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 Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019.	)	Case No. 16-743-EL-POR

OHIO PARTNERS FOR AFFORDABLE ENERGY'S REPLY BRIEF

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") respectfully submits to the Public Utilities Commission of Ohio ("Commission") this reply brief in the proceeding to consider the above-captioned application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (together "FirstEnergy" or "Companies") 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.

II. The Staff's Narrow Focus on Program Costs Is Unreasonable.

The Staff argues that the Stipulation does not benefit ratepayers and the public interest because the Companies' riders for cost recovery for their energy efficiency programs are among the largest riders on the Companies' customers' bills. Staff Brief at 4. Staff claims that its cost caps will be the mechanism for controlling costs and providing some price assurances to customers. Id. at 9. Staff argues that a “Commission-approved budget for the portfolio plans does not necessarily control costs” because the budget does not preclude recovery of additional costs that the Companies may incur to meet and exceed their statutory mandates. Id. Staff claims that its cost caps “would do just that.” Id. Staff also argues that if the Companies are unable to meet their statutory mandates within the cost caps, Revised Code Section 4928.66(A)(1)(b) allows the Companies to request that the Commission amend the mandates if the Companies provide regulatory, economic, or technological reasons beyond their control that hinder the Companies from reasonably achieving the mandates. Id. at 6. The Staff states that the Companies will continue to file annual rider cases for Staff to review the prudence of costs incurred, but any costs that exceed the cost caps will be disallowed from recovery or refunded to customers if already collected. Id.

Clearly, the Staff is focused only on costs. Energy efficiency and peak demand reduction programs cause costs, and the Staff intends to cap the costs. Staff sees its goal as enforcing a cost cap and practically nothing else. The Staff’s goal will be easy to accomplish. Nothing could be easier than looking once at the Companies’ revenues shown on Line 10 Page 300 of their FERC Forms 1 for 2015, multiplying by 3%, and establishing the cost caps for all three years of the Plan. Staff’s selection of the cost cap based on 3% of the 2015 FERC Forms 1 Line 10 Page 300 revenue number is not related to any analysis of the benefits to consumers of spending below the cap or any analysis of harm to consumers 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 times during the Plan period or at different 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 for cost caps. Environmental Intervenors Ex. 1 at 27. The Staff will limit its regulatory activity primarily to reviewing costs and enforcement of its cost caps. This gives the Staff, and the Commission if it approves the caps, practically nothing to do in terms of the regulation of the Companies' energy efficiency and peak demand reduction portfolio Plan.

The Staff worries that the Commission's approved budget will not prevent the Companies' from seeking cost recovery in their annual rider filings above the approved budget levels. Only the Staff's pre-set, three-year, hard caps can limit costs. But the Staff's caps put regulation on auto-pilot. In fact, a limitation on spending should be embodied in the Commission's approval of a budget for the Plan. This approval should be based on a careful review of the programs proposed, their costs, the mix of benefits the programs provide, and the purposes the programs serve. Environmental Intervenors Ex. 1 at 32. If the Companies request approval of imprudent costs or costs above the budget levels, the Commission can always disallow imprudently incurred costs. Under the cost caps, Staff will skip all these complex steps and simply enforce the cost caps.

There is no evidence that the Commission's process for the approval of portfolio plans and budgets will be improved by pre-set, three-year, hard cost caps based on the FERC Forms 1 revenue numbers that are completely divorced from any relation to energy efficiency costs and benefits. Staff has not justified its cost caps in terms of their benefit or value to customers except for the value of arbitrarily and automatically controlling costs. While controlling costs may be a worthy goal, it is not the only goal.

To address the problem that cost control via cost caps is an inadequate regulatory response to energy efficiency cost recovery riders being the third highest riders on customers' bills, Staff argues that its cost caps require the Companies to pick the most cost effective and efficient means of achieving their statutory mandates, thus avoiding unnecessary charges to customers. Staff Brief at 9. The evidence contradicts this assertion. The Staff's cost caps will force the Companies to focus attention on the cost per first year kWh saved by a program or measure. The caps will not consider the Companies' costs per a program or measure's lifetime kWh saved. A consideration of lifetime savings is necessary to understand the magnitude of electric system benefits that are being produced by the energy efficiency savings. Environmental Intervenors Ex. 1 at 33. With the spending caps, the Companies may be forced to emphasize programs that produce inexpensive savings in the first year of the Plan that can count toward their annual mandates. The Companies 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.

Staff has not shown that a 3% cost cap based on the Companies' 2015 FERC Form 1s is a fair and reasonable substitute for prudent regulatory review of the Companies' energy efficiency and peak demand reduction programs' costs and benefits. The caps will simply automatically control costs for the three years of the Plan. The Commission should reject this simplistic, if easy, approach to the consideration of energy efficiency and peak demand reduction portfolio plans. It is unreasonable for the Commission to focus only on one factor in its review of the Companies' Plan.

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

Central to the Staff's argument in favor of its cost caps is the Staff's belief that the Companies will not need to spend above the caps in order to meet their statutory mandates. The Staff argues that, given the projected benchmark for 2017 of 535,000 MWH in savings, and slightly lower than that for 2018 and 2019, and given the Companies' spending history for 2012 through 2014, the Companies are capable of meeting and exceeding the 2017-2019 benchmarks within a 3% cost cap. Staff Brief at 7. Staff also finds factors that will serve to reduce the Companies' future costs. Staff argues that the Companies did not take into account the customers who will opt out of the energy efficiency rider during the Plan period. Id. Opt-outs would reduce the benchmarks for 2017 through 2019 so that the Companies' projected savings requirements and the projected budgets are overstated. Id. at 8. Staff also argues that overall costs can be offset by the revenues the Companies receive from PJM for bidding energy efficiency into the PJM RPM auction. The PJM revenues will also reduce the cost of the programs. Id.

The Staff's cost caps are unreasonable because they were 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. Id. at 6. Failing to consider significant changes in the cost of compliance is a major flaw in the Staff's proposal. Id. at 6-7.

Should the Companies be subject to the Staff's proposed $80.1 million cost cap, they 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 and fewer long-run savings. The Companies' potential for future noncompliance with the mandates significantly increases. Id. at 13. The Staff's disregard of future costs and benefits of energy efficiency and peak demand reduction programs is another reason the Staff's cost caps are unreasonable.

IV. The Stipulation Meets the First Part of the Commission's three-part test for the Reasonableness of Stipulations.

The Office of the Ohio Consumers' Counsel ("OCC") argues that the Commission should weigh heavily that consumers, who pay for the programs, are not signatory parties to the Stipulation. OCC Brief at 35. OCC argues that environmental parties, who have identical interests, do not pay the costs of the programs that environmental parties support "using other people's money." Id. at 35. OCC argues that EnerNOC represents its interests as a provider of demand response software. IGS represents its interests as a competitive retail electric service provider. And OPAE "represents its own interests as the provider of FirstEnergy's Community Connections program." Id. at 36.

OCC states that it represents residential customers who will pay many millions of dollars to fund the Companies' energy efficiency programs. OCC argues that the Commission should consider the signatory parties "narrow interests" as compared to the "broad interests" represented by OCC and other non-signatory parties, the Ohio Hospital Association ("OHA"), Industrial Energy

Users-Ohio ("IEU-O"), the Ohio Manufacturers' Association ("OMA") and the Kroger Company. Id. OCC argues that the signatory parties with narrow interests do not represent sound regulatory policy but simply that the settlement might benefit those narrow interests. Id.

It is not for OCC to speculate why any other party would sign, not sign, oppose, or not oppose the Stipulation. OHA has submitted a brief explaining its opposition to the Stipulation. IEU-O, OMA and Kroger do not oppose the Stipulation; they have signed as non-opponents. It is not for OCC to describe what "broad interests" these non-opponent-non-signatory parties represent or what their motivations may be. They are able to speak for themselves.

As for residential customers, OCC argues that only OCC represents residential customers and that a stipulation without OCC's signature should be suspect. The Commission has always rejected OCC's argument that its agreement is essential to stipulations. *Columbia Gas of Ohio*, Opinion and Order (December 21, 2016) at 30-32.

OCC also states that the Companies could reduce the cost of their programs through the use of competitive bidding. OCC notes the testimony of its witness Spellman that competitive bidding is the best way to achieve maximum savings for customers at the lowest cost. OCC Brief at 20-21. OCC argues that competitive bidding could reduce the costs that customers pay for energy efficiency and could make it easier for FirstEnergy to achieve its statutory benchmarks within the $80.1 million annual cost cap. OCC Brief at 21.

OCC's witness Spellman directed his competitive bidding comment at OPAE's administration of the Community Connections programs, which is moot given that the Commission has already approved OPAE's administration of the Community Connections program. *FirstEnergy Corp.*, Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016) at 96. At the hearing, 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 the Community Connections program, 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. He provided no evidence or information that would lead to the assertion in OCC's brief that competitive bidding for Community Connections could reduce costs or make it easier for FirstEnergy to achieve its statutory benchmarks under the Staff's cost caps.

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 Companies' energy efficiency and peak demand reduction program spending. The Staff's proposed cost caps focus only on costs, which are only one factor the Commission should consider in its review of the Companies' energy efficiency and peak demand reduction programs. Importantly, Commission review requires a consideration of both the costs and benefits of energy efficiency programs. The Staff is proposing only a "cost-cost" review. The Staff ignores the benefits of energy efficiency programs. The Staff also did not consider the costs the Companies will incur to achieve energy efficiency and peak demand reductions during the Plan period. The Commission already has authority to review and approve spending budgets for the Companies' programs. The Commission already reviews the prudence of the costs flowing through the cost-recovery riders. The spending caps are not only unnecessary, they will also interfere with the optimization of the Companies' Plan and therefore reduce the potential savings and benefits to all of the Companies' customers, including residential customers.

Respectfully submitted,

/s/Colleen Mooney

Colleen L. Mooney
Ohio Partners for Affordable Energy
PO Box 12451
Columbus, OH 43212
Telephone: (614) 488-5739
cmooney@ohiopartners.org

(Electronically subscribed)

CERTIFICATE OF SERVICE

A copy of the foregoing Reply Brief will be served on this 3rd of March 2017 by the Commission's Docketing Division to these parties who are electronically subscribed.

/s/Colleen Mooney
Colleen L. Mooney

cdunn@firstenergycorp.com
kjklaw@yahoo.com
eostrowski@firstenergycorp.com
mrgladman@jonesday.com
Christopher.healey@occ.ohio.gov
dstinson@bricker.com
rkelter@elpc.org
mfleisher@elpc.org
tdougherty@theOEC.org
jfinnigan@edf.org
swilliams@nrdc.org
rdove@attorneydov.com
joliker@igsenergy.com
mpritchard@mwncmh.com
bojko@carpenterlipps.com
perko@carpenterlipps.com
sechler@carpenterlipps.com
callwein@keglerbrown.com
gpoulos@enernoc.com
ricks@ohanet.org
dparram@bricker.com
dborchers@bricker.com
mwarnock@bricker.com
John.jones@ohioattorneygeneral.gov
Natalia.messenger@ohioattorneygeneral.gov