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BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

DOCKETING DIVISION  
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In the Matter of Ohio Partners for )  
Affordable Energy's Motion for Required ) Case No. 01-187-EL-UNC  
Compliance with Section 4928.52(C)(2), )  
Revised Code )

In the Matter of Ohio Partners for )  
Affordable Energy's Motion for Required ) Case No. 01-188-EL-UNC ✓  
Compliance with Sections 4928.51 and )  
4928.52, Revised Code )

In the Matter of Ohio Partners for )  
Affordable Energy's Motion for Required ) Case No. 01-189-EL-UNC  
Compliance with Section 4928.52(C)(1), )  
Revised Code )

**FirstEnergy Corp.'s Memorandum Contra  
the Motions of Ohio Partners for Affordable Energy**

Comes now FirstEnergy Corp., on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("Companies"), by counsel, and respectfully submits its Memorandum Contra the Motions of Ohio Partners for Affordable Energy ("OPAE") (collectively referred to as the "Motions").<sup>1</sup> In the Entry issued on January 25, 2001, the Attorney Examiner directed that all further pleadings and responses to these Motions be filed only in the dockets set forth above. Due to the similarity of the issues raised by OPAE, i.e., all related to the Universal Service Program and R.C. 4928.51 and 4928.52, the Companies are filing the same Memorandum Contra in all three of the aforementioned dockets.

<sup>1</sup> Per a telephone conversation with the Attorney Examiner in these dockets related to when the Memorandum Contra was due, the Attorney Examiner indicated that the filing of this Memorandum Contra on February 12, 2001 would be timely.

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## **Introduction**

Seeking headlines more than facts, the Motions criticize the Companies, along with the other electric utilities in Ohio, for not yet transferring funds to the Ohio Department of Development (“ODOD”) collected from the USF Rider and PIPP customers, and not crediting sooner a portion of the arrearages in the accounts of the selected elderly and disabled PIPP customers.<sup>2</sup> As OPAE is well aware, the transfer of funds from the Companies to the ODOD has not occurred because the Agreement required by ODOD’s rules between the Companies and ODOD has not yet been finalized. OPAE’s Motions also ignore the fact that the Companies expect to begin crediting the accounts of the elderly and disabled persons, as contemplated by R.C. 4928.51(C)(1), as soon as this month. OPAE’s Motions ignore relevant facts, are without merit, and should be denied.

## **Arrearage Forgiveness for the Elderly and Disabled (Case No. 01-187-EL-UNC)**

R.C. 4928.51(C)(2) provides that PIPP customers, who have complied with the requirements of the PIPP program and that are permanently and totally disabled, as defined in R.C. 5117.01<sup>3</sup>, or 65 years of age on the effective date of the section, are relieved of any payment obligation for their arrearage balance on the effective date of the section. Contrary to the OPAE Motion, the statute places no affirmative duty upon the electric utility to either determine which customers this section applies to or to notify the affected customers. The

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<sup>2</sup> The Motion refers to R.C. 4928.52(C)(2), but there is no such section in Am. Sub S.B. 3. The correct reference is R.C. 4928.51(C)(2).

<sup>3</sup> OPAE argues in its footnote 1 on page 3 that the reference to R.C. 5117.01 in R.C. 4928.51(C)(2) expands the scope of R.C. 4928.51(C)(2) to include the eligibility requirements of the Ohio Energy Credit Program. This is wrong. It is clear that the reference to R.C. 5117.01 was simply to define “permanently and totally disabled”, not to expand the scope of R.C. 4928.51(C)(2) with the attributes of the Ohio Energy Credit Program. R.C. 4928.51(C)(2) contemplates a one-time forgiveness, not a program that continues indefinitely.

statute identifies no date when the list must be developed or how the information is to be communicated to customers. OPAE is wrong on both counts.

In reality, the Companies will provide notice to customers and have been working with the ODOD since last fall to develop the list of customers to which this statutory section applies. The ODOD provided a list of over 15,000 customers that the Companies have been manually reviewing since it was provided. The Companies plan to start posting the adjustments to the arrearage balances as early as this month. Since the passage of Am. Sub. S.B. 3, PIPP customers have not been obligated to pay any portion of this amount, and their price for electricity has not increased. In fact, their billed amount for electricity was reduced beginning in January 2001 due to the 5% reduction to the generation component in the Companies residential tariffs. This would have the effect of slowing the increase to a PIPP customer's arrearage balance.

That natural gas prices have increased or that customers are hesitant to join the PIPP program has nothing to do with the application of this statutory section. This section applies only to persons that are already on PIPP as of the effective date of the section, and the arrearages are associated with electricity use. OPAE's Motion is without merit, and will soon be rendered moot, not through the intervention of OPAE, but through the diligent efforts of employees of the Companies to implement this statutory provision. OPAE's Motion should be denied.

**Transfer of Funds to ODOD from the USF Rider and PIPP Customer Collections  
Case Nos. 01-188-EL-UNC and 01-189-EL-UNC**

The Motions filed by OPAE regarding the transfer of funds from the Companies to ODOD ignore the fact that the Companies have been working with the ODOD and the Staff of the Commission for over a year to implement the requirements of R.C. 4928.51 and 4928.52. Much time was devoted by all involved to develop rules for the program. The rules were finalized last summer. Within the rules there is a requirement that an agreement be reached

between ODOD and each of the Companies that, among other matters, will govern how the transfer of funds will be accomplished. Again, the ODOD, the Companies and the Staff of the Commission have been working together to finalize this agreement. The transfer of funds from the Companies to ODOD, both related to USF Rider and PIPP customer collections, and from ODOD to the Companies cannot commence until the mechanism for such transfers is in place.

OPAE's allegation that the Companies have been unjustly enriched is without merit. In fact, it is expected that the amounts that the Companies would have transmitted to ODOD for September 2000 through January 2001 would have been less than what ODOD would have been required to transfer back to the Companies. Therefore, the balance in the fund would have been negative and there would be no interest. In any event, once the agreement is finalized and the fund transfers commence, they will commence for the Companies as of collections starting on September 1, 2000. The Companies will not keep any of the money collected in the interim, again, no unjust enrichment.

Certainly, there is no double collection of PIPP arrearages and OPAE's unfounded speculation on this topic is wrong. For the Companies, the regulatory asset balance was reduced related to that portion of the PIPP rider that was to be included in regulatory assets. Further, any amounts collected from PIPP customers after September 1, 2000 will be transferred to the ODOD. OPAE's accusation of double recovery is without merit.

OPAE also speculates that because the fund transfers have not yet commenced, that the ODOD's PIPP customer aggregation efforts have been negatively affected. But neither the ODOD nor the Commission Staff has ever voiced this as a concern to the Companies.

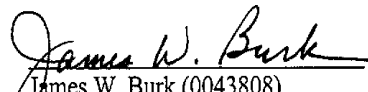
Finally, rising natural gas prices are unrelated to the Companies' transfer of the PIPP program administration to the ODOD, and OPAE's focus on this in the Motions remains a

mystery. What we do know, as mentioned earlier, is that price for electricity in the Companies' residential tariffs has gone down. Specifically, the generation component in the Companies' residential tariffs was reduced by 5% effective in January 2001, and this will in fact have the effect of slowing the increase of arrearages for PIPP customers.

### **Conclusion**

Steps to relieve eligible PIPP customers of their arrearage repayment obligation pursuant to R.C. 4928.51(C)(2) are expected to begin this month, therefore OPAE's Motion is effectively moot. OPAE's other Motions purposefully ignore both the legal process that has been followed by the ODO, the Companies, and the Commission Staff to finalize the agreement, and practical difficulty associated with implementing the provisions of Am. Sub. S.B. 3. OPAE's Motions should be denied and the dockets closed.

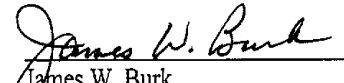
Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **FirstEnergy Corp.'s Memorandum Contra the Motions of Ohio Partners for Affordable Energy** was served, by placing said document in the United States mail, first class, postage prepaid this 12<sup>th</sup> day of February, 2001 upon the persons set forth below.

  
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