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 Portfolio Plans for 2013 through 2015	)))))))	Case Nos. 12-2190-EL-POR 12-2191-EL-POR 12-2192-EL-POR

REPLY BRIEF OF ENVIRONMENTAL LAW AND POLICY CENTER AND OHIO ENVIRONMENTAL COUNCIL

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INTRODUCTION

The Public Utilities Commission of Ohio ("PUCO" or the "Commission") has before it the application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy" or "Companies") for approval of their respective updated Energy Efficiency ("EE") and Peak Demand Reduction ("PDR") Plans (the "Proposed Plans"), pursuant to Ohio Revised Code ("ORC") § 4928.66 and the Ohio Administrative Code ("OAC"). The Attorney Examiners in this case conducted hearings on October 22-27 and 30, 2012. On November 20, 2012, the parties filed initial post-hearing briefs. The Environmental Law & Policy Center ("ELPC") and the Ohio Environmental Council ("OEC") hereby reply to FirstEnergy's November 20, 2012 Post-Hearing Brief.

FirstEnergy attempts to shift the burden of proof to intervenors, overestimate its savings from lighting measures, ignores the clear consensus amongst interested parties that it bid anticipated eligible savings into the PJM Base Residual Auction ("BRA"), and continues to count transmission and distribution projects and mercantile self-direct projects in its shared savings mechanism. For the reasons below, and as outlined in ELPC and OEC's November 20, 2012 Initial Brief, ELPC and OEC request that the Commission approve FirstEnergy's Proposed Plans with modifications.

ARGUMENT

I. THE COMPANIES, NOT INTERVENING PARTIES, HAVE THE BURDEN TO DEVELOP GOOD PLANS

Despite the Companies' assertion that the Proposed Plans "comply with all statutory and regulatory requirements,"[1] they seem to ignore the fact that, pursuant to OAC 4901:1-39-04(E), the Companies "have the burden to prove that the proposed program portfolio plan is consistent with the policy of the state of Ohio as set forth in section 4928.02 of the Revised Code, and meets the requirements of section 4928.66 of the Revised Code." Yet throughout their Post-Hearing Brief the Companies attempt to shift the burden to other parties in this case.

Many parties made suggestions for improvements to the Proposed Plans throughout these proceedings and continued to do so in the initial post-hearing briefs. The Companies argue that the Commission should ignore these proposed improvements because parties did not provide "details sufficient to support the adoption of any of these recommendations."[2] By arguing that parties "provided no alternative level of savings"[3] or did not provide "a comprehensive analysis as to how the suggestions should be incorporated into the Proposed Plans, or what the market potential for such suggestions might be,"[4] FirstEnergy attempts to shift the burden of proof from the Companies to the other parties. The Commission should ignore this effort. The burden of proof is on the Companies to develop plans that "achieve energy savings." It is appropriate and valuable for intervenors to point out deficiencies in the Proposed Plans and suggest ways that the

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[1] FirstEnergy Post-Hearing Brief, at page 6.
[2] Id.
[3] Id., at page 14.
[4] Id., at page 40

Commission should order the Companies to improve. Some of these changes will require the Companies to spend several months figuring out the details of how to implement the changes, but that does not speak to whether FirstEnergy's Plans are deficient and whether these recommendations will help bring the Companies into compliance.

II. FIRSTENERGY OVERESTIMATES SAVINGS FOR LIGHTING MEASURES

FirstEnergy argues that the Commission should not require it to fix the deficiencies in its lighting programs because parties who noted the deficiencies, such as ELPC and OEC, did not also provide "estimate[s of] participation rates for any of these suggestions, or budget levels or how the TRC might be affected if the these suggestions were incorporated into the Proposed Plans."[5] As noted above and in ELPC and OEC's initial brief, the burden is on the Companies to prove that their Proposed Plans comply with the law. They have failed to meet that burden, especially with regard to how savings are calculated for lighting measures. The Companies overestimate lighting savings by including changes that would occur from the new Energy Independence and Security Act of 2007 ("EISA") standards, and by overestimating installation rates of compact fluorescent lamps ("CFLs") from energy efficiency kits. The Commission should order the Companies to spend the first months of portfolio plan implementation fixing the deficiencies so that the portfolios meet the Companies' obligation under Ohio law.

A. The Commission Should Require the Companies to Recalculate Their Savings Estimates for Screw-In Light Bulbs, Using EISA Compliant CFLs as the Baseline

FirstEnergy asserts that it "conservatively included EISA impacts for all CFLs . . . for the entire Plan Period" and that the savings estimate is "a constant value that represents the full

[5] Id.

reduction of savings for all CFLs for the Plan Period."[6] The Companies claim that this is a conservative estimate because even though "EISA reduces the baseline for a 60W incandescent lamp to 43 watts effective January 1, 2014," they will count savings as though the new standard begins January 1, 2013, which will effectively reduce the amount of savings the Companies count in the first year of the programs.[7] The problem is that this savings estimate is still too high, especially in 2014 and 2015 when the standard becomes law, because the EISA standard should not be the new baseline. As explained in detail in the ELPC and OEC's Initial Brief,[8] Company Witness Miller admitted that the only EISA-compliant bulbs currently available to replace the 60 watt incandescent bulb is the 15 watt CFL or more efficient LEDs, and that he did not know if, when, or in what quantities less efficient EISA-compliant halogen bulbs will be available to customers.[9] When asked by Mr. Kelter whether Witness Miller could "anticipate that there will be some 42- or 43-watt bulbs for sale that are 60-watt equivalent," Witness Miller could only answer that it was "a fair assumption."[10] The Companies should not base their savings estimates on theoretical technologies for which they have no data on availability to customers. The baseline, therefore, should not be set at 43 watts, but at 15 watts, since that is what customers will actually be buying to replace their 60 watt incandescent bulbs. The Commission should not allow FirstEnergy to spend customer money to count fictitious savings from non-existent EISA compliant 42 watt bulbs.

The Commission should order the Companies to recalculate their savings estimates for screw-in energy efficient bulbs in light of the new EISA standards and the evidence in the record

[6] FirstEnergy, Post-Hearing Brief, at page 13.
[7] Id., at page 13, footnote 55.
[8] Environmental Law & Policy Center and Ohio Environmental Council, Initial Brief, at pages 21-23.
[9] Tr. Vol. 6, at pages 1069-70 (October 30, 2012).
[10] Id., at page 1070, lines 5-8.

regarding the market in FirstEnergy's territory over the next three years. The baseline should be set not by the EISA standard, but by what will actually be available to customers in the market.

B. The Companies Should Not Discount Standard T-8 Linear Fluorescent Lighting

FirstEnergy proposes to continue discounting standard T-8 lighting that replaces less efficient T-12 lighting despite the fact that as of July 14, 2012, EISA prohibits the manufacture of T-12 lighting.[11] As with the EISA-compliant CFLs discussed above and as detailed in ELPC and OEC's Initial Brief,[12] the Companies are seeking to gin up fictitious savings by discounting products that customers would already purchase, rather than incentivizing customers to take advantage of more efficient technologies that they may not otherwise purchase. FirstEnergy attempts to justify continuing to incentivize standard T-8s by arguing that T-12s will remain on the market despite EISA's ban on manufacturing and that customer choice is important. Neither of these reasons is compelling.[13]

First, Company Witness Miller testified about a "likelihood" that T-12s will remain on the market,[14] but did not cite any market data to support this claim. Since the ban on manufacturing will have been in effect for almost six months by the time the Proposed Plans are set to begin, it is unreasonable to just assume that most customers will have access to T-12s through 2015, when the Proposed Plans end.

Second, customer choice has nothing to do with which measures the Companies should incentivize. Customers are free to purchase standard T-8s if they choose, but that does not mean that the Companies should spend ratepayer money to subsidize their purchase. Those funds

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[11] FirstEnergy, Post-Hearing Brief, at pages 41-42.
[12] Environmental Law & Policy Center and Ohio Environmental Council, Initial Brief, at pages 23-25.
[13] FirstEnergy, Post-Hearing Brief, at page 41.
[14] Company Exhibit 21, Rebuttal Testimony of Edward C. Miller, at page 5, lines 1-3.

would generate much greater savings from more efficient alternatives (high performance T-8s are 46% more efficient than standard T-8s) for a comparatively small price premium (high performance T-8s are only 22% more expensive than standard T-8s)[15] over the life of the measure (T-8s have a 15-year lifespan).[16] Customers can install whichever bulbs are available, but that does not mean that the Companies should help them pay for it.

The EISA standards have eliminated T-12s from the market. Paying customers to install the least efficient product available, standard T-8s, is a bad use of ratepayer money and should not count toward the Companies savings targets. The Commission should order the Companies to adjust their plans so that they only incentivize upgrades to, at a minimum, high performance T-8s.

C. The Commission Should Not Approve the Companies' Proposed Standard and All-Electric Energy Efficiency Kits

FirstEnergy intends to send free energy efficiency kits to customers in order to meet 32% and 36% of its residential and small commercial savings goals respectively.[17] These kits include a variety of measures, from furnace whistles to shower heads,[18] but according to Company Witness Miller, 86% of the energy savings comes from the included CFLs.[19] As explained in detail ELPC and OEC's Initial Brief, with the exception of the school kits, the Commission should reject the proposed energy efficiency kits because they circumvent normal market channels and have very low installations rates that are overstated by the Companies.[20]

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[15] Sierra Club Exhibit 1, Direct Testimony of Jeffrey Loiter, at page 12.
[16] Tr. Vol. 6, at page 1075, lines 1-5 (October 30, 2012).
[17] Sierra Club Exhibit 2, Direct Testimony of Glenn Reed at 5, lines 17-18.
[18] FirstEnergy, Post-Hearing Brief, at page 40.
[19] Tr. Vol. 3, at page 418, lines 8-19 (October 24, 2012).
[20] Environmental Law & Policy Center and Ohio Environmental Council, Initial Brief, at pages 26-29.

The Companies used an inflated installation rate of 0.86 for modeling savings from CFLs they include in the kits. The 0.86 rate comes from the Draft Ohio Technical Resource Manual ("TRM"), but as noted in ELPC and OEC's Initial Brief, that installation rate applies to CFLs purchased by customers at retail rather than to bulbs mailed directly to customers for free. While FirstEnergy states in its Post-Hearing Brief that the 0.86 projected in-service rate "closely resembles the results achieved by the Companies' sister utilities in other jurisdictions,"[21] Company Witness Miller testified that kits used in other jurisdictions had just a 0.70 installation rate three months after customers received them.[22] Because the kits are being proposed on such a massive scale, this 0.16 difference is substantial. Although the Companies point to an observed 0.82 in-service rate one year after receipt of the kits in other jurisdictions,[23] Company Witness Miller, in response to a question from Attorney Examiner Price, conceded that FirstEnergy does not "have any information as to whether people immediately replace [bulbs] or just put [kit CFLs] in the closet and as incandescent bulbs fail replace them with CFLs."[24] Witness Miller agreed with Attorney Examiner Price's conclusion that, "you really can't extrapolate from the information in two or three months [because] people usually have two or three incandescent bulbs fail anyway."[25]

The Companies overstate the benefits of the kits. The Commission should order the Companies to implement other, more successful programs such as those suggested by ELPC and OEC and other parties, and reallocate the proposed budget for kits to other lighting programs that engage existing market channels.

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[21] FirstEnergy, Post-Hearing Brief, at page 13.
[22] Tr. Vol. 6, at page 1072-73 (October 30, 2012).
[23] FirstEnergy, Post-Hearing Brief, at page 15.
[24] Tr. Vol. 6, at page 1073, lines 22-25. (October 30, 2012).
[25] Id., at page 1074, lines 5-9 (October 30, 2012).

III. MOST PARTIES AGREE THAT FIRSTENERGY SHOULD BID ANTICIPATED ELIGIBLE SAVINGS INTO THE PJM BASE RESIDUAL AUCTION

FirstEnergy proposes to bid only "installed energy efficiency resources" into the BRA,[26] arguing that this strategy "appropriately manages risk."[27] Company Witness Mikkelsen argued there is not a sufficient "risk protection mechanism to insulate each of the Companies (or their customers)" from the potential financial harm of not delivering cleared resources.[28] Most of the parties, including PUCO Staff and the Office of the Ohio Consumers' Counsel ("OCC"), are willing to take on this risk in exchange for the substantial benefits of bidding anticipated eligible resources into the BRA.[29] As PUCO Staff explained, "FirstEnergy's claims that it will not bid planned resources into PJM because it is allegedly too risky . . . carries little weight."[30] Further, OCC also recommends that "customers should assume FirstEnergy's risk of PJM penalties for any EE & [load management] capacity obligations cleared in the PJM BRA, where FirstEnergy has been prudent managing the Utilities' Portfolio and used its best effort to deliver the capacity savings."[31] FirstEnergy's concern with risk to customers, therefore, is out of touch with the fact that its customers are actually willing to accept those risks in exchange for the substantial benefits of bidding more resources into the BRA.

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[26] FirstEnergy, Post-Hearing Brief, at page 28.
[27] Id., at page 33.
[28] Company Exhibit 23, Rebuttal Testimony of Eileen M. Mikkelsen, at page 4, lines 19-21.
[29] Office of the Ohio Consumers' Counsel, Initial Post-Hearing Brief, at pages 17-18; PUCO Staff, Initial Post-Hearing Brief, at page 10.
[30] PUCO Staff, Initial Post-Hearing Brief, at page 10.
[31] Office of the Ohio Consumers' Counsel, Initial Post-Hearing Brief, at page 22.

IV. THE COMMISSION SHOULD FIND THAT NOTICE ON THE COMPANIES' WEBSITES IS ENOUGH TO TRANSFER OWNERSHIP OF ENERGY CREDITS TO THE COMPANIES FOR THE PURPOSES OF BIDDING INTO THE BRA

In FirstEnergy's recent ESP 3 rate case, Case No. 12-1230, the Commission ordered the utilities to "take steps to amend their energy efficiency programs to ensure that customers, knowingly and as a condition of participation in the programs, tender ownership rights of the energy efficiency resources to the Companies" for the purpose of bidding those resources into the BRA.[32] FirstEnergy is concerned about how to secure ownership rights from certain "upstream" financial incentives, such as the point-of-sale discount of CFLs, where the customers will not be able to provide consent through standard terms and conditions.[33] The Companies propose to secure ownership of these savings by placing notice on the Companies' websites.[34] ELPC and OEC support the Companies' proposal and request that the Commission find that notice via the websites is sufficient to transfer ownership of the savings.

V. THE COMMISSION SHOULD APPROVE FIRSTENERGY'S SHARED SAVINGS INCENTIVE WITH MODIFICATIONS

A. The Commission Should Exclude Transmission and Distribution ("T&D") Projects from the Proposed Shared Savings Plan

FirstEnergy proposes to count incremental energy efficiency savings from T&D projects that are "planned and then modified to provide energy efficiency savings."[35] As discussed in detail in ELPC and OEC's Initial Brief, FirstEnergy submitted no evidence that in the course in the next three years it has any plans to make T&D improvements for the primary purpose of

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[32] Case No. 12-1230-EL-SSO, Opinion and Order, at 38 (July 18, 2012).
[33] FirstEnergy, Post-Hearing Brief, at page 29.
[34] Id.
[35] FirstEnergy, Post-Hearing Brief, at page 25.

improving energy efficiency.[36] Without evidence that there are projects that will actually exist, determining post-hoc which projects provide savings is not feasible.

The Commission should also consider that, as intervenor Nucor points out in its Initial Brief, T&D projects “are generally capitalized and receive a return on the utility's investment in distribution rates cases.”[37] Thus, there is substantial risk of overcompensation. This risk, coupled with the lack of support in the record that the Companies have any intention of building T&D projects for the purpose of generating energy efficiency savings, means that the Commission should completely exclude T&D projects from the proposed shared savings plan.

B. The Commission Should Exclude Savings From Mercantile Self-Direct Projects

FirstEnergy proposes to include savings from its Mercantile Self-Direct Program in its shared savings calculation, arguing that “the only distinction” between mercantile customers who participate in the C&I Equipment Program, receive a rebate, or receive an exemption through the Mercantile Self-Direct Program is the incentive, not the savings generated.[38] In reality, self-direct projects differ substantially from other projects in that they are funded, initiated, and implemented by the customer, with little investment or input of the utility.

As the Industrial End Users-Ohio points out, "[t]he right of a mercantile customer to request an exemption”[39] from the efficiency rider is a creation of Ohio law and not created by FirstEnergy’s Portfolio Plan, and therefore, self-direct customers “are opting out and not participating in FirstEnergy’s Portfolio Plan.”[40] Nucor Steel agrees and argues in its Initial Brief that “savings from mercantile self-direct programs are generated by projects initiated and

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36 Environmental Law & Policy Center and Ohio Environmental Council, Initial Brief, at page 38.
37 Nucor Steel Marion, Inc., Initial Brief, at page 20.
38 FirstEnergy, Post-Hearing Brief, at page 25.
39 Industrial End Users-Ohio, Post Hearing Brief, at page 3.
40 Id., at page 9.

directed by mercantile customers themselves as opposed to FirstEnergy, and therefore should not be included as savings for purposes of the shared savings mechanism."[41] Recognizing this important distinction, the Commission approved AEP's proposed shared savings incentive with the specific and complete exclusion of savings derived from mercantile customer self-direct projects.[42] The Commission should similarly exclude savings from the Mercantile Self-Direct Program from FirstEnergy's shared savings mechanism.

CONCLUSION

FirstEnergy has not met its burden of proof to demonstrate that its Proposed Plans comply with Ohio law. Its attempts to shift the burden of proof to intervenors, overestimate its savings from lighting measures, ignore the clear consensus amongst interested parties that it bid anticipated eligible savings into the BRA, and continue to count T&D and mercantile self-direct projects in its shared savings mechanism should be denied by the Commission. For the above reasons and as outlined in detail in ELPC and OEC's November 20, 2012 Initial Brief, ELPC and OEC request that the Commission approve FirstEnergy's Proposed Plans with modifications.

Respectfully submitted,

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[41] Nucor Steel Marion, Inc., Initial Brief, at page 20.
[42] Case No. 11-5568-EL-POR, et al., Finding and Order, at pages 8-9 (March 21, 2012).

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Reply Brief*, submitted on behalf of the Environmental Law & Policy Center and Ohio Environmental Council, was served by electronic mail upon the following Parties of Record this 30th day of November, 2012.

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