

**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)	Case No. 12-2190-EL-POR
Edison Company For Approval of Their)	Case No. 12-2191-EL-POR
Energy Efficiency and Peak Demand)	Case No. 12-2192-EL-POR
Reduction Program Portfolio Plans for)	
2013 through 2015.)	

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

This case involves a FirstEnergy¹ (“FirstEnergy” or “Utility”) Application under Senate Bill 310² for approval to dismantle its energy efficiency programs that FirstEnergy itself earlier described as having saved \$235 million for Ohio consumers.³ And the Application involves FirstEnergy’s attempt to preserve various of its charges to 1.9 million residential consumers and others despite the dismantling of the programs that gave rise to the charges.

The Office of the Ohio Consumers’ Counsel (“OCC”)⁴ filed initial comments on behalf of FirstEnergy’s residential customers, on October 20, 2014. There, OCC made recommendations to the Public Utilities Commission of Ohio (“PUCO”). OCC proposed

¹ Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company.

² Specifically uncodified Section 6 (A)(2) of Senate Bill 310.

³ Case No. 12-2190-EL-POR, Energy Efficiency and Peak Demand Reduction Portfolio at 4, (July 31, 2012). The Total Discounted Lifetime Benefits estimate is for the period of 2013 through 2015, and based upon the Utility’s Portfolio filed on July 1, 2012.

⁴ The Ohio Manufacturer’s Association, Ohio Partners for Affordable Energy, Environmental Advocates, PUCO Staff, Industrial Energy Users-Ohio, and Ohio Hospital Association also filed Comments in this docket on October 20, 2014.

that the PUCO modify FirstEnergy's proposals so that the benefits of FirstEnergy's existing energy efficiency and peak demand reduction ("energy efficiency") portfolio can be preserved in some greater measure for consumers. OCC submits these reply comments in accordance with the PUCO's September 29, 2014 Entry.

II. REPLY COMMENTS

A. The PUCO Should Adopt the Recommendation of Its Staff That FirstEnergy, And Not Customers, Should Bear The Risk Of Any Additional Costs Associated With The Utility's Request To Adjust Its Energy Efficiency Program Mix During The Term Of The Amended Plan.

In Comments, OCC recommended that the PUCO should protect consumers from FirstEnergy's proposal that it be allowed to unilaterally adjust its energy efficiency programs during the term of the Amended Plan.⁵ OCC provided several reasons why FirstEnergy's proposal should be denied.⁶ In this regard, OCC explained that the PUCO should continue to have authority over the programs to ensure that the cost savings from the programs flow through to customers' electric bills.⁷ This would allow parties the opportunity to work in a collaborative process and provide much needed stakeholder input. This approach has been the hallmark of the PUCO's decision-making for these programs.⁸

⁵ *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 Portfolio Plans for 2013 through 2015*, Case No. 12-2190-EI-POR, OCC Comments at 17 (October 20, 2014).

⁶ Id.

⁷ Id.

⁸ Id.

OCC also noted that FirstEnergy is asking the PUCO to approve an Application, with programs (and costs to customers) that might change, without the PUCO having the opportunity for further review.⁹ This is wrong.

In addition, OCC explained that stopping and restarting energy efficiency programs could result in increased costs to customers.¹⁰ This is unreasonable because it goes against the fundamental principle that energy efficiency programs are supposed to save customers money--not cost customers money. And, as the Ohio Manufacturers' Association Energy Group ("OMAEG") concluded, switching the programs could cause customer confusion.¹¹ OMAEG surmised that this customer confusion could likely lead to higher costs because FirstEnergy's customers would require continuous education (and re-education) on whether programs are being offered, and the content of those programs that are available at any given time.¹² OCC agrees with OMAEG.

But if the PUCO approves FirstEnergy's request to adjust its program mix to customers without prior approval or input from stakeholders, then OCC supports a related PUCO Staff proposal. That is, FirstEnergy--and not customers--should bear the risk of any additional costs associated with the Utility's adjustments to its programs.¹³ And, the PUCO Staff recommends the costs and benefits of FirstEnergy's decisions should be "reviewable by the [PUCO's] [measurement and verification] consultant through the review process that is in place at the time."¹⁴ OCC agrees. But we emphasize that this

⁹ Id.

¹⁰ Id at 18.

¹¹ OMA Comments at 8.

¹² Id at 8.

¹³ Staff Comments at 6.

¹⁴ Id at 7.

proposal is secondary to our primary proposal that changing the Utility's programs must be accomplished, to be legal under uncodified Section 7 of Senate Bill 310, in a process that includes a PUCO decision.

The PUCO should protect customers from incurring unnecessary costs that are the direct result of FirstEnergy's decisions to suspend and resurrect energy efficiency programs. But mainly the PUCO should follow the law and provide for a PUCO process for stakeholders and PUCO approval of any energy efficiency program changes.

B. The PUCO Should Adopt Its Staff's Position That FirstEnergy Should Not Be Financially Rewarded If The Utility Is Not Actively Influencing Customers To Invest In And Implement Energy Efficiency Programs.

The PUCO Staff described the programs FirstEnergy proposed to retain as "passive in nature."¹⁵ A utility's energy efficiency mechanism should reward the utility for the savings for customers that the utility actively generates through the design and implementation of its programs.¹⁶ But the majority of the programs FirstEnergy proposed to retain (and the new programs FirstEnergy proposed) do not actively influence customers to implement energy efficiency.¹⁷ Ohio Partners for Affordable Energy stated that "[i]t would be ironic for a revised portfolio to tax customer actions that the utility has nothing to do with."¹⁸ OCC agrees.

A shared savings mechanism should encourage energy efficiency and reward exemplary utility performance to provide benefits to customers.¹⁹ FirstEnergy proposes

¹⁵ Id at 2.

¹⁶ OCC Comments at 7.

¹⁷ Staff Comments at 3.

¹⁸ OPAE Comments at 5.

¹⁹ OCC Comments at 11.

to suspend the majority of its energy efficiency programs. The PUCO should not permit FirstEnergy to charge customers for shared savings, based on the remaining programs the Utility has proposed in its Application. FirstEnergy should not be financially rewarded (and customers should not be charged) for energy efficiency programs that do not actively incent customers to implement energy efficiency. It would be a bad result for 1.9 million consumers and bad precedent for the PUCO to allow a utility to charge customers for energy efficiency measures that the utility has little (or nothing) to do with.

C. FirstEnergy Should Be Prohibited From Charging Customers For Shared Savings (Profits) Resulting From The Residential Low Income Program And The Residential Direct Load Control Program.

The PUCO Staff recommends that “only the Residential Low Income Program and Residential Direct Load Control Program be eligible for shared savings.”²⁰ OCC does appreciate the Staff’s position that all of the other programs FirstEnergy included in its Amended Plan should not be eligible for shared savings.²¹ But the Residential Low Income Program and Residential Direct Load Control Program also should be ineligible for shared savings.

First, residential low income programs offered by Ohio utilities have not been demonstrated to be cost-effective on their own.²² And, second, the newly proposed Residential Direct Load Control Program is a prime example of a program that does not warrant charging Ohio consumers for utility profit (in the form of shared savings). There

²⁰ Staff Comments at 3.

²¹ Id.

²² FirstEnergy only reports Total Resource Cost (“TRC”) test results in the aggregate; however, other utilities do report TRC results by program type. For example, Ohio Power’s 2012-2014 Portfolio Plan reported a TRC result of 0.5 for its Community Assistance Program, AEP Ohio, *Volume 1: 2012 to 2014 Energy Efficiency/Peak Demand Reduction (EE/PDR) Action Plan*, Case No. 11-5568-EL-POR, November 29, 2011, at 12.

are no permanent, persistent capacity reductions (savings) achieved from this program. The load control program does result in a temporary peak demand reduction, which is a valuable customer-sited capacity resource. However, the load control is at the Utility's discretion (i.e., only when the Utility decides to utilize the load control mechanism). Therefore, residential customers receive no permanent reduction in capacity, and no permanent energy savings, from this program.

The shared savings incentive mechanism is intended to promote additional permanent energy savings and capacity reductions through energy-efficiency measures. For this reason, it is unreasonable to charge customers for shared savings (profits) for the Residential Direct Load Control Program.

FirstEnergy should not be permitted to charge customers for share savings for either of these programs.

D. The PUCO Should Adopt Its Staff's Position That FirstEnergy Should Be Prohibited From Counting The Energy Efficiency Savings Of Customers Who Choose To Opt-Out Of The Utility's Energy Efficiency Program Towards Meeting The Statutory Benchmarks.

The PUCO Staff is opposed to FirstEnergy counting energy efficiency savings of customers who opt-out (from the Utility's energy efficiency programs) towards the statutory benchmarks.²³ OCC agrees.

Amended R.C. 4928.66(A)(2)(a) states that the energy efficiency baseline shall not include "A customer that has opted out of the utility's portfolio plan...."²⁴ The PUCO Staff correctly points out that it would be "inconsistent with the "opt out" concept created by [Senate Bill 310] for the [PUCO] to allow FirstEnergy to count the savings of

²³ Staff Comments at 4.

²⁴ Amended by Senate Bill 310.

customers that decided to completely divorce themselves from FirstEnergy's portfolio programs."²⁵

FirstEnergy contends that it is allowed to count the energy efficiency savings of opt-out customers under R.C. 4928.662(A).²⁶ But R.C. 4928.662(A) states:

Energy efficiency savings and peak demand reduction achieved through actions taken by customers or through electric distribution utility programs that comply with federal standards for either or both energy efficiency and peak demand reduction requirements, including resources associated with such savings or reduction that are recognized as capacity resources by the regional transmission organization operating in Ohio in compliance with section 4928.12 of the Revised Code, shall count toward compliance with the energy efficiency and peak demand reduction requirements.

In contrast, the Staff correctly points out that R.C. 4928.662(A) does not address a utility's authorization to count the energy efficiency savings of opt-out customers towards the energy efficiency benchmarks.²⁷ Rather, R.C. 4928.662(A) addresses whether an electric utility can count programs that comply with federal standards.

FirstEnergy has incorrectly applied R.C. 4928.662(A) to support its request to have savings from opt-out customers count towards the energy efficiency baseline. The PUCO should adopt the PUCO Staff's recommendation and prohibit the Utility from using energy efficiency savings of opt-out customers towards meeting the energy efficiency benchmarks.

²⁵ Staff Comments at 4.

²⁶ FirstEnergy Application at 5.

²⁷ Staff Comments at 4.

E. The PUCO Should Adopt OMAEG's Position That FirstEnergy Should Be Prohibited From Using Energy Efficiency Savings From Previous Years To Charge Customers For Shared Savings In 2015 And 2016.

Like OMAEG, OCC's position is that the PUCO should protect customers against paying profits to FirstEnergy for little or no benefit to customers.²⁸ OMAEG also noted that FirstEnergy is planning to exceed the cumulative benchmark of 4.2 percent entirely by using savings from previous years.²⁹ But OMAEG explains that the PUCO has previously found in this docket that "banked savings shall only be counted toward shared savings in the year it is banked."³⁰ OMAEG is correct.

And the PUCO has previously held with respect to Ohio Power Company that Ohio Power could:

[o]nly count savings for shared savings one time (**meaning there is no double counting of shared savings**) and in the year in which the savings were generated. In a year in which previous years' over-compliance is used to comply with the benchmarks, shared savings shall be based only on impacts generated in the current year.³¹ (Emphasis added).

OCC supports OMAEG's argument. It is improper and directly against PUCO Orders and precedent for a utility to use "banked savings" or savings earned in previous years to charge customers for a shared savings incentive for a future year when the energy efficiency savings did not occur. The PUCO should ensure that FirstEnergy does not count energy efficiency savings twice to charge customers for shared savings.

²⁸ OMA Comments at 6, OCC Comments at 6-7.

²⁹ OMA Comments at 6.

³⁰ Id., 6-7, citing to Case No. 12-2190-EL-POR, Opinion and Order at 16.

³¹ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case No. 11-5568-EL-POR, et al., Opinion and Order at 8.

III. CONCLUSION

OCC appreciates the opportunity to submit these Reply Comments. For the reasons addressed in OCC's Comments and Reply Comments, FirstEnergy's Application should be modified in the interest of protecting consumers. The modification recommended here will protect the Utility's 1.9 million customers from unnecessary charges and will maximize the benefits of energy efficiency for Ohioans.

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-9585 (Kern Telephone)
Kyle.kern@occ.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Comments were served on the persons stated below via electronic service this 27th day of October 2014.

/s/ Kyle L. Kern

Kyle L. Kern

Assistant Consumers' Counsel

SERVICE LIST

Devin.parram@puc.state.oh.us

kjkolich@firstenergycorp.com

cdunn@firstenergycorp.com

toddm@wamenergylaw.com

cmooney2@columbus.rr.com

Cathy@theOEC.org

Trent@theOEC.org

callwein@wamenergylaw.com

fleisher@elpc.org

jvickers@elpc.org

rkelter@elpc.org

dboehm@BKLawfirm.com

mkurtz@BKLawfirm.com

jkylercohn@BKLawfirm.com

ricks@ohanet.org

tobrien@bricker.com

tsiwo@bricker.com

gpoulos@enernoc.com

sam@mwncmh.com

fdarr@mwncmh.com

mpritchard@mwncmh.com

mlavanga@bbrslaw.com

robinson@citizenpower.comswilliams@nrdc.org

rbrundrett@ohiomfg.com

hussey@carpenterlipps.com

Bojko@carpenterlipps.com

Attorney Examiners:

mandy.willey@puc.state.oh.us

Gregory.price@puc.state.oh.us

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Summary: Comments Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Kern, Kyle Mrs.