

**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 2010 through 2012 and Associated Cost Recovery Mechanism.)		
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)	Case Nos.	09-1947-EL-POR
)		09-1948-EL-POR
)		09-1949-EL-POR
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)		

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 Nos.	12-2190-EL-POR
)		12-2191-EL-POR
)		12-2192-EL-POR
)		
)		

**MEMORANDUM IN RESPONSE
by the
SIERRA CLUB, OHIO ENVIRONMENTAL COUNCIL,
AND CITIZEN POWER**

I. Introduction

The Sierra Club, Ohio Environmental Council, and Citizen Power (“Intervenors”) respectfully submit this memorandum in response regarding the Motion by the Ohio Edison Company, the Cleveland Electric Illuminating Company and the Ohio Edison Companies (“FirstEnergy” or “Companies”) to extend existing energy efficiency and peak demand reduction program portfolio plans (“EE/PDR Plans”) into 2013. The Intervenors share the desire stated by FirstEnergy that the Public Utilities Commission of Ohio “issue a decision on the proposed plans by mid-December 2012”¹ – or prior to the year’s end.

¹ FirstEnergy Memorandum in Support at 2 (December 7, 2012).

The Intervenors note that an extension of existing programs – if necessary – is not something that they oppose. But the Intervenors would instead urge the Commission, now that all parties have complied with the expedited procedural schedule, to issue an order in these cases before December 31, 2012.

II. RESPONSE

The Companies' request for a continuation was previously and jointly proposed by several parties. FirstEnergy now requests that the Public Utilities Commission of Ohio ("PUCO" or "Commission") approve the continuation of the existing plans "until replaced by the Proposed Plans as approved by the Commission."² Further, the Companies request an expedited ruling, stating that "clarity is important for administrators and customers regarding the continuation."³ Similar sentiments were expressed by several parties at the beginning of these cases – in opposition to an expedited schedule.

In a joint objection to FirstEnergy's proposed procedural schedule, several parties noted that a better solution to the Companies' expedited request was a continuation of the existing plans:

Since both the Companies' and the Intervenors' proposed schedules might result in the Companies' inability to fully implement new plans by January 1, 2013, Intervenors also request that the Commission allow the Companies to continue running the current plans past January 1, 2013 with full cost recovery until the Companies can begin implementing the new plans.⁴

FirstEnergy responded that such a request was "premature" and that there was "no indication that the authorization sought by the coalition was necessary."⁵ FirstEnergy requested this expedited process only *after* their plans and testimony were fully developed and submitted to the

² FirstEnergy Motion at 2 (December 7, 2012).

³ *Id.*

⁴ Joint Objection filed by the Environmental Law & Policy Center, Sierra Club, Ohio Environmental Council and Natural Resources Defense Council at 3-4 (August 6, 2012).

⁵ FirstEnergy Response to Joint Objection at 5 (August 10, 2012).

Commission. Thus, the time period was not shortened for the utility Companies to prepare their case, but was subsequently abbreviated for the responding parties to develop theirs.

FirstEnergy's request for an expedited schedule was predicated on a ruling occurring prior to the end of the year.⁶ The schedule was requested by FirstEnergy in order to: "...provide the Commission with sufficient time to issue its opinion and order in this proceeding so as to avoid any potential delay in implementing the Proposed Plans on January 1, 2013,"⁷ and in order to: "...afford the Companies the opportunity to finalize contracts with potential vendors and otherwise seamlessly transition from the Existing Plans to Proposed Plans without interruption."⁸

After receiving an expedited schedule as requested for the purpose of a facilitating a 2012 Order by the Commission, the Companies now request that the existing programs continue into 2013. If such an extension of existing programs was granted back in August, it may have afforded a full procedural schedule that would have provided parties a longer period of time to develop, present and execute their responses and issues with FirstEnergy's filings. The shorter schedule resulted in less time to review the filings, develop testimony, prepare witnesses and execute case strategy. If the Commission is unable to prepare and present an Order by mid-December, the Intervenors request that these circumstances be considered in future cases, when another utility submits a request for an expedited procedural schedule predicated on a quick ruling by the Commission. It potentially disadvantages interested parties and obligates the Commission to try and perform its duties in a manner which is perhaps unrealistic or simply not possible.

⁶ FirstEnergy Application at page 13 – the last of the seven procedural requests was: "Commission's Order Issued – No later than December 12, 2012."

⁷ FirstEnergy Application at 13.

⁸ FirstEnergy Application at 14.

As illustrated in the record, the parties in these cases worked diligently to prosecute their issues within the time allowed and provide the Commission with a full presentation of items for consideration – ranging from specific program improvements to broad policy considerations. Working within the confines of an expedited schedule, parties in these cases completed their advocacy within the time allowed, and the Attorney-Examiners worked carefully to ensure the evidentiary record was complete. Therefore, the Intervenors now state their preference that the Commission focus on preparing and issuing an Order in these cases to facilitate the launch of new and modified programs in the Companies’ service territories. In the alternative, the Intervenors respectfully request the Commission grant FirstEnergy’s motion and extend existing programs for the shortest period of time necessary to issue an order that maximizes energy efficiency opportunities, forwards Ohio policies and benefits FirstEnergy customers.

There are several reasons to abbreviate any continuation of existing programs. First, the Companies have had difficulty meeting the benchmarks in previous years.⁹ A long extension means the likely possibility that FirstEnergy will not meet compliance with the 2013 energy efficiency or peak demand benchmarks.¹⁰ While the Intervenors believe that this was within FirstEnergy’s control (i.e. the Companies could have filed the proposed plans prior to July 31st), it is important now to make the positive modifications and additions to the proposed plans and facilitate commencement as soon as possible, in order to maximize the amount of time available to the Companies for compliance efforts in 2013. The Intervenors understand the proposed portfolio may require extensive modification and additions, and we encourage the Commission

⁹ See, for example, the affidavit of John Dargie in Case No. 12-1533-EL-EEC, *In the matter of the Portfolio Status Report on the status of the Companies Energy Efficiency and Peak Demand Reduction Results for the year ended December 31, 2011* (May 15, 2012).

¹⁰ See the Supplemental Testimony of Dylan Sullivan at 3, lines 9-17 (October 22, 2012).

to give appropriate consideration to changes as proposed by various parties. The Intervenors request the Commission make these changes as expeditiously as possible.

Second, it will be important for the Companies to have as much time as possible to prepare a bid into PJM Base Residual Auctions in May of 2013.¹¹ The Intervenors and others have advocated for bidding in forecast energy efficiency savings. Assuming the Commission adopts these recommendations, FirstEnergy will need time to prepare an M&V report and make other bid preparations.

Finally, in addition to the consideration of the items above, there may be additional procedural activities, such as one or more applications for rehearing. While the Intervenors are optimistic that this will be unnecessary, it is an avenue available to all parties. The sooner that an Order is issued, the sooner such activities - if conducted - may be addressed and resolved. Therefore, the Intervenors respectfully request that the Commission issue an Order in these cases as soon as possible.

III. Conclusion

The Sierra Club, Ohio Environmental Council and Citizen Power respectfully request that the Commission issue an Order before the end of the year and allow FirstEnergy sufficient time to launch energy efficiency and peak demand reduction programs.

¹¹ The 2016/2017 PJM Base Residual Auction is scheduled for May 13, 2013:
www.pjm.com/~media/...ops/...auction.../rpm-auction-schedule.ashx

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Memorandum in Response by the Sierra Club, Ohio Environmental Council and Citizen Power* has been served upon the following parties via electronic mail on December 11, 2012.

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Summary: Memorandum in Response electronically filed by Mr. Christopher J Allwein on behalf of THE SIERRA CLUB and Ohio Environmental Council and Citizen Power