced Energy Economy of Ohio* has been served upon the following parties via electronic mail on November 20, 2012.

/s/ Todd M. Williams
Todd M. Williams

Devin Parram
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad St., 6th Fl.
Columbus, OH 43215
Devin.parram@puc.state.oh.us

Kathy J. Kolich
Carrie M. Dunn
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
kjkolich@firstenergycorp.com
cdunn@firstenergycorp.com

Attorneys for FirstEnergy Service Company

Cathryn N. Loucas
Trent Dougherty
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
Cathy@theOEC.org
Trent@theOEC.org

Attorneys for the Ohio Environmental
Council

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Robert Kelter
Justin M. Vickers
Nicholas McDaniel
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
jvickers@elpc.org
rkelter@elpc.org
NMcdaniel@elpc.org

Attorneys for the Environmental Law
& Policy Center

Kyle L. Kern
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43216
kern@occ.state.oh.us

Jody M. Kyler
David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
jkyler@bkllawfirm.com
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

Attorneys for Ohio Energy Group

Richard L. Sites
General Counsel & Senior Director of
Healthy Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215
ricks@ohanet.org

Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007
mkl@bbrslaw.com

Attorney for Nucor Steel Marion, Inc.

Gregory Price
Mandy Willey
Attorney Examiners
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215
gregory.price@puc.state.oh.us
mandy.willey@puc.state.oh.us

Christopher J. Allwein
Williams Allwein & Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, OH 43212
callwein@wamenergylaw.com

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
tobrien@bricker.com

Attorney for Ohio Hospital
Association

Samuel C. Randazzo
Frank P. Darr
Joseph E. Olikier
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

Theodore Robinson
Citizen Power
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.org

J. Thomas Siwo
Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tsiwo@bricker.com
tobrien@bricker.com

Attorneys for Ohio Manufacturers'
Association

Gregory Poulos
EnerNOC, Inc.
471 East Broad Street, Suite 1520
Columbus, OH 43215
gpoulos@enernoc.com

Glenn S. Krassen
Bricker & Eckler LLP
1001 Lakeside Avenue East, Suite 1350
Cleveland, Ohio 44114
gkrassen@bricker.com

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
mwarnock@bricker.com

Attorneys for Northeast Ohio Public
Energy Council

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/20/2012 4:49:23 PM

in

Case No(s). 12-2190-EL-POR

Summary: Brief AEEO Initial Post Hearing Brief electronically filed by Mr. Todd M Williams on behalf of Advanced Energy Economy Ohio