**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio | ) | |
| Edison Company, The Cleveland | ) | Case No. 16-743-EL-POR |
| Electric Illuminating Company, and | ) | |
| The Toledo Edison Company for | ) | |
| Approval of Their Energy Efficiency and | ) | |
| Peak Demand Reduction Program | ) | |
| Portfolio Plans for 2017 through 2019. | ) | |

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# OHIO PARTNERS FOR AFFORDABLE ENERGY'S POST-HEARING BRIEF

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**TABLE OF CONTENTS**

**I. Introduction ……………………..…………………………………..………,…3**

**II. The Staff's Cost Caps Ignore the Benefits of Energy Efficiency …….4**

**III. The Staff's Cost Caps Ignore the Cost of Energy Efficiency during the Plan Period, 2017-2019……………………………………………….10**

**IV. The Commission Already Has Authority to Limit and Review Energy Efficiency Spending…………..………………………………12**

**V. Conclusion………………………………………………………………..13**

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# OHIO PARTNERS FOR AFFORDABLE ENERGY'S POST-HEARING BRIEF

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## I. Introduction

Ohio Partners for Affordable Energy ("OPAE") respectfully submits to the Public Utilities Commission of Ohio ("Commission") this post-hearing brief in the proceeding to consider the above-captioned application of Ohio Edison Company, The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company (together "FirstEnergy" or "Utilities") for approval of their revised energy efficiency and peak demand reduction program portfolio plans ("Plans") for 2017 through 2019. OPAE is a signatory party to the Stipulation and Recommendation filed in this case on December 9, 2016 ("Stipulation"); and, as a signatory party, OPAE supports the Commission's adoption of the Stipulation in its entirety. The Stipulation meets the Commission's three-part test for the reasonableness of stipulations.

Therefore, OPAE does not support the proposal of the Staff of the Commission ("Staff") for a cap on the FirstEnergy Utilities' annual energy efficiency program costs and shared savings of 3% of the Utilities' revenues reported on Line 10, Page 300 of their 2015 Federal Energy Regulatory Commission ("FERC") Forms 1. Adopting the Staff's cost caps results in an annual cost cap for the revised Plans of $38.1 million for Ohio Edison, $28.5 million for CEI, and $13.5 million for Toledo Edison, or $80.1 million for the Utilities on a consolidated basis. FirstEnergy ("FE") Exhibit ("Ex.")17 at 3. Herein, OPAE explains why the Commission should not adopt the Staff's cost caps.

## II. The Staff's Cost Caps Ignore the Benefits of Energy Efficiency.

Ohio Administrative Code ("O.A.C.") Chapter 4901:1-39 sets forth Ohio administrative law for energy efficiency and peak demand reduction program portfolio plans. Rule 4901:1-39-04 states that the program portfolio plan must be cost-effective on a portfolio basis. To determine whether a portfolio plan is cost-effective, the Commission uses the Total Resource Cost ("TRC") test. In order for a portfolio plan to be cost-effective under the TRC test, the present value of the avoided supply costs for the periods of load reduction, valued at marginal cost, must be greater than the present value of the monetary costs of the demand-side measure or program born by both the electric utility and the participants. O.A.C. 4901:1-39-01(Y). In short, a plan or individual program within a plan must save more in energy supply costs than the total costs of implementing the plan or program.

The Staff is not disputing that the revised Plans are cost-effective under the TRC test. The Staff is also taking no position on the programs or individual measures included in the revised Plans. The Staff is only focused on the costs of the Plans that flow through the cost-recovery riders. Staff witness Patrick Donlon testified that the Utilities' portfolio costs have been escalating to the point that the riders in which the energy efficiency costs are collected (Riders DSE2) have become one of the highest riders on the Utilities' residential customers' bills. Staff Ex. 1 at 5. For two of the Utilities, Rider DSE2 was the fourth highest rider out of 16 riders, and for the third Utility, Ohio Edison, it was the fifth highest rider out of 16 riders as of October 2016. Tr. II at 328; Tr. III at 447. The highest rider of the three Utilities was $2.90 a month for a residential customer using 750 kWh. Therefore, it was the costs collected through the Utilities' DSE2 riders and their relation to other rider costs paid by customers that caused the Staff to propose its cost caps.

The Staff's cost caps on energy efficiency spending focus only on containing costs without consideration of the benefits of energy efficiency and the purposes of portfolio plans. Mr. Donlon recognized that energy efficiency has the potential to save customers money on their bill. Tr. III at 448. The less energy customers use, the less energy FirstEnergy and competitive suppliers have to purchase on the wholesale market. Mr. Donlon recognized that there would be some wholesale market price reduction when there is a reduction in demand. Id. He agreed that energy efficiency reduces usage at peak times. Tr. III at 455.

But the Staff looked only at rider costs and did not analyze the benefits of the energy efficiency plans. The Staff did not consider what wholesale market price reductions would result from the Plans if the caps were adopted or not adopted. The Staff did not analyze how wholesale price reductions might be affected by a 3% cap on energy efficiency spending. Tr. III at 452. Mr. Donlon acknowledged that the FirstEnergy Utilities might not be able to achieve the same level of efficiency savings under the 3% cap as without a cap. Tr. III at 453. The Staff did not consider foregone energy savings from energy efficiency programs if its caps were adopted. The Staff was only looking to cap costs.

For example, the Staff's cost caps will focus attention on the cost per first year kWh saved by a program or measure. But the cap will not consider the cost per lifetime kWh saved. Such a consideration would be necessary to get a better feel for the magnitude of electric system benefits that are being produced by energy efficiency savings. Environmental Intervenors Ex. 1 at 33. With a spending cap, the FirstEnergy Utilities may be forced to emphasize programs that produce inexpensive savings in the first year of the Plan that can count toward their annual statutory targets. The Utilities will forego more expensive savings that provide more benefit over the long-term. Id. at 25. A program that provides first-year kWh savings at a lower cost than other programs may be implemented even if its cost per lifetime kWh saved is higher. The program that may be emphasized is the one likely to provide far fewer economic benefits. Id. The caps may result in the implementation of programs with savings likely to be much shorter-lived than other programs. Id. at 26.

Given such obvious problems, the Staff could not show why a 3% cap based on the Utilities' revenues shown on Line 10 Page 300 of their FERC Forms 1 for 2015 should be used as a cap on energy efficiency spending. The

Staff's selection of the 3% cost cap is not related to any analysis of the benefits to consumers of spending below the cap or any analysis of spending above the cap that would produce higher costs than benefits. The Staff did not conduct an analysis of how incremental benefits and costs change at different potential budget levels. The Staff did not provide an analysis to support a conclusion that 3% of the revenues on Line 10 of Page 300 of FERC Forms 1 for 2015 is the right number. Environmental Intervenors Ex. 1 at 27.

The Staff also did not provide any evidence that FirstEnergy's Plan was cost-ineffective and in need of a control mechanism. The Staff did not assess the reasonableness of FirstEnergy's proposed program costs or the value of the benefits the Plan would provide. There is no analysis by Staff to suggest that FirstEnergy's proposed programs are too expensive in relation to their benefits or do not bring enough value to support their costs. None of this analysis, which should be required to support the imposition of a spending cap on energy efficiency, was conducted because the Staff was only looking at costs flowing through riders.

Moreover, under Ohio law, a utility may include a program within its portfolio plan that is not cost-effective when that program provides substantial non-energy benefits. O.A.C. 4901:1-39-04(B). As the rule makes clear, the costs of the programs and the energy benefits as calculated in the TRC test are not the only consideration. Non-energy benefits that are also to be considered include societal benefits that do not affect the calculation of program cost-effectiveness pursuant to the TRC test. These include, but are not limited to, benefits of low-income customer participation in utility programs, reductions in greenhouse gas emissions, reductions in air emissions, and natural resource depletion to the extent the benefit of such reductions are not fully reflected in cost savings. The plan also considers enhanced system reliability. O.A.C. 4901:1-39-03(B)(5); O.A.C. 4901:1-39-01(Q). The plan also assesses the degree to which a program bundles measures so as to avoid lost opportunities and attain energy savings that would not be cost-effective if installed individually. O.A.C. 4901:1-39-03(B)(9). The plan considers the degree to which a program engages the energy efficiency supply chain and leverages partners in program delivery, such as community action agencies represented by OPAE and gas distribution utilities. O.A.C. 4901:1-39-03(B)(10). The plan considers the degree to which the program successfully addresses market barriers or market failures. O.A.C. 4901:1-39-03(B)(11). The plan considers the degree to which the program promotes market transformation. O.A.C. 4901:1-39-03(B)(13). In short, the Commission's review of a portfolio plan considers far more than the costs and energy benefits reflected in the TRC test calculation.

The Staff's cost caps are solely concerned about the costs flowing through the Utilities' riders. The Commission's energy efficiency rules require consideration of energy and non-energy benefits of energy efficiency and peak demand reduction programs. It makes no sense that the Staff does not dispute the cost-effectiveness of the Plans and that the Staff acknowledges that the Plans' benefits outweigh the costs, while the Staff insists on cutting the costs without regard to the benefits.

The Staff's interest in cost cutting is rivaled by the cost-cutting advocated by the Office of the Ohio Consumers' Counsel ("OCC"). OCC witness Spellman testified, without knowing anything about OPAE, that OPAE's role as the administrator of FirstEnergy's low-income Community Connections program should be put out for competitive bids. OCC Ex. 9A at 70-72. OPAE has already been awarded the Community Connections program so that the issue is moot. *FirstEnergy Corp.*, Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016) at 96. Mr. Spellman was unaware of how OPAE was awarded the contract for Community Connections. Tr. II at 273. He also had no information about any potential bidders that would be interested in bidding to operate Community Connections, and had not looked into it. Tr. II at 306. He had done no research on providers of low-income program services in the FirstEnergy service territory. Tr. II at 307. He had no particular bidder in mind. Tr. II at 308.

Mr. Spellman was not proposing that FirstEnergy's low-income programs be rejected by the Commission. Tr. II at 273-274. He testified that the programs should be reevaluated so as to reach more low-income customers but he had no specific recommendations. Tr. II at 275. Mr. Spellman's "expert" testimony about OPAE's role as administrator of the Community Connections program has no value. The Commission has already approved Community Connections' funding and OPAE's role. *FirstEnergy Corp.*, Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016) at 96.

## III. The Staff's Cost Caps Ignore the Cost of Energy Efficiency during the Plan Period, 2017 through 2019.

The Staff's cost caps also ignore whether the cost per unit of savings in the plan period will be greater than in the prior period, 2012-2014. The Staff ignores the fact that measures that are still cost-effective during the period from 2017-2019 may not be as cost-effective as they were in 2012-2014. While the measures still save electricity at a lower cost than could be supplied, they may well cost more in the coming Plan period. Environmental Intervenors Ex. 1 at 20.

FirstEnergy rebuttal witness Edward C. Miller noted that the Staff's cost cap is unworkable because it was determined without taking consideration of the cost of compliance with the energy efficiency benchmarks in the 2017-2019 Plan period. FE Exhibit 17 at 5. The Staff looked at cost data for the 2012-2014 period but did not consider whether the cost data from 2012-2014 is still relevant for the period of this plan, 2017-2019. Since 2012, costs have increased not only through inflation but also because standards and efficiency conditions have changed. The amount of energy savings from some measures has decreased, requiring more participation simply to achieve the same levels of saving as in the past. In some cases, technologies have evolved and become more expensive requiring an increase in the incentive levels offered to customers. FE Ex. 17 at 6. Failing to consider significant changes to the cost of compliance is a major flaw in the Staff's proposal. Id. at 6-7.

The Staff's proposed cost cap results in a maximum aggregate annual budget of $80.1 million for the three FirstEnergy utilities. The average annual budget of the revised Plan as agreed in the Stipulation is approximately $90 million. The FirstEnergy utilities are obligated under their current Electric Security Plan ("ESP IV") to pay $6 million per year to OPAE to operate the Community Connections program. *FirstEnergy Corp.*, Case No. 14-1297-EL-SSO, Opinion and Order, (March 31, 2016) at 75. The three Utilities are also allowed an opportunity to collect up to $10 million in after-tax ($15.6 million before tax) shared savings during the Plan period. FE Exhibit 17 at 8. The cost cap of $80.1 million eliminates any realistic opportunity for the FirstEnergy utilities to earn the shared savings.

Under the caps, the Utilities will need to focus all their attention to meet their statutory benchmarks. FE Ex. 17 at 10. The Utilities will be restricted in their ability merely to meet their statutory targets under the Staff's caps. The Staff's proposal that the Utilities could seek an amendment to the benchmarks has so much uncertainty that it cannot justify the cost caps. FE Ex. 17 at 11. The Staff's cost caps could force the utilities to make significant revisions to their Plans, which could limit the amount of energy efficiency resources eligible to be offered into the PJM auctions. FE Ex. 17 at 13.

Should the Utilities be subject to the Staff's proposed $80.1 million cost cap, the Utilities would need to adjust the program mix and significantly increase reliance on "low hanging fruit", i.e., low-cost, first-year savings measures being available. More comprehensive, long-lived, and more expensive programs and measures would be eliminated. These actions would result in a less robust plan with fewer opportunities for customer participation. In addition, the Utilities' potential for noncompliance significantly increases. FE Ex. 17 at 13.

## IV. The Commission already has Authority to Limit and Review energy efficiency spending.

The Commission already approves utility portfolio plans and budgets. Pursuant to O.A.C. Rule 4901:1-39-04, the utilities' portfolio plans and the non-low-income programs included in the plans must be found to be cost-effective on a portfolio and program basis. Each of the Utilities' revised plans passes the Total Resource Cost ("TRC") test, with TRC scores of 1.5, 1.6, and 1.6 for Ohio Edison, CEI, and Toledo Edison respectively. FE Exhibit 17 at 4.

When the Commission approves the Plans, the Commission also approves the Plans' three-year budget. The Utilities will recover costs within their budgets. The approved budget is already a "cap" that will control the costs of the Plans, including all program costs and shared savings. There is no need to place additional caps on program costs. FE Ex. 17 at 4.

Staff witness Donlon agreed that when the Commission approves a plan, the Utilities are not authorized to spend more money than the amount approved in the plan. Tr. III at 461. When the Commission approves the plan, it is authorizing the spending amount in the plan. Tr. III at 461. The Commission approves plans and program budgets for the entire three-year duration of the plan. Tr. II at 365. If the Utilities want to spend more money above and beyond those budgets, they would have to seek Commission approval. Tr. II at 365.

Thus, a limitation on spending is embodied in the Commission's approval of a budget for a plan. This approval should be based on a careful review of the programs proposed, their costs, and the mix of benefits they provide and the purposes they serve. Environmental Intervenors Ex. 1 at 32. When the Commission approves a portfolio plan, the Commission addresses potential concerns about costs. There is no evidence that the Commission's process for the approval of portfolio plans will be improved by a cost cap. A cost cap expressed as a fixed percentage of revenues reported on FERC Forms 1 has not been justified in terms of its benefit or value to customers.

## V. Conclusion

In conclusion, the Commission should adopt the Stipulation and Recommendation filed in this case on December 9, 2016 in its entirety. The Stipulation meets all three parts of the Commission's test for the reasonableness of stipulations, and therefore should be adopted. The Commission should not adopt the Staff's proposal for cost caps on the FirstEnergy Utilities' energy efficiency and peak demand reduction program spending. The Staff's proposed cost caps ignore all the benefits of energy efficiency programs. The Staff also did not consider the costs the FirstEnergy Utilities will incur to achieve energy efficiency and peak demand reductions during the Plan period. The Commission already has authority to review and approve spending for the FirstEnergy Utilities' programs. The Commission already reviews the costs flowing through the cost-recovery riders. The spending caps are not only unnecessary, they will also interfere with the optimization of the FirstEnergy portfolio Plans.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

A copy of the foregoing Post-Hearing Brief will be served on this 21st day of February 2017 by the Commission's Docketing Division to these parties who are electronically subscribed.

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