

**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. 16-0743-EL-POR
Edison Company for Approval of Their)	
Energy Efficiency and Peak Demand)	
Reduction Program Portfolio Plans for)	
2017 through 2019)	

**ELPC RESPONSE TO THE COMPANIES' MOTION TO STRIKE PORTIONS OF
INTERVENED WITNESSES' FILED TESTIMONY**

On September 23, 2016 First Energy filed a Motion to Strike portions of ELPC Witness John Paul Jewell's testimony related to counting customer action towards shared savings. The essence of First Energy's Motion is that the Commission decided the issues related to customer action and shared savings when it approved the Stipulation in Docket No. 14-1297-EL-SSO (ESP IV). The Commission must reject such argument and a decision approving the motion would have absurd consequences.

First Energy's ESP case did not focus on energy efficiency or shared savings. First Energy and other parties signing the settlement agreed to include this issue, without the development of a record regarding energy efficiency or shared savings in the ESP case. Now the Commission has before it a proceeding on First Energy's Energy Efficiency Plan and First Energy is arguing the Commission approval of the Stipulation precludes argument of it in this proceeding. The Commission certainly did not focus on this issue in the ESP case, and allowing First Energy to get away with this would be endorsing one of the biggest back door moves in utility regulatory history.¹

In defending its absurd argument, the Company claims the Commission ruled on the CAP issue at p. 68 and 69 of its Order, but review of those pages indicates the Commission made no such finding. The Commission states, "We find, therefore, that the increase in the shared savings cap is in the public interest because it encourages the Companies to seek to provide to their customers all cost-effective energy efficiency opportunities." Docket No. 14-1297 Order at 95. This language indicates the Commission's desire to incent First Energy to run good programs,

¹ ELPC tries to avoid rhetoric and does not believe this characterization of what First Energy is trying to do is an over statement.

but the CAP savings have nothing to do with the utility's efforts. Quite the contrary, the CAP savings by definition come from customer action unrelated to the programs.

ELPC also notes that the Commission Order states, "Nothing in the Stipulations waive the cost-effectiveness requirements of Ohio Adm.Code 4901:1-39-03 and -04, and, as discussed above, the Commission expects that the portfolio implemented by the Companies under the Stipulations will continue to be cost-effective." Order at 111. Hence, the Commission did not give First Energy carte blanche for future proceedings. It said that First Energy must demonstrate that its efficiency portfolio is in fact cost-effective, and there is no basis for the Commission to find that that giving First Energy shared savings on customer action is "cost-effective." Shared savings is a reward to the company for efforts to generate savings above the goal, and customer action unrelated to First Energy's programs does not fall within these parameters.

This concludes ELPC's Memorandum Contra to First Energy's Motion to Strike.

Respectfully Submitted,

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PHV-2685-2016

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *ELPC Response to the Companies' Motion to Strike Portions of Intervened Witnesses' Filed Testimony* submitted on behalf of the Environmental Law & Policy Center was served by electronic mail upon the following Parties of Record on September 30, 2016.

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Summary: Response to Companies' Motion to Strike Portions of Intervened Witnesses' Filed Testimony electronically filed by Mr. Robert Kelter on behalf of Environmental Law & Policy Center