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

REPLY BRIEF OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY IN SUPPORT OF THEIR ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAM PORTFOLIO PLANS FOR 2013 THROUGH 2015

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INTRODUCTION

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "Companies") submit their reply brief in support of their Energy Efficiency and Peak Demand Reduction Portfolio Plans for the Years 2013 through 2015 (the "Proposed Plans" or "Plans"), which responds to issues raised by the Commission Staff ("Staff"); the Office of the Ohio Consumers' Counsel ("OCC"); Ohio Partners for Affordable Energy ("OPAE"); Natural Resources Defense Council, Sierra Club and Citizen Power (collectively, "NRDC"); Environmental Law and Policy Center and Ohio Environmental Council ("ELPC/OEC"); EnerNOC, Inc. ("EnerNOC"); Advanced Energy Economy Ohio ("AEEO"); Ohio Hospital Association ("OHA"); OMA Energy Group ("OMAEG"); Industrial Energy Users-Ohio ("IEU-Ohio"); Ohio Energy Group ("OEG"); and Nucor Steel Marion, Inc. ("Nucor").

The purpose of this proceeding is to determine whether the Proposed Plans meet the requirements of Section 4928.66, Ohio Revised Code, and the Commission's rules related thereto. As explained in the Companies' Post-Hearing Brief, the Proposed Plans do both. They are designed to achieve the statutory benchmarks as set forth in R.C. § 4928.66(A)(1)(a) and (b) for the period January 1, 2013 through December 31, 2015 ("Plan Period"). They include a variety of programs, offering at least one to each customer segment. The portfolio of programs as a whole passes the TRC test, having "one of the most cost-effective ex-ante analyses of all the Ohio distribution utilities."[1] The Proposed Plans also include all of the other details required by O.A.C. 4901:1-39-04, including descriptions of programs, the Companies' planning process, their reporting and tracking systems, management structure, implementation strategies, and

[1] Staff Exh. 1, Prefiled Testimony of Gregory C. Scheck ("Scheck Testimony"), p. 3.

evaluation, measurement and verification ("EM&V") activities. Where recommendations have been made that are consistent with plan objectives, the Companies have willingly incorporated them into the Proposed Plans.[2]

Various parties complain about aspects of the Proposed Plans submitted by the Companies, yet few provided constructive solutions. Many of these same parties recommended modifications or additions to the program portfolio, but virtually none of these suggestions were supported by the evidence. For example, NRDC and ELPC/OEC criticize the Companies' energy efficiency kits as, essentially, being *too effective*, while putting forward a wish list of programs on which they believe the Companies should be spending unspecified amounts of money to achieve unspecified levels of benefits for an unspecified number of customers. None of the recommendations made by any of the parties are supported by a total resource cost ("TRC") test on either an individual program basis or on the resultant revised portfolio of programs as required by the Commission's rules set forth in O.A.C. 4901:1-39-01 *et seq.* ("Rules"). Similarly, OEG and Nucor criticize the impact that the existing rate design of the DSE2 charge has on large industrial customers and suggest alternatives for the Commission's consideration, but they lack any analysis of the impact those alternatives would have on customers.

In sum, while many are quick to complain about certain aspects of the Proposed Plans, few have offered defensible solutions. The only programs and plans before the Commission that are supported by the evidentiary record and comply with all of the statutory and regulatory requirements are those presented and subsequently modified by the Companies. Accordingly,

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[2] *See* Company Exh. 21, Rebuttal Testimony of Edward C. Miller ("Miller Rebuttal"), pp. 5-8 (incorporating ENERGY STAR benchmarking and audits for hospitals and a dedicated sub-program for data centers).

the Companies respectfully ask that the Plans as modified be approved no later than mid-December, 2012, so that the Companies may begin their implementation starting in 2013.

ARGUMENT

I. THE PLANS SHOULD BE APPROVED AS PROPOSED.

While there are several issues that are not specific to the Energy Efficiency ("EE") and Peak Demand Reduction ("PDR") programs in the Proposed Plans, which issues are addressed *infra* in Section II, the majority of the issues raised by the various intervening parties involve: (i) the Proposed Plans' compliance with the Commission's Rules; (ii) the design of the EE/PDR programs and measures in the Proposed Plans; (iii) the Companies' shared savings proposal; and (iv) the Companies' collaborative process. None of the parties have established valid grounds for not approving the Proposed Plans, or any part thereof, as addressed below.

A. The Plans Comply with Ohio Law and Commission Rules.

Consistent with the Commission's Rules, the Companies developed Proposed Plans that set forth their strategy for achieving the EE/PDR benchmarks in Section 4928.66, Ohio Revised Code, during the Plan Period.[3] As explained in the Companies' Post-Hearing Brief, the Plans are designed to achieve the statutory benchmarks during the Plan Period;[4] passes the TRC on a total portfolio basis;[5] and include all components required by the Commission's Rules.[6]

However, NRDC invents "incremental" benchmarks that would apply separate and apart from the cumulative benchmarks required by R.C. § 4928.66 and then complains that the

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[3] *See* Rule 4901:1-39-04.

[4] Companies' Post-Hearing Brief ("Co. Br."), pp. 8-15.

[5] *Id.*, pp. 15-16.

[6] *Id.*, pp. 16-21.

Proposed Plans are not designed to meet these fictional "incremental" benchmarks.[7] NRDC also criticizes the Market Potential Study submitted by the Companies,[8] while NRDC and other parties criticize the Companies purported "overreliance" on energy efficiency kits and under-reliance on other programs favored by their witnesses.[9] As explained below, none of these arguments are valid or justify the rejection of the Plans.

1. The Plans are designed to meet the statutory benchmarks during the Plan Period.

Under Section 4928.66(A)(1)(a) of the Ohio Revised Code, each electric distribution utility ("EDU") was required to implement energy efficiency programs for 2009 that achieved energy savings equivalent to at least 0.3% of its annual average kilowatt-hour sales during the preceding three calendar years. This savings requirement increases, using a trailing three-year average of sales, "to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, one per cent from 2014 to 2018, and two per cent each year thereafter, achieving a cumulative, annual energy savings in excess of twenty-two per cent by the end of 2025." As the Commission has stated, "[t]hese annual benchmarks are cumulative" and, using 2015 as an example, require the Companies to reduce their normalized kilowatt hour sales by more than 5% (actually 5.2%) by 2015.[10] The Proposed Plans are designed to do exactly this with respect to the energy efficiency benchmarks,[11] and no party has shown otherwise.

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[7] NRDC Brief, pp. 15-17.

[8] NRDC Brief, pp. 7-14.

[9] NRDC Brief, pp. 28-57; ELPC/OEC Brief, pp. 20-35; OPAE Brief, pp. 2-15.

[10] *In the matter of the Commission's Review of the Participation of The Cleveland Electric Illuminating Company, the Ohio Edison Company, and The Toledo Edison Company in the May 2012 PJM Reliability Pricing Model Auction*, Case No. 12-814-EL-UNC, Entry at 2 (Feb. 9, 2012) ("12-814 Entry"). *See also In the Matter of the Application of Ohio Edison Company, The Cleveland Electric*

NRDC, however, complains that the Proposed Plans are not designed to provide the additional amount of energy savings that NRDC believes should be required to be provided each year.[12] Thus, NRDC wants the Commission to adopt an extra-statutory requirement by layering on top of the cumulative benchmarks provided by law an additional test of an incremental annual benchmark. If adopted, NRDC's new set of benchmarks would supersede the statutory ones. Take, for example, the statutory requirement to reduce normalized kilowatt hour sales by 5.2% by 2015. Starting in 2012, the cumulative energy efficiency benchmark is 2.3%. If an EDU over-complies in 2012 and produces energy efficiency savings of 2.5%, this does not affect the cumulative benchmarks for 2013, 2014 and 2015 of 3.2%, 4.2% and 5.2%, respectively. However, NRDC's incremental benchmark proposal would re-set each year using the prior year's results – the 2.5% savings in our example – as a baseline. Thus, to satisfy NRDC's incremental benchmarks, an EDU would need to achieve savings of an additional 0.9% in 2013 and 1% in 2014 and 2015, with the result being that the EDU's benchmarks have increased to 3.4%, 4.4% and 5.4% for 2013, 2014 and 2015, respectively. If the EDU over-complies again in 2013, say by achieving 3.6% savings, the goal posts are changed again even further ahead of the cumulative statutory benchmarks – the EDU's benchmarks would be reset to 4.6% and 5.6% in 2014 and 2015. The "banked" amount in that 3.6% savings (the 0.4% above the cumulative

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Illuminating Company, and The Toledo Edison Company to Amend Their Energy Efficiency Benchmarks, Case No. 09-1004-EL-EEC, et al., Finding and Order at 4 ("FirstEnergy should meet the cumulative energy savings mandated by the statute.").

[11] *See* Company Exh. 22, Rebuttal Testimony of Eren G. Demiray ("Demiray Rebuttal"), pp. 3-5 and Exh. EGD-R1. No party has contested that the Proposed Plans are designed to meet the PDR benchmarks.

[12] NRDC Brief, pp. 15-18.

benchmark of 3.2%) would be rendered less than worthless, since it would actually increase the incremental targets.[13]

NRDC's proposal is unlawful and cannot be implemented as part of a portfolio plan case. Ohio law is simple – it provides a cumulative target of 22% by the end of 2025, with annual stepping stones along the way that lead Ohio's EDUs to that 22% target. NRDC proposes revising Ohio law to annually compound energy efficiency requirements so that the energy efficiency savings requirements are significantly increased above those levels currently set forth in R.C. § 4928.66, which of course is not permitted in a portfolio plan case. If NRDC seeks to pursue significant increases in energy efficiency requirements, and the attendant significant increases in cost imposed on customers, then it must pursue those desires in the General Assembly.

NRDC's proposal is beyond the scope of Ohio law and, thus, the Commission can and should reject it.

2. The Companies' Market Potential Study is valid.

In accordance with Rule 4901:1-39-03(A), Ohio Administrative Code, the Companies commissioned a market potential study ("MPS") through Black & Veatch for the period 2012 through 2026 ("Scope Period"), with an emphasis on the achievable potential during the Plan Period.[14] This study was included as Appendix D to each of the Companies' Proposed Plans. Black and Veatch also prepared the market potential study as part of the development of the Companies' portfolio plans that are currently in existence ("Existing Plans").[15] NRDC

[13] *See* Tr. Vol. VI, pp. 1103-06 (Companies Witness Demiray discussion of banked savings). *See also id.*, pp. 1101-03 (discussing invalidity of fictional incremental benchmarks).

[14] Company Exh. 3, Direct Testimony of George L. Fitzpatrick ("Fitzpatrick Testimony"), p. 6.

[15] Company Exh. 4, Direct Testimony of Edward C. Miller ("Miller Testimony"), p. 6.

challenges two aspects of the MPS – the determination of achievable potential and the values used for avoided costs.[16] Staff challenges only the Companies' value included in the MPS for avoided distribution costs.[17] These issues are discussed below.

a. Achievable potential

NRDC acknowledges that the Companies' MPS indicates sufficient potential during the Plan Period and, therefore, it does not recommend that a new MPS be done for the Proposed Plans.[18] While this should be dispositive of the issue, NRDC goes further and makes several recommendations based on its criticism of Black and Veatch's use of customer surveys.[19] NRDC suggests that, instead of customer surveys, Black and Veatch should have used standardized curves and estimates based on national statistics with virtually no relevance to Ohioan's perceptions on energy efficiency. As explained below, NRDC's criticisms of Black and Veatch's use of customer surveys are unfounded and their recommendations are without merit. Accordingly, they should be rejected.

As a preliminary matter, NRDC misleads this Commission by trying to characterize the approach taken by Black and Veatch as being limited to "asking customers their interest and intentions regarding end-use specific – but otherwise undefined – energy efficiency programs."[20] Nothing could be further from the truth. Section 3.0 of the MPS describes the process utilized to

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[16] NRDC Brief, pp. 7-13.

[17] Staff Brief, pp. 15-16.

[18] NRDC Brief, p. 9. Although NRDC does not suggest withdrawing the MPS, it claims that its perceived flaws underlying the MPS "leave opportunities on the table" and, as a result, "the Companies are understating the amount of cost-effective energy efficiency they could implement over the Plan [P]eriod." NRDC Brief, p. 14. This ignores both R.C. § 4928.02 and the Commission Rules, pursuant to which the Proposed Plans need be designed only to meet the statutory energy efficiency and peak demand reduction benchmarks. *See* O.A.C. 4901:1-39-04(A).

[19] NRDC Brief, pp. 8-10.

[20] *Id.*, p. 8.

develop projected market potential during the Scope Period and Section 3.2 indicates the various factors considered when developing model inputs. In addition to utilizing customer survey results, the Black and Veatch model incorporated factors such as customer usage data provided by the Companies, the California Deemed Energy Database (DEER), ACEEE Market Potential Study for Ohio, Department of Energy Quick Energy Simulation Tool (eQUEST), the Black and Veatch Energy Efficiency Technologies Database, and the draft Ohio Technical Reference Manual ("TRM"). Cost and savings data were considered from these sources for non-weather sensitive measures, while data for weather sensitive measures were simulated through eQUEST, and a regression analysis on heating and cooling degree days was used to adjust data from other sources to Ohio circumstances.[21]

As Mr. Fitzpatrick explained, Black and Veatch generally utilized three major sources of information when developing the achievable potential for energy efficiency during the Scope Period. In addition to looking at customer survey results, Black and Veatch also considered recent program results experienced by the Companies, their sister utilities in Pennsylvania, and AEP Ohio.[22] These results were discussed with the Companies' development team and their EM&V contractor.[23] Black and Veatch also looked at program results in the states of Indiana, Michigan, Illinois, Pennsylvania and Maryland, as well as price elasticity impacts and climatology in several of these states.[24] They looked at appliance life cycle statistics, appliance saturation surveys, and load research data[25] and utilized market saturation and market

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[21] MPS, Section 3.2.

[22] Tr. Vol. II, pp. 171, 173, 183.

[23] *Id*., p. 171.

[24] *Id*., pp. 164, 173, 206, 183-184.

[25] *Id*., pp. 171, 219.

substitution curves.[26] Based upon this information, and a distribution analysis, a life cycle was established for each measure and the deployment of each measure was customized based on the nature of the measure, how people responded in the surveys and appliance turnover.[27] Anomalies in data were investigated and programs were weighted based on their success, launch date and similarities between locations.[28] All of this information was incorporated into the modeling of the achievable potential.[29] None of this work, however, was done in a vacuum. Rather, it was an iterative process with information sharing among Black and Veatch, the Companies and the Companies' EM&V contractor.[30]

NRDC urges the Commission to reject the use of customer surveys, instead opting for "standard, well-vetted methodologies" in the next market potential study, because the use of surveys "has only been employed for FirstEnergy and is not peer-reviewed."[31] Yet, NRDC's assessment and condemnation of the use of the surveys was done by someone who had not even bothered to read the survey questions.[32] Moreover, as already explained, the use of surveys is only one aspect of Black and Veatch's approach to developing achievable potential. It also uses all of the standard, well-vetted methodologies described above. However, as Mr. Fitzpatrick explained, these surveys are a valuable resource, not only as a check on the projected results from the market potential modeling, but also as a barometer on how customers in the

[26] *Id*., pp. at 177, 218-20.
[27] *Id*., pp. 167-169.
[28] *Id*., p. 174.
[29] *Id*., pp. 167-168.
[30] *Id*., pp. 175, 219.
[31] NRDC Brief, pp. 8-9, 10.
[32] Tr. Vol. IV, p. 719.

Companies' service territories perceive energy efficiency at that time.[33] Based upon various survey work that Mr. Fitzpatrick has done for both the Companies and their sister utilities in Pennsylvania, he finds that the Companies' customers are very knowledgeable and well informed on energy efficiency related issues in general and more specifically on their end uses, age of appliances, cost of electricity and impacts energy efficiency might have on the environment.[34] And it is these same customers, after all, that will have to pay for these energy efficiency programs, not NRDC. The surveys are very detailed, containing the potential for hundreds of responses to the survey questions[35] and are statistically valid, with a 95 percent confidence level.[36] The results of these surveys have a high correlation with assumed appliance lives and past program performance. In other words, the survey results are very consistent with projections generated through the models.[37]

Instead of using surveys, NRDC suggests comparisons to states with programs that "save a lot of energy."[38] In NRDC Witness Swisher's testimony, he used Vermont and Massachusetts as examples of such states.[39] However, as Mr. Fitzpatrick explained, both of these states are a bad choice for such a comparison[40] because the climate, rate levels, ground water temperatures and latitude and longitude – all of which affect program results – differ from those found in the

[33] Tr. Vol. II, pp. 158, 161.

[34] *Id*., pp. 159, 177.

[35] *Id*., pp. 159, 181.

[36] *Id*., p. 162.

[37] *Id*., pp. 159-160.

[38] *Id*., p. 9.

[39] NRDC Exh. 1, Direct Testimony of Joel Swisher ("Swisher Testimony"), p. 7. He also referred to undisclosed states in the Pacific Northwest region of the country.

[40] Tr. Vol. II, p. 205.

Companies' service territories.[41] Vermont has approximately 7400 heating degree days to Ohio's 5700, and has approximately half of the cooling degree days as those found in Ohio.[42] This affects end use saturation and mix.[43] Similarly, Vermont's electricity rates are approximately 30-40 percent higher than those of the Companies, thus, impacting market participation rates.[44] Ground water temperatures also affect program mix and participation, while the amount of savings from lighting can be impacted by latitude and longitude.[45] Furthermore, programs in Vermont and Massachusetts have been in place for many years, again affecting participation rates and market transformation.[46] Indeed, when programs found in states in proximity to Ohio with comparable climate and prices were reviewed and compared, the achievable potential found in those states was quite consistent with that projected by Black and Veatch.[47] While not relevant for purposes of evaluating the achievable potential during the Plan Period, the projections found in the MPS for later years of the Scope Period are also consistent with findings presented by AEP Ohio and ACEEE.[48]

In sum, for those who heard Mr. Fitzpatrick testify during the evidentiary hearing, it was quite obvious that he was extremely knowledgeable and competent in the development of the MPS. Moreover, based upon the foregoing, there is no evidence that the methodology used to determine achievable potential included in the MPS is flawed or that NRDC's recommendations

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[41] *Id.*, pp. 161-163.

[42] *Id.*, p. 162.

[43] *Id.*, p. 204.

[44] *Id.*, p. 205.

[45] *Id.*, p. 163.

[46] Swisher Testimony, p. 7.

[47] Tr. Vol. II, p. 206. Based on ACEEE, achievable potential in Michigan and Pennsylvania was 0.4 percent, while Illinois reported 0.8 percent, as compared to 0.5 percent as projected in the MPS. *Id*.

[48] Tr. Vol. II, p. 233; Tr. Vol. VI, pp. 1052-1053.

for the next portfolio plan period are necessary. In particular, while the Companies will continue to review future MPS results with the Collaborative, the Companies should not be forced to handicap future plan development by making all future MPS methodologies subject to Collaborative veto. The Companies cannot risk the success of their programs on the whims of NRDC consultants who lack a working knowledge of Ohio.[49] NRDC's recommendations would result in the MPS having less visibility into the minds and behaviors of Ohio customers, which is a remarkably unreasonable stance for NRDC to take. Accordingly, each of NRDC's recommendations should be rejected.

b. Avoided costs

NRDC also challenges the avoided costs included in the MPS, claiming that the avoided costs utilized by the Companies are too low.[50] Again, however, NRDC is not recommending that the Proposed Plans be withdrawn or that new analyses be performed using different avoided cost values.[51] Moreover, as noted in the Companies' Post Hearing Brief,[52] even assuming for the sake of argument that NRDC Witness Reed's observations are correct (which they are not), given that the Proposed Plans already pass the TRC test using the avoided cost values utilized by the Companies, adopting NRDC's values adds nothing to the process since they only serve to confirm again that the Proposed Plans are cost effective. Therefore, NRDC's criticisms with

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[49] The Commission has previously indicated that the Collaborative is a forum for the sharing of ideas and data, not a forum where consensus is required before the Companies can proceed to fulfill their statutory obligations. *In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison 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*, Case No. 09-1947-EL-POR et al., Opinion and Order at 20 (Mar. 23, 2011).

[50] NRDC Brief, pp. 10-13. *See also* Tr. Vol. IV, pp. 727-728.

[51] NRDC Brief, p. 13.

[52] Co. Br., p. 17.

respect to the avoided cost values used in the MPS are moot for purposes of evaluating the Proposed Plans.

Both NRDC and Staff make recommendations regarding how avoided cost values should be determined for purposes of the next plan cycle and not for purposes of the Proposed Plans. As Mr. Fitzpatrick noted, however, conditions change, and another market potential study will be performed during the next planning period.[53] Market transparency and market information will continue to evolve. Given that the next planning cycle is several years off, it is premature for the Commission to dictate how the Companies should determine avoided costs, or what studies are necessary in order to meet their burden of proof in the next portfolio plan case. NRDC will, of course, be able to raise its concerns through the Collaborative and in the next plan proceeding. Accordingly the Commission should refrain from adopting any recommendations involving these issues at this time.

In sum, no party recommends rejection of the MPS or its results for purposes of this proceeding. Instead, NRDC makes unnecessary recommendations involving the process used to develop achievable potential in the next market potential study, and both NRDC and Staff make premature recommendations involving the avoided costs included in that same study. Accordingly, all recommendations involving the development of a market potential study three years from now should be rejected and addressed during the proceeding in which the next market potential study is presented.

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[53] Tr. Vol. II, p. 203.

3. Ohio law authorizes the counting of T&D project savings and "as found" savings from the Mercantile Customer Program.

ELPC/OEC improperly requests that the Commission prohibit the Companies from counting in the Proposed Plans any savings produced by their Transmission and Distribution ("T&D") Improvement Program or any "as found" savings from the Mercantile Customer Program.[54] In both instances, the Companies' approach is consistent with Ohio law.

a. T&D Projects

The Proposed Plans continue the Companies' existing practice of initiating separate dockets for T&D programs, which are examined by Staff, open to interested parties for comment and reviewed by the Commission.[55] The T&D Improvement Program is a continuation of the existing program and a component of the Proposed Plans because R.C. § 4928.66(A)(2)(d) expressly authorizes EDUs to satisfy the statutory benchmarks using, in part, "transmission and distribution infrastructure improvements that reduce line losses." Contrary to ELPC/OEC's argument,[56] this express authorization is not limited by R.C. § 4928.66 or the Commission's Rules to only those projects that are undertaken primarily for energy efficiency or demand reduction purposes. In fact, the rule relied upon by ELPC/OEC has nothing to do with the counting of T&D projects for purposes of benchmark compliance.[57] ELPC/OEC's flawed interpretation of that rule is contrary to the plain language of R.C. § 4928.66(A)(2)(d) and, thus, both unreasonable and unlawful. As noted in Companies Witness Miller's testimony, the T&D Improvement Program is included as part of the Proposed Plans as part of the Companies'

[54] ELPC/OEC Brief, pp. 31-35.

[55] *See*, *e.g.*, Case Nos. 09-951-EL-EEC, *et seq.*, 10-3023-EL-EEC, *et seq.*, 12-155-EL-EEC.

[56] ELPC/OEC Brief, p. 31.

[57] O.A.C. 4901:1-39-07(A)(1) deals with the allocation of T&D project costs for purposes of cost recovery through an approved rate adjustment mechanism, such as the Companies' DSE2 charge.

compliance strategy, but no further approval is necessary given that it is permitted by statute and has already been approved by the Commission.[58]

ELPC/OEC's reliance on O.A.C. 4901:1-39-03 also is unreasonable given that the T&D projects are developed over time as part of the Companies' process for budgeting and completing T&D improvements. The energy savings for these projects are not known until the projects are developed. This is why, as noted above, the Companies must separately file for approval of T&D project savings.[59] The Companies do not have to demonstrate what projects they are undertaking under this plan proceeding because those projects will be developed and reviewed in separate dockets as they are completed. ELPC/OEC's arguments are based on obvious misinterpretations of Ohio law and should be rejected.

b. "As found" savings from mercantile projects

As with the T&D Improvement Program, the Companies' Mercantile Customer Program is a continuation of the existing program and included in the Proposed Plans as an element of the Companies' compliance strategy. Again, approval is not required through the Plans because the Mercantile Customer Program is statutorily authorized and its implementation details are the subject of separate filings and other proceedings, most recently in Case No. 10-834-EL-POR (the "Pilot Program").[60] ELPC/OEC challenges as "erroneous" the Commission's decision in the Pilot Program to allow the Companies and other EDUs to count "as found" savings as part of their Mercantile Customer Program, and it argues that the Commission's approval of "as found"

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[58] Miller Testimony, p. 16.

[59] *See*, *e.g.*, Case No. 09-951-EL-EEC, *et seq.*, Entry on Rehearing at ¶ 9 (August 3, 2011) (rejecting arguments of OEC and NRDC that T&D infrastructure improvements cannot be counted by the Companies under R.C. § 4928.66(A)(2)(d)).

[60] Miller Testimony, p. 16. *See In the Matter of the Application for Approval of a Pilot Program Regarding Mercantile Applications for Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders*, Case No. 10-834-EL-POR.

savings in the Pilot Program should not be extended to this proceeding.[61] Yet, as made clear by ELPC/OEC's criticisms, whether "as found" savings will continue to be authorized for purposes of the Companies' Mercantile Customer Program is a question that will be resolved in the Pilot Program proceeding; not here. ELPC/OEC sought rehearing in the Pilot Program of the Commission entries it believes were erroneous, and it may continue to press the issue there. This proceeding is not the appropriate forum or the appropriate time – given the lack of a record such as that being developed in the Pilot Program – to resolve the "as found" savings issue.

As of today, the Commission has determined that the "as found" savings methodology is preferable because it assists in the implementation of the EE/PDR mandates "in the most reasonable, practicable and expedient manner in light of real world experience" so that "customers [are] given latitude to select measures which represent the best fit for their specific operations."[62] The Companies have complied with this directive when developing the Proposed Plans. ELPC/OEC's arguments are contrary to this directive and should, therefore, be rejected or, alternatively, addressed in the Pilot Program docket.

B. NRDC's, ELPC/OEC's and OPAE's Recommended Amendments to the Companies' Residential Programs Are Not Supported by Record Evidence and Should Be Rejected.

NRDC claims that the Companies must improve their residential programs to "reduce the Companies' dependence on banked savings and to manifest a foundation to achieve future increased benchmarks."[63] NRDC also asserts that the Companies' Proposed Plans are not comprehensive and are unbalanced, while ELPC/OEC criticizes the Companies' reliance on cost-

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[61] ELPC/OEC Brief, p. 33-35.

[62] Pilot Program, Sixth Entry on Rehearing at ¶8 (Nov. 16, 2012).

[63] NRDC Brief, p. 28.

effective lighting measures.[64] Apparently to improve these alleged shortcomings, NRDC and ELPC/OEC have made several recommendations for the Commission's consideration – all of which are unsupported by evidence. As discussed below, glaringly absent from this testimony are details – such as budgets, TRC analyses, savings potential and market projections.[65] A comprehensive quote from Mr. Reed's testimony at hearing exemplifies this shortfall:

> Q. And even though your testimony contains recommendations on changes to the companies['] residential portfolio plans, you did not complete a detailed revised residential plan for the Commission to consider, did you?
>
> A. That's correct.
>
> Q. And you have not done a Market Potential Study for your recommendations in Ohio, have you?
>
> A. No, but I have reviewed the existing one.
>
> Q. Now, as far as the companies' planning process with the plans, you don't know what the companies' internal planning process was for the plans, do you?
>
> A. No, I do not.
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> ***
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> Q. You do not know what the total cost for the plan would be if the Commission adopted your recommendations, do you?
>
> A. No, I do not.
>
> Q. You do not know what the cost per kilowatt-hour saved would be if the Commission adopted your recommendations, do you?

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[64] NRDC Brief, pp. 30-31; ELPC/OEC Brief, pp. 20-22, 26-29.

[65] Tr. Vol. III, pp. 656-657. *See generally* Sierra Club Exh. 2, Direct Testimony of Glenn Reed ("Reed Testimony"); ELPC/OEC Exh. 1, Direct Testimony of Geoffrey C. Crandall ("Crandall Testimony"). NRDC asserts that "doing a revised benefit cost analysis of the proposed changes is beyond the resources of the Intervenors." NRDC Brief, p. 30. Given that the Companies have presented Proposed Plans that meet their *prima facie* case, the NRDC must refute the Companies' Proposed Plans with record evidence and specific, tangible recommendations that the Commission could adopt. NRDC has not done so – and not having enough resources is not an excuse.

> A. No, I do not.
>
> Q. You do not know how much more savings would be generated if the Commission adopted your recommendations, do you?
>
> A. No, I do not.[66]

Despite this lack of factual support, NRDC blithely asserts that if the recommendations were adopted, the Companies' Proposed Plans could be modified quickly "within a month or two."[67] If it were that easy – which it clearly is not – NRDC could have, and should have, made recommendations that included the details necessary to properly assess their value and viability.

Also, in making these recommendations, NRDC and ELPC/OEC ignore one key fact – it is the Companies, and not the NRDC, ELPC/OEC or any other Intervenor for that matter, that are responsible for meeting the statutory mandates. The Companies' proposed residential programs, which are supported by record evidence, are an expansion of the existing plan programs, provide opportunities for residential customers to learn about energy efficiency opportunities and programs, pass the TRC, attempt to address current economic conditions, and conform to the realities of the current market potential. Changing the proposed programs may increase the risk of compliance by unrealistically relying on certain programs without the support to do so. While some of NRDC, ELPC/OEC and other Intervenors' recommendations may be explored for inclusion in future plans, the fact remains that the Companies have extensively developed and presented a comprehensive portfolio of programs that will meet or exceed the benchmarks and satisfy all requirements of the Commission's Rules and Section 4928.66, Ohio Revised Code. No Intervenor has done so and accordingly, the Companies' portfolio of programs should be approved on this basis alone. And while this should be dispositive of the

[66] Tr. Vol. III, pp. 656-658.

[67] NRDC Brief, p. 30.

issue, as more fully discussed below, the criticisms surrounding the Companies' program portfolio are unfounded.

1. The Companies' strategy in utilizing energy efficiency kits is appropriate and supported by record evidence.[68]

NRDC and ELPC/OEC assert that the Companies over-rely on energy efficiency kits and recommend that the Companies eliminate or reduce their Energy Efficiency Kits Program.[69] In support of this recommendation, NRDC and ELPC/OEC assert that the kits represent a disproportionate amount of savings from the residential portfolio savings and that the savings estimates "appear" to be overstated.[70] NRDC recommends that the Commission order the Companies to reallocate kit funding to the Energy Efficient Products Program to support home retrofits and retailer participation.[71]

a. The Companies do not over-rely on energy efficiency kits.

NRDC asserts that "few other program administrators rely so heavily on mailing six to nine compact fluorescent lamps to residential customers."[72] ELPC/OEC also asserts that the energy efficiency kits, which include Compact Fluorescent Light bulbs ("CFLs"), circumvent

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[68] Although this section of the Companies' Reply Brief addresses the energy efficiency kits in the context of residential programs, Sierra Club Witness Loiter also criticized the use of kits for small commercial and industrial customers. Sierra Club Exh. 1, Direct Testimony of Jeffrey Loiter ("Loiter Testimony"), p. 9. Although the Companies discuss the rationale for the use of energy efficiency kits for residential customers in this Reply Brief, the same rationale applies to small commercial and industrial customers as well.

[69] NRDC Brief, p. 29.

[70] NRDC Brief, p. 29; ELPC/OEC Brief, p. 26.

[71] NRDC Brief, p. 29.

[72] NRDC Brief, p. 31. NRDC suggests that placing more emphasis on non-lighting savings could help the Companies meet future benchmarks, particularly starting in 2019 (*id.*, p. 30), but that is a question for the Companies' future portfolio plans – there is no requirement in R.C. § 4928.66 or the Commission's Rules to incur program costs earlier than necessary so as to bank savings for 2019.

normal market channels. Lastly, ELPC/OEC asserts that the Commission should not authorize the use of the kits.[73]

As discussed in the Companies' Post-Hearing Brief, the Companies are proposing energy efficiency kits that contain a combination of energy efficiency measures such as, but not limited to, CFLs, LED nightlights, furnace whistles, smart strips, shower heads and aerators.[74] The Companies' rationale for promoting an Energy Efficiency Kit Program is five-fold. First, the Companies' Home Performance Program includes almost 326,000 opt-in energy efficiency kits for residential customers during the Plan Period, which represents less than 20% of the Companies' residential customer base.[75] Although the kits represent 36% of estimated savings from residential customers over the Plan Period, this level of savings cannot be equated to overreliance, given the results seen by the Companies' affiliates in Pennsylvania or Maryland.[76] As Companies Witness Miller testified, "The fact that the majority of the savings are coming from lighting is not uncommon. It's extremely common in the industry in energy efficiency, and I think our point is completely on the mark that there is – it's a huge end use and has a huge opportunity for savings."[77]

Second, the kits are very cost effective while producing major energy savings for residential customers.[78] Third, the kits provide customers with an opportunity to learn about energy efficiency in the home without the need to buy the various measures, something with

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[73] ELPC/OEC Brief, p. 29.

[74] Proposed Plan, Section 3.2 (under Home Performance Program); Tr. Vol. II, p. 344.

[75] Miller Rebuttal, p. 3.

[76] *See id.*

[77] Tr. Vol. III, pp. 427-428.

[78] *Id.* As indicated in PUCO Table 7A-B, the Home Performance Program of which this sub-program is a part has a TRC value of 1.3. Proposed Plans, Appendix C-3.

which both Mr. Reed and Mr. Crandall agreed, and they provide promotion and awareness of other energy efficiency programs among customers.[79] As Mr. Crandall also testified, he believes that "the energy kits could contain information that would be useful for customers to go the next step to install lighting equipment or understand what the rebates are and to take action as a result of the audit and the kits."[80]

Fourth, contrary to the claims of ELPC/OEC, the kits should not circumvent normal retail channels, given the wide variety of other CFL types and LED lighting choices offered by retailers.[81] Moreover, the CFL bulbs included in the kit represent a small percentage of the potential opportunities found in the home, thus leaving significant potential for retail sales. On average, customers have installed six CFLs, while the average home has between 55 to 65 incandescent sockets.[82]

Lastly, the chance of free ridership is relatively low because the kits are opt-in, thus requiring customers to take affirmative action in order to receive their kits. Moreover, as Mr. Fitzpatrick explained, one of the goals of these programs is to "move the market."[83] By providing these kits to customers upon request, the customers have a chance to experience installing and using various energy efficient devices – devices that they may not normally

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[79] Tr. Vol. III, pp. 398-99, 649; Tr. Vol. V, p. 1027.

[80] Tr. Vol. V, p. 1041. *See also* Tr. Vol. III, p. 399 (Companies Witness Miller explaining that "[t]he intent of the kit is to create general awareness of the plan and energy efficiency. It is to promote programs on a whole, such as energy efficient products, and all the opportunities that are available to customers in the plan, as well as support or increase the adoption of the efficient measures that are provided as a component of the kit.")

[81] Tr. Vol. I, pp. 648-649.

[82] Market Potential Study at 67; Tr. Vol. III, p. 413-414; see also Tr. Vol. IV, pp. 831-832. (By Staff Witness Scheck: "[l]ight bulbs produce a lot of savings and I think I counted up in my house . . . there's 50, 60 sockets, which I find is not an unusual number for an average household.").

[83] Tr. Vol. II, p. 183.

purchase without an incentive to do so – in the hopes of moving the market.[84] Therefore, what NRDC and other Intervenors call "free ridership" is the Companies' attempt to accelerate and transform the market for energy efficiency products.

In light of the above, there is no need to reduce or modify the number of energy efficiency kits included in the Proposed Plans. Given that it is the Companies' responsibility to comply with the statutory EE and PDR targets, deference should be given to their development team's judgment; otherwise, the Companies should be held harmless if such an adjustment is made and they fall short of their targets.

b. The Companies do not over-state energy savings from the kits.

NRDC asserts in this proceeding that the Companies should use "more realistic savings assumptions" for the kits.[85] Stretching Mr. Reed's testimony,[86] ELPC/OEC asserts, without reliable record evidence, that the kits have very low installation rates and that the Companies cannot substantiate the 86% projected installation rate for CFLs in the kits.[87] As discussed in the Companies' Post-Hearing Brief, in modeling the savings for the energy efficiency kits, the Companies utilized the 86% installation rate identified in the draft Ohio TRM and conservatively included EISA impacts for all CFLs included in the kits for the entire Plan

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[84] *See* Tr. Vol. I, p. 75; Tr. Vol. III, pp. 648-649; Tr. Vol. III, p. 456 (an Ohio Energy Project study of school kits concluded that customers who received the kits were more motivated to purchase additional CFLs as a result of receiving the kit).

[85] NRDC Brief, p. 32.

[86] ELPC/OEC asserts that Mr. Reed testified that "one would expect the installation rate for CFLs received in a free energy efficiency kit to be considerably lower than those purchased by a consumer at retail." ELPC/OEC Brief, p. 27. He did not testify that the installation rate for CFLs in kits would be considerably lower. *See* Reed Testimony, p. 7. Rather, Mr. Reed was simply pointing out that the Ohio TRM utilizes an 86% installation rate for CFLs purchased at retail and an 81% installation rate for CFLs that are directly installed. Tr. Vol. III, p. 665.

[87] ELPC/OEC Brief, p. 27.

Period.[88] The savings estimate for kits modeled in the Proposed Plans is a constant value that represents the full reduction of savings for all CFLs for the Plan Period.[89] If NRDC and ELPC/OEC disagree with these deemed values, then the time and place to voice their concerns is not in this proceeding, but rather in Case No. 09-512-GE-UNC,[90] or any other docket that involves changes to the TRM.

Contrary to its position taken in this proceeding, NRDC argued in Case No. 12-665-EL-UNC that an installation rate of *no less than 100%* is reasonable.[91] Indeed, NRDC and ELPC/OEC do not offer a credible alternative installation rate for this Commission to consider.[92] Sierra Club Witness Loiter's opinion was not based on an analysis of measure lives or commercial in-service rates, and he offered no empirical evidence in support of an alternative installation rate.[93] Sierra Club Witness Reed low-balled the initial survey findings in an Annual Report to the Pennsylvania Public Utility Commission submitted by the Companies' affiliate, Pennsylvania Electric Company, by ignoring the full findings that are unfavorable to his

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[88] Co. Br., p. 13. *See* Tr. Vol. II, p. 344; Miller Rebuttal, pp. 3-4.

[89] *Id*. As explained by Companies Witness Miller, EISA reduces the baseline for a 60W incandescent lamp to 43 watts effective January 1, 2014. Instead of using the higher wattage between January 1, 2013 and January 1, 2014, the Companies modeled the entire Plan Period using the 43W baseline. Miller Rebuttal, p. 4. Thus, the actual results, which would reflect the 60W baseline for 2013, should be higher than as reflected in the Companies' models. *Id.*

[90] *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC.

[91] *See* Co. Br., pp. 13-14, citing NRDC's Comments filed in *In the Matter of the Annual Verification of the Energy Efficiency and Peak Demand Reductions Achieved by the Electric Distribution Utilities Pursuant to Section 4928.66, Revised* Code, Case No. 12-665-EL-UNC, NRDC Comments at 2-3 (Nov. 2, 2012).

[92] Tr. Vol. III, p. 651. Staff also agreed with this assertion. Tr. Vol. III, p. 832.

[93] Tr. Vol. III, pp. 584, 585.

position.[94] Plus, as Mr. Reed was forced to admit, the fact that the kits are being offered through an opt-in process means that the Companies will have a higher in-service rate than for kits that are sent randomly.[95] Lastly, ELPC/OEC Witness Crandall merely opined that he had "lingering questions" regarding the installation rates for the measures included in the kits, but did not provide any explanation.[96]

As for the other measures in the kits (in addition to the CFLs), the installation rates cited by ELPC/OEC from the statewide evaluator's report in Pennsylvania "are not unanticipated."[97] The Companies keep these measures in the kits because they maximize energy savings and minimize costs.[98] The Companies proactively manage their programs and have revised the measures contained in the kits based on evaluation activities in Pennsylvania.[99] As explained by Companies Witness Miller, items such as nightlights, faucet aerators, and furnace whistles are included in the kits because there is very little incremental cost of including them and they contribute savings towards the statutory targets, even at the projected installation rates.[100]

Based upon the foregoing, the projected savings levels for the energy efficiency kits are reasonable and supported by the evidentiary record. Accordingly, no modification to the savings levels included in the Proposed Plans is necessary.

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[94] *See* Co. Br., p. 15; Tr. Vol. III, p. 650. The Pennsylvania Statewide Evaluator's report results must be taken into context as they were not based on a statistically significant sample. Tr. Vol. III, pp. 450-451.

[95] Tr. Vol. III, p. 651. *See also* Tr. Vol. IV, p. 832 (Staff Witness Scheck stating, "I would think that the installation rates are going to be pretty decent if they are opt in").

[96] Crandall Testimony, p. 13.

[97] Tr. Vol. III, pp. 448-449.

[98] Tr. Vol. III, pp. 448-449.

[99] Tr. Vol. III, pp. 450-451

[100] Tr. Vol. III, pp. 448-449.

2. The Commission should disregard NRDC's recommendation to increase in-home audit efforts and to change the Companies' rebate strategy for energy efficiency products.

Relying on Witness Reed's belief that market potential exists for various types of energy efficiency products, NRDC recommends that program budgets be rebalanced to provide more funding for in-home audit efforts and energy efficient product rebates.[101] NRDC similarly promotes the general concept of re-allocation of budget dollars from the efficiency kits to an existing home retrofit effort.[102] As a preliminary matter, as has already been demonstrated, the number of efficiency kits included in the Plans is appropriate. Accordingly, the budget for that program should not be modified or reallocated to the programs recommended by NRDC, especially when these recommendations are totally lacking in details. Similar to its other recommendations, NRDC again fails to provide specific alternatives, specific program recommendations or projections, a TRC analysis, or a market potential analysis in support of these recommendations. And without these details, the recommendations cannot be properly assessed. Finally, as Mr. Miller testified, the Companies have a rebate strategy that proposes a rebate range which has an "up to" value associated with various measures. Through program implementation the Companies will adjust that range consistent with market conditions.[103]

As the evidence demonstrates, the programs, sub-programs and measures included in the Proposed Plans were the result of an exhaustive process involving the Companies' plan development team and their consultants, plus input from the Collaborative Group.[104] Given the

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[101] NRDC Brief, pp. 29, 31.

[102] NRDC Brief, p. 35.

[103] Tr. Vol. III, p. 388.

[104] Co. Br., pp. 8-9; Company Exh. 1, Direct Testimony of John C. Dargie ("Dargie Testimony"), pp. 8-9.

fact that it is the Companies' responsibility to either achieve the statutory energy efficiency and peak demand reduction targets, or alternatively face the possibility of incurring a forfeiture, deference to the Companies' Proposed Plans is appropriate, especially when the alternative recommendations are totally lacking in specificity. NRDC's budget and rebate recommendations should be rejected.

3. The Companies' Proposed Plans flexibly address new lighting technologies and use the appropriate baselines.

NRDC recommends against the Companies offering incentives for efficient halogen lighting technologies.[105] Again, all that is offered are complaints, not solutions supported by evidence. As discussed above, the Companies conducted a thorough review of the programs that should be included in their Proposed Plans. The Proposed Plans reasonably provide the Companies with flexibility to offer rebates for various types of efficient lighting products that emerge over the next three years, including halogen lighting that is more efficient than federal standards.[106] ELPC/OEC Witness Crandall agreed that "it's important that the companies have flexibility with the rebate levels to assess the customer uptake and the market conditions and to be able to react to that."[107] If market conditions dictate that efficient halogen lights are not readily available, then the Companies are unlikely to incent them. If new technologies do emerge, such as more energy efficient halogen lighting, the Proposed Plans allow the Companies to rebate those items. NRDC asks that the Companies discriminate against new technologies in favor of CFLs and LEDs and limit customer options for energy efficiency, but the market should determine what efficient lighting technologies are worth incenting, not NRDC. The Commission

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[105] NRDC Brief, p. 40.

[106] Miller Testimony, pp. 10-12.

[107] Tr. Vol. V, pp. 1030-31.

should reject any recommendation to limit customer options for higher efficiency lighting technologies and the Companies' program implementation flexibility that is part of the Proposed Plans.[108]

ELPC/OEC also argues that the Companies should not use the EISA standard as the baseline to determine energy savings for CFLs and LEDs. EISA is a federal standard affecting the availability of certain standard incandescent bulbs that will be phased in over a number of years, and ELPC/OEC's description of the phase-in, as reflected in a chart on page 21 of its brief, is incorrect. The EISA standards do not all become effective on January 1, 2012. Rather, the correct information is as follows:[109]

The law is being phased in over the next three years:

Today's Bulbs	After the Standard	Standard Effective Date
100 watt	≤ 72 watts	January 1, 2012
75 watt	≤ 53 watts	January 1, 2013
60 watt	≤ 43 watts	January 1, 2014
40 watt	≤ 29 watts	January 1, 2014

As this corrected chart demonstrates, the EISA standards, which prohibit only the ***manufacturing or import*** of certain bulbs greater than the standard, are phased in over time.

Notwithstanding the fact that the draft TRM and the EM&V standards established in the Oct. 15, 2009 Order in Case No. 09-512-GE-UNC (the "09-512 Order") direct that these federal

[108] NRDC equates potential incentives for high efficiency halogen lighting with the Companies' proposal to provide rebates for storage water heaters. NRDC Brief, p. 41. The weakness in NRDC's argument also is the same: the Companies incent higher efficiency storage water heaters because, without the incentive, the Companies would be eliminating customer options. NRDC's preferred heat pump water heaters are more efficient but also significantly more costly.

[109] Energy Independence and Security Act of 2007, US EPA Backgrounder – Spring 2011, http://www.energystar.gov/ia/products/lighting/cfls/downloads/EISA_Backgrounder_FINAL_4-11_EPA.pdf.

EISA standards should be used as the baseline,[110] NRDC disagrees. It also asserts that by utilizing the EISA standard as the baseline, the Companies' savings are based on free ridership. Yet EM&V standards established in the 09-512 Order clearly direct that compliance will be determined based on gross savings and not net.[111] Given that this issue was also addressed in the 09-512 Order, NRDC's argument is misplaced and inappropriate in this proceeding, especially if the potential result is that the Companies may be held to a standard different from other Ohio EDUs.

ELPC/OEC criticizes the Companies, claiming that "FirstEnergy does not know whether EISA compliant bulbs between the 43 watt EISA standard and 15 watt CFLs will be on the market."[112] Given that this can only be known after EISA standards take effect and manufacturers build up capacity to replace the old bulbs, it is extremely unlikely that any other party in this proceeding, including ELPC/OEC, knows with any certainty either what will exist in the market, at what technical specifications, and at what prices.

The Companies' rebate strategy is fully coordinated with the EISA standard, provides for rebating of lighting technologies that exceed the EISA standard per the Ohio TRM, is common in the industry, and should be approved as filed.

4. Without specific recommendations, the Commission should not revise the Companies' Residential New Homes Sub-Program.

Although NRDC mostly complains that the Companies make it too easy to obtain savings in their other programs,[113] there is one exception where NRDC believes the Companies are

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[110] 09-512 Order, para. 27.

[111] *Id.*, para. 16.

[112] ELPC/OEC Brief, p. 22.

[113] NRDC Brief, pp. 30, 39.

making it too difficult to achieve savings – residential new construction. NRDC recommends that the Commission modify the Companies' New Homes Sub-Program to make ENERGY STAR ver. 3.0 an option, but not a requirement, and to develop a tiered incentive structure.[114] NRDC refers to "experience in other jurisdictions" but does not cite what jurisdictions.[115] It also refers to the CT Zero Energy Challenge, based on a citation to a website – which is again not record evidence.[116] In this circumstance, consistent with the program currently in effect, the Companies attempted to minimize free ridership by requiring ENERGY STAR ver. 3.0, which is above Ohio's standard residential building code.[117] Given the fact that NRDC's recommendation is unsupported in the evidentiary record, it should be rejected.

5. The Commission should reject NRDC's recommendation that <u>all</u> of the Ohio utilities – gas and electric – engage in joint implementation.

NRDC argues that the Commission require all of the state's utilities, both electric and gas – the latter of which have no statutory energy efficiency requirements – to engage in joint implementation of energy efficiency programs.[118] As discussed in the Companies' Post-Hearing Brief, the Proposed Plans address joint implementation in Section 3.1.6.[119] The Companies have attempted to align and coordinate their programs with the programs of other EDUs in Ohio to the extent possible.[120] Notwithstanding these efforts, there are barriers to joint implementation which NRDC does not address. In fact, Sierra Club Witness Reed testified that he did not know

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[114] NRDC Brief, pp. 29, 38.

[115] NRDC Brief, p. 38.

[116] NRDC Brief, p. 39.

[117] Tr. Vol. III, p. 655. *See* Proposed Plans, § 3.2 (under Home Performance Program).

[118] NRDC Brief, pp. 30, 43.

[119] Co. Br., pp. 19-20.

[120] Dargie Testimony, p. 11; Proposed Plans, § 3.1.6. *See* Tr. Vol. I, pp. 50-51 (offering the appliance recycling program as an example).

if other Ohio utilities would be receptive to joint implementation with the Companies.[121] Back office and tracking and reporting systems would have to be integrated.[122] And joint implementation may cause an EDU to lose control over its own destiny as it tries to achieve annual statutory targets through joint efforts. Therefore, while the Companies are not opposed to aligning programs with other unaffiliated EDUs, there are certain barriers and statewide issues that need to be resolved before significant alignment can become a reality.[123] Because NRDC has not offered any solutions to these barriers, the Commission should reject its recommendation.

6. The Companies' Proposed Plans reasonably address free ridership.

Throughout their briefs and without record evidence,[124] in the context of both residential and commercial/industrial programs, NRDC and ELPC/OEC argue that the Proposed Plans do not reasonably address free ridership. Yet, when the Companies tried to do this in their new home construction program by requiring a higher standard, NRDC complained. The Companies do not deny that free ridership is a challenge. However, as Companies Witness Miller testified, the Companies attempt to meet this challenge through "the evaluation of the program and the feedback that [the Companies] would receive through the implementation vendors to understand how the program is packaged."[125] The Companies regularly evaluate participation levels, rebate

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[121] Tr. Vol. III, p. 657.

[122] Tr. Vol. I, pp. 50-51.

[123] *See* Tr. Vol. II, pp. 370-72 (Companies Witness Miller describing joint implementation efforts and barriers to joint implementation).

[124] As Sierra Club Witness Loiter testified: "I would have no basis for estimating free ridership of a program delivered by FirstEnergy without – you know, without being hired to do an evaluation, no." Tr. Vol. III, p. 58.

[125] Tr. Vol. III, pp. 407-409.

levels and what is driving customers to participate in the programs, adjusting the programs as conditions warrant.[126]

Trying to avoid free ridership in the design of the EE and PDR programs is a delicate balancing act – one that the Companies, and not ELPC/OEC, NRDC, or any of the other intervenors, must perform. The Proposed Plans strike such a balance and, accordingly, ELPC/OEC's and NRDC's criticisms are unfounded.

7. OPAE's request to increase the budget for the Low Income Program is unsupported by the evidentiary record and inconsistent with the prerequisites for such an increase.

In the Proposed Plans, the Companies have budgeted a total of $5 million per year in the aggregate (or $15 million during the Plan Period) for the Low Income Program, which is the new name for the Community Connections Program currently found in the Existing Plans.[127] As OPAE correctly notes, the Commission approved the extension of the Community Connections program in its July 18, 2012 Opinion and Order in the Companies' most recent Electric Security Plan case.[128] As OPAE also correctly notes, the Commission's Order in that case, quoting from the Stipulation and Recommendation that was the subject of that Order, provided for an opportunity to increase the funds for this program, provided that the energy efficiency collaborative approved such a funding increase.[129]

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[126] *Id.*

[127] Miller Testimony, p. 9.

[128] *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, p. 13 (July 18, 2012) ("ESP III Order"); OPAE Brief, p. 2.

[129] ESP III Order, p. 13; OPAE Brief, pp. 2-3.

OPAE suggests that the Proposed Plans be modified to increase the Low Income Program budget by a total of $12 million, which would bring the total budget for the Low Income Program to $27 million during the Plan Period.[130] Yet, nowhere did OPAE (or any other party) present any evidence to indicate that the Companies' Collaborative Group approved any such funding increase. Further, while OPAE challenges the Companies' calculation of the TRC value of 0.1 for the Low Income Program,[131] OPAE notes that even using its calculation of the TRC value, it would only be 0.5 and the revised program would still be uneconomic.[132]

OPAE cites numerous statistics, many of which are unsupported in the evidentiary record.[133] These statistics, while perhaps interesting, are irrelevant for purposes of resolving this issue. The Companies incorporated the Community Connections program into the Proposed Plans as negotiated in the ESP III Stipulation and approved by this Commission in the ESP III Order. That Stipulation provided a mechanism for a budget increase to this program – a mechanism that requires approval by the Collaborative Group. This prerequisite has not been met. Therefore, OPAE's recommendation for an increase to the Low Income Program should be rejected.

C. Intervenors' Recommended Changes to the Companies' Commercial & Industrial Programs Are Not Supported by Record Evidence and Should Be Rejected.

As with its residential programs, the Companies' proposed Commercial and Industrial ("C&I") programs are supported by record evidence, provide expanded and comprehensive opportunities for C&I customers to learn about energy efficiency programs, pass the TRC,

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[130] OPAE Brief, p. 7.

[131] Proposed Plans, Appendix C-3, PUCO Table 7A-B.

[132] OPAE Brief, p. 7.

[133] *Id.*, pp. 3-7.

attempt to address current economic conditions, and conform to the realities of current market potential. Several Intervenors criticize bits and pieces of these C&I programs but, again, these criticisms generally lack substance. Where the Companies have seen value in Intervenor recommendations – such as OHA's ENERGY STAR benchmarking and audit proposals and ELPC/OEC's data center proposal – they have been incorporated into the Proposed Plans.[134]

Yet Intervenors have complained that the Companies should do more to support retro-commissioning, more to promote continuous improvement, more to incent efficient new construction, more to assist small businesses with direct installations, and more to fund energy audits. The arguments to do more actually support the Companies' program elements and are merely criticizing the Companies' program projections or packaging. NRDC and ELPC/OEC want the Companies to do nothing at all to incent customers to switch from T-12 lighting to standard T-8 lighting, which limits customer options even though T-12 lighting remains in retail stock or customer inventory. ELPC/OEG wants the Companies to do more to include LED lighting in their Street Lighting Services and Tariffs, and OMAEG wants three new industry-specific prescriptive (custom type) measures. Staff wants budget increases for Ohio Edison and CEI. And EnerNOC wants the Companies to do more to promote demand resources. In a perfect world with unlimited budgets and resources, all of these requests might be accommodated. However, budgets and resources are limited and none of these suggested changes are necessary in order for the Companies to comply with their statutory benchmarks during the Plan Period. Therefore, the Commission should reject the suggested changes to the C&I program portfolio included in the Companies' Proposed Plans.

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[134] *See Id.*, pp. 5-8.

1. The Companies' program improvements included in their rebuttal testimony should be adopted in the form proposed.

Based on the recommendations of several parties, the Companies adopted certain modifications to the Proposed Plans during the rebuttal phase of the proceeding. These modifications include an expansion of energy audits for hospitals and the incorporation of ENERGY STAR benchmarking for members of the OHA.[135] The Companies also agreed to create a sub-program within their C&I Efficient Equipment Program, Small and Large that will specifically target data center participation through the development of special marketing materials and the assistance of an experienced implementation vendor or trade allies with skills geared towards data center assessments.[136] Lastly, the Companies' Proposed Plans include a strategy to deal with continuous energy improvement issues. Although Intervenor comments on these initiatives generally supported the Companies doing even more, the Commission should allow the Companies to proceed with implementation in the form proposed by the Companies with continuing input from the Collaborative.

a. ENERGY STAR Portfolio Manager benchmarking and audits

The Companies agreed to expand the Energy Efficient Buildings Program – Large by $200,000, with the funds to be paid through the OHA in an amount not to exceed the lesser of $5,000 or 50% of the cost of a ASHRAE level I audit.[137] These funds are in addition to any other funding for which a hospital may qualify under the Companies' standard audit program included in the Proposed Plans.[138] In order to maximize the benefit of this expansion of the

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[135] *Id.*, pp. 5-7.

[136] *Id.*, p. 8.

[137] *Id.*, p. 5.

[138] *Id.*

program, the Companies also agreed to earmark an additional $50,000 total over the term of the Proposed Plans to enable the OHA to conduct ENERGY STAR Portfolio Manager benchmarking for OHA member hospitals served by the Companies.[139] OHA supports these program improvements.[140]

Staff and OMAEG believe that the Companies should increase the caps for audits, but neither provides any meaningful detail other than the actual caps proposed.[141] Although the Companies stand by the audit program in their plans as proposed, the Companies will work with Staff and OMAEG on the implementation of this audit program.

b. Data center sub-program

Companies Witness Miller described the new data center sub-program, which will be a component of, and supported from the existing budget of, the C&I Efficient Equipment Program, Small and Large.[142] The Companies anticipate that the sub-program budget will be similar to the budget of AEP Ohio's Data Center Program as a percentage of the Proposed Plans, or approximately $3.2 million total over the 2013-2015 Plan period.[143] ELPC/OEC agrees that the Companies' data center sub-program is a "good step", but, without explanation, wants the Companies to increase the over-all budget by $3.2 million to accommodate this measure.[144] Without such explanation, the Companies do not believe it is necessary to increase the budget to accommodate this measure.

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[139] *Id.*

[140] OHA Brief, pp. 4-7.

[141] Staff Brief, pp. 13-15; OMAEG Brief, pp. 3-4.

[142] Miller Rebuttal, p. 8. The Companies' Energy Efficient Products Program already provided incentives for several measures included in a data center program, such as HVAC. Tr. Vol. VI, pp. 1059-1060.

[143] Miller Rebuttal, p. 8.

[144] ELPC/OEC Brief, p. 31.

NRDC also suggests several measures that the Companies could consider for the data center sub-program, but it provides very few details, such as market potential, cost-effectiveness or savings projections. NRDC Witness Swisher testified that he was not making any specific recommendations as to a data center program and only suggests that the Companies "try to design one over the next several months."[145] The Companies will work with interested stakeholders on the implementation of the data center sub-program. The Commission should reject the changes recommended by NRDC and ELPC/OEC.

2. Intervenor criticisms of the Companies' C&I programs should be rejected.

a. Retro-commissioning program

The Companies have included incentives for retro-commissioning in the custom buildings component of the C&I Energy Efficient Buildings Program – Large, and they have allocated appropriate funds to it based on the market potential.[146] The Companies considered a retro-commissioning program as a separate prescriptive program when developing their Proposed Plans.[147] However, because of the need to customize retro-commissioning solutions to the customer, the Companies' development team opted to offer retro-commissioning as a custom measure within the C&I Energy Efficiency Buildings Program – Large.[148] This approach is consistent with the draft TRM, which does not provide a way to measure the savings realized from a standalone retro-commissioning program.[149]

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145 Tr. Vol. IV, p. 720.

146 Tr. Vol. IV, p. 734; Proposed Plans, Section 3.4 (C&I Energy Efficient Program – Large, under "Custom" description).

147 Tr. Vol. II, pp. 363-364.

148 Tr. Vol. IV, p. 734; Proposed Plans, Section 3.4 (C&I Energy Efficient Program – Large, under "Custom" description).

149 Tr. Vol. III. p. 746.

NRDC wants the Companies to increase the funding for retro-commissioning, but has offered no justification for a budget increase other than envy of AEP Ohio's similar initiative.[150] NRDC Witness Swisher recognized that the Companies have a retro-commissioning program, but lacked an opinion regarding a specific program design or specific budget.[151] OMAEG Witness Seryak also supports a retro-commissioning program, but also lacks an opinion regarding the appropriate design or budget.[152] He also agreed that a large percentage of manufacturing customers' energy efficiency programs are specific to their premises and, therefore, require customized solutions.[153] This supports the Companies' program design to offer retro-commissioning as a custom measure. For all of the above reasons, the Commission should reject OMAEG's and NRDC's recommendations related to retro-commissioning.

b. Continuous energy improvement

NRDC seeks a substantial budget increase for a continuous energy improvement program, but the Companies have a more cost-effective strategy for encouraging continuous improvement by C&I customers. The Companies do not believe a large budget increase – NRDC recommends $9 million[154] – is necessary for a continuous improvement program. As Mr. Miller testified:

> The Companies consider a Continuous Energy Improvement Program as a form of customer education, marketing and engagement of energy efficiency opportunities with major C/I customers. In lieu of having a dedicated program and additional operating expenses, the Companies plan to target their major C/I customers through their implementation vendors and their

[150] NRDC Brief, pp. 48-49.

[151] Tr. Vol. IV, p. 722-723.

[152] OMAEG Exh. 1, Direct Testimony of John Seryak ("Seryak Testimony"), p. 4.

[153] Tr. Vol. III, p. 750.

[154] NRDC Brief, p. 53.

> Customer Service Representatives who have regular contacts with their assigned major customers. As such, the Companies will engage their largest customers to promote energy efficiency opportunities without the added costs associated with a Continuous Energy Improvement Program.[155]

NRDC again offers AEP Ohio's program as an example, without any testimony to support it and no analysis of market potential, cost effectiveness or savings projections. For this reason, and because the Companies reasonably believe they can achieve the same goals without the added expense, the Commission should reject recommendation.

c. C&I New Construction Program

NRDC recommends that the Companies offer a C&I New Construction Program for large C&I facilities even though this is eligible through the Custom Buildings measure under the C&I Energy Efficient Buildings Program - Large. NRDC recognizes that the Companies offer a specific new construction program for small C&I customers but supports an expansion "directed specifically at new construction of large C&I customer facilities."[156] NRDC recommends that the Companies simply copy AEP Ohio's program design, but again fails to provide any analysis of market potential, cost effectiveness or savings protections.[157] Indeed, NRDC Witness Swisher testified that, while he criticizes the projected savings from the Companies' new construction program, he did not analyze what those savings projections should be and admitted that he has not proposed an alternative program.[158] Similar to the other recommendations from NRDC discussed above, the Commission should reject this proposal.

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[155] Miller Rebuttal, pp. 8-9.

[156] NRDC Brief, pp. 49-51.

[157] NRDC Brief, p. 51.

[158] Tr. Vol. IV, p. 726.

d. Small business direct install program

NRDC recommends that the Companies offer a small business direct install program, again without any specific information such as budget, market potential, savings projections and cost-effectiveness.[159] NRDC also criticizes the Proposed Plans' alleged "neglect" of small C&I customers.[160] Yet the Companies have a direct install component in the Companies' C&I Energy Efficient Equipment Program – Small.[161] Companies Witness Miller demonstrated that the Companies are not neglecting smaller customers but, instead, plan to target small customers to assist them in making energy efficiency choices.[162]

NRDC has done no analysis of what it envisions a direct install program should be. Sierra Club Witness Loiter did not propose any specific budget amount for a direct install program,[163] does not know what the TRC value would be for such a program,[164] and does not know what savings would result from a direct install program.[165] There is no basis in the record to support NRDC's recommendation for a separate direct install program versus the Companies' proposed program.

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[159] NRDC Brief, p. 55.

[160] NRDC Brief, p. 54. NRDC criticizes the kits that the Companies' propose to provide to small commercial customers who request them. For the reasons described above, in Section I.B.1, the Commission should reject this recommendation as well. OPAE echoes this concern but provides no further arguments in support. OPAE Brief, p. 13.

[161] Tr. Vol. III, pp. 423-426.

[162] Tr. Vol. III, pp. 423-426.

[163] Tr. Vol. III, p. 589.

[164] Tr. Vol. III, p. 589.

[165] Tr. Vol. III, pp. 614-617.

3. The Commission Should Disregard NRDC and ELPC/OEC's Criticisms Related to the Companies' Incentives for Certain Baseline Technologies.

NRDC and ELPC/OEC criticize the Companies' proposal to continue to incent standard T-8 lighting installations that result in the early retirement of T-12 lighting installations.[166] The Companies are proposing an incentive level that is less than that offered for higher efficiency lighting options.[167] Remarkably, however, NRDC's and ELPC/OEC's witnesses could not describe the incentive levels being offered and did not know whether the Commission allows the Companies to count the energy savings from a switch to standard T-8 lighting.[168] The tiered incentives for various levels of T-8 lighting is reasonable and should be approved.

ELPC/OEC states that the Companies must "demonstrate that such discounts will generate sales from customers who will retire their T-12 fixtures early, but would only do so if the Standard T-8's are discounted."[169] The law does not require this burden. To the contrary, the Commission supported the as-found condition for early retirement as the baseline for determining energy savings in Case No. 09-512-GE-UNC, which supports incenting a standard T-8 lighting installation replacing a T-12 lighting installation.[170] As discussed in more detail in the Companies' Post-Hearing Brief, the Companies believe that there are opportunities to incent standard T-8 lighting installations that provide the early retirement of T-12 lighting installations and achieve greater participation in the Companies' programs.[171]

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[166] NRDC Brief, p. 56; ELPC/OEC Brief, p. 20. OPAE seems to echo this concern, but citing only to ELPC/OEC's testimony. OPAE Brief, p. 11.

[167] Proposed Plans, Appendix C-4; Miller Rebuttal, pp. 4-5.

[168] Crandall Testimony, p. 11; Loiter Testimony, p. 11; Tr. Vol. III, pp. 598-599.

[169] ELPC/OEC Brief, p. 23.

[170] Miller Rebuttal, pp. 4-5.

[171] Co. Br., pp. 41-42.

Ignoring the customer-side concerns, ELPC/OEC asserts that the $18 difference between high performance T-8 fixtures and standard T-8 fixtures is only 22% and, therefore, "negligible."[172] This price difference does not take into account that there are dozens and dozens of different types of high performance T-8 and standard T-8 fixtures and that the cost difference varies greatly based on the customer-specific application dictating the selection of fixture. And for certain customers, this 22% price differential (or other price increase based on the customer application) will prevent them from the early replacement of hundreds if not thousands of bulbs. The Companies are promoting an affordable alternative for these customers that will generate greater customer participation in the program as well as significant energy savings when other measures may be cost prohibitive for the customer.

ELPC/OEC further argues that an Ohio utility "began eliminating" incentives for standard T-8s and that an Illinois utility "typically" provides incentives only for high performance T-8s.[173] However, ELPC/OEC fails to provide any details surrounding the terms associated with these efforts, and fails to recognize that other utilities continue to provide lighting incentives for the early retirement of T-12 lighting with standard T-8 lighting.[174] As T-12 lighting remains in retail stock and customer inventory, it is not appropriate to remove the option for the Companies to incent customers for the early retirement of T-12 lighting installations with standard T-8 lighting. And, as stated above, incenting standard T-8 lighting installations that provide the early retirement of T-12 lighting installations maintains customer

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[172] ELPC/OEC Brief, p. 24.

[173] ELPC/OEC Brief, pp. 24-25.

[174] *See* Miller Rebuttal, p. 5.

choice and achieves greater participation in the Companies' programs.[175] Lastly, neither NRDC nor ELPC/OEC knows what types of technology will be available in the future. Utilizing a flexible rebate strategy will allow the Companies' to adapt their Proposed Plans to changes in standards and technologies over the Plan Period. Therefore, the Commission should reject NRDC and ELPC/OEC's criticism of the Companies' incentive for standard T-8 lighting.

4. The Commission should reject ELPC/OEC's recommendation that the Companies include efficient LED lighting technologies in their street lighting tariffs.

ELPC/OEC requests that the Companies include Efficient LED Lighting Technologies in their Street Lighting tariffs.[176] ELPC/OEC Witness Crandall recognizes that the Companies do offer efficient LED lighting technologies in its Proposed Plans for customer-owned streetlights.[177] Nevertheless, ELPC/OEC believes that the Companies should offer and own LED lighting on their tariffed streetlighting schedules. This request is simply outside the scope of this proceeding. What ELPC/OEC is requesting is that the Companies' modify part of their existing distribution system. This is not the forum for that decision. Further, there is no evidence on this record that the Companies' existing facilities could accommodate those fixtures and there is no evidence of the monthly rates associated with owning, installing and maintaining this type of equipment. Given that the Companies do rebate LED lighting for customer-owned lighting and that Mr. Crandall is unaware if any other utilities have this type of program in Ohio,[178] the Commission should not entertain this recommendation.

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[175] Co. Br., pp. 41-42.

[176] ELPC/OEC Brief, pp. 25-26.

[177] Tr. Vol. V, p. 1029. *See* Proposed Plans, §§ 2.5, 3.5.

[178] Tr. Vol. V, pp. 1028-1030.

5. The Commission should reject OMAEG's recommendation to include their proposed prescriptive measures in the Proposed Plans.

OMAEG recommends that the Companies develop a pilot of three technologies for prescriptive programs because, it asserts, a custom measure is burdensome.[179] Again, OMAEG does not provide any meaningful detail on the programs it is proposing.[180] Regardless, OMAEG Witness Seryak agrees that manufacturing by its nature is custom and requires different data to determine savings.[181] OMAEG's recommended programs are not appropriate for prescriptive measures as they require custom designs based on the customer application, and are otherwise eligible as a custom measure in the Companies' Plans. OMAEG's recommendations should be rejected.

6. The Commission should not order the Companies to increase the budgets for Ohio Edison and CEI or to utilize a specific process for rebates.

Staff recommends that the Companies increase their budgets for Ohio Edison and CEI's programs because, as the Existing Plans were implemented, the Companies had to increase their budgets to accommodate demand for the commercial lighting program. Although Staff assumes that the Companies' current budgets do not align with the number of C&I customers, the Companies have carefully developed the budgets for their programs based on the unique circumstances of each operating company.[182] The commercial lighting budget is based on participation projections that take into account the historical performance of the program, the

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[179] OMAEG Brief, p. 4.

[180] Tr. Vol. IV, p. 749.

[181] Tr. Vol. IV, pp. 749-750.

[182] Tr. Vol. III, pp. 441-46.

customer make up of the Companies, and feedback from implementation vendors.[183] Toledo Edison's budget is higher because the highest participation projections were for that operating company as opposed to CEI.[184] Staff does not know these participation projections, and Witness Scheck stated that he has no reason to believe these projections are wrong.[185] Based on the Companies' sound process in developing their budgets, the Commission should approve the budgets contained in the Proposed Plans.

As for Staff's recommendations regarding the rebate process,[186] Staff Witness Scheck recognized that the Companies are logging the rebate applications and that providing that information during the Collaborative would be an acceptable way to review those logs.[187] Also, Mr. Scheck agreed that if the recommended customer satisfaction surveys are performed under normal EM&V activities, it would satisfy Staff's concerns regarding customer issues.[188] Despite these improvements, the Companies will work with Staff on the rebate process, thereby making it unnecessary for the Commission to order specific procedures.

7. CSP-contracted demand resources should be included in the Demand Reduction Program for C&I Large Enterprise customers.

EnerNOC objects to the Companies including in their Demand Reduction Program any demand resources that already are participating in the PJM capacity market, unless the

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[183] *Id*.

[184] Tr. Vol. III, pp. 444.

[185] Tr. Vol. IV, p. 783. Although Staff suggests using customer square footage to develop budgets, the Companies do not track square footage and there is no evidence that this would assist in the development of an accurate participation projection.

[186] Staff Brief, pp. 6-7.

[187] Tr. Vol. IV, p. 788.

[188] Tr. Vol. IV, pp. 830-831.

Companies contract for those resources from CSPs such as EnerNOC.[189] Similarly, Staff argues that the Companies should not count demand resources from mercantile customers unless those customers first commit those resources to the Companies as part of applying for an exemption from the DSE2 charge.[190] Notably, this is not an issue of ownership of these demand resources for purposes of bidding those resources into PJM, which is addressed below. The demand resources which the Companies seek to include in their Demand Reduction Program are those "demand resources participating in the PJM market for the applicable delivery year through PJM CSPs."[191] Thus, these customers already have been incented to contribute their demand resources to PJM, and any additional incentive from the Companies is unnecessary. As explained in EnerNOC's brief, this is "proof, again, that open, competitive market opportunities will encourage innovation."[192] Market incentives from CSPs have resulted in these demand resources participating in the PJM capacity auction, so the relevant question is not whether these demand resources require additional incentives but simply whether they should be counted for purposes of the Companies' Demand Reduction Program. The Companies explained why they should be counted, and the underlying law permitting the counting of these resources, in their Post-Hearing Brief.[193]

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[189] EnerNOC Brief, p. 9.

[190] Staff Brief, p. 16.

[191] Proposed Plans, § 3.4 (*see* description for Demand Reduction Program under "program approach, rationale and description").

[192] EnerNOC Brief, p. 8.

[193] Co. Br., pp. 36-38.

8. The Companies do not object to calculating interruptible load for purposes of its Demand Reduction Program using the Rider ELR definition of Curtailable Load.

Nucor and OEG argue that the amount of interruptible capability counted toward the Companies' PDR benchmarks should be calculated using the definition of Curtailable Load included in Rider ELR to calculate credits payable to interruptible customers.[194] The Companies currently count as a demand resource for purposes of the PDR benchmarks the amount of interruptible capability registered as a demand resource with PJM.[195] The difference between how the Companies calculate the PDR savings and how Nucor and OEG recommend PDR savings should be counted is clear. The Companies use the amount of load capable of being reduced when a PJM event is called.[196] Nucor and OEG propose using the aggregate amount of maximum load interruptible customers have pledged will be available for interruption.[197] The Companies are not opposed to counting Curtailable Load, as defined in Rider ELR, toward their PDR benchmarks should the Commission order it.

D. The Shared Savings Mechanism is Reasonable.

Several parties support the Companies' proposed shared savings mechanism, albeit with various modifications.[198] Only Nucor and OEG oppose any form of a shared savings mechanism on the basis that the Companies have not provided "empirical" analysis justifying such a

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[194] Nucor Brief at 25-27; OEG Brief at 13-14.

[195] OEG/Nucor Exh. 1, Direct Testimony of Dr. Dennis W. Goins ("Goins Testimony"), p. 19.

[196] *See* IEU-Ohio Exh. 2, PJM Manual 18: PJM Capacity Market §§ 4.3.5 – 4.3.9.

[197] Goins Testimony, p. 19.

[198] *See*, *e.g.*, Staff Brief, p. 12 ("Staff generally supports FE's proposed shared savings mechanism but has a few concerns"); OCC Brief, p. 7 ("The Utilities should receive a more modest apportionment of shared savings"); NRDC Brief, p. 60 ("The Commission should . . . approve a modified shared savings mechanism").

mechanism.[199] Yet the Nucor/OEG witness, Dr. Goins, agreed that any empirical analysis would be beside the point because the Commission's decision to approve a shared savings mechanism and the savings level approved is a normative judgment, not an empirical one.[200] Dr. Goins' personal opinion is that incentives should not be used to stimulate savings in excess of statutory benchmarks, but he recognizes that there are credible arguments to the contrary.[201] Despite his personal opinion, he has developed incentive mechanisms for utilities in the past.[202] Indeed, Duke Energy Ohio has had a shared savings mechanism for several years, and the Commission recently approved a shared savings incentive mechanism for AEP Ohio consistent with O.A.C. 4901:1-39-07(A).[203] If the Commission believes that customers would benefit from the Companies exceeding the statutory benchmarks, the Nucor/OEG arguments are not a convincing basis upon which to reject the Companies' proposed shared savings mechanism.

With regard to modifications recommended by various parties, the Companies addressed these in large part in their Post-Hearing Brief.[204] Although shared savings are an incentive for exceeding the statutory benchmarks, NRDC argues that shared savings should not be tied

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[199] Nucor Brief, pp. 15-18; OEG Brief, pp. 8-10.

[200] Tr. Vol. II, pp. 247-48 ("It is a nonscientific value judgment"); *id.*, p. 252 ("since we said that at the outset of this discussion, that this was a normative process, I don't think anyone could say what the optimal from a social welfare point of view, what a – the optimal incentive structure should be if one wanted to implement it. In a normative scheme, my judgment is as good as your judgment.").

[201] Tr. Vol. II, p. 248-49.

[202] *Id.*, p. 249.

[203] *In the Matter of the Application for Recovery of Costs, Lost Margin, and Performance Incentive Associated with the Implementation of Electric Residential Demand Side Management Programs by The Cincinnati Gas & Electric Company*, Case No. 06-91-EL-UNC, Finding and Order, pp. 3-4 (July 11, 2007) (shared savings starting at 65% of targeted savings); *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case No. 11-5568-EL-POR, Opinion and Order at pp. 7-8 (Mar. 21, 2012) ("AEP Ohio POR Order").

[204] Co. Br., pp. 22-28.

directly to the Companies' statutory benchmarks.[205] Instead, NRDC seeks to create additional complicated targets for the Companies to manage by excluding all T&D projects and all Mercantile Customer Program results from the baseline determination of when shared savings are triggered.[206] However, as explained in the Post-Hearing Brief and in this Reply Brief, both the T&D Improvements Program and the Mercantile Customer Program are expressly authorized in R.C. § 4928.66 to be counted toward compliance with the statutory benchmarks.[207] There is no dispute that these programs result in energy efficiency savings that benefit customers and, thus, there is no reason to exclude them from the incentive baseline.[208]

Several parties criticize the inclusion of T&D programs, the Mercantile Customer Program and behavioral programs in the Companies' calculation of Adjusted Net Benefits.[209] As explained in the Companies' Post-Hearing Brief,[210] the Companies have carefully balanced these concerns and limited the contribution of savings from these programs in the incentive mechanism to those specific, verifiable savings that result from the Companies' programs. For example, not all T&D savings will count for purposes of the incentive mechanism; only the incremental benefits obtained from T&D projects that are planned and then modified to provide additional energy efficiency benefits will count.[211] Similarly, the Companies will include only mercantile customer projects installed after March 23, 2011, which is the date on which the

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[205] NRDC Brief, p. 61.

[206] *Id.*

[207] *See* Co. Br., pp. 24-25; Proposed Plans, § 3.6.

[208] *See* Tr. Vol. IV, pp. 845-46 (OCC witness Gonzalez agreeing that mercantile results should be counted for purposes of calculating compliance with the benchmarks).

[209] NRDC Brief, p. 62; ELPC/OEC Brief, pp. 37-38; OCC Brief, pp. 14-16; OEG Brief, p. 11; Nucor Brief, p. 20; OPAE Brief, pp. 17-18.

[210] Co. Br., pp. 25-26.

[211] Company Exh. 5, Direct Testimony of Eren G. Demiray ("Demiray Testimony"), p. 10.

Commission approved the Companies' Existing Plans and customers had a choice of participating in the programs included in any of the programs included therein.[212] The Companies will count behavioral modification programs only if they demonstrate continued applicability, as verified each year as part of the Companies' annual EM&V activities, towards compliance with the statutory energy efficiency benchmarks.[213] No party has shown that this balancing of interests is unreasonable.

Several parties also continue to advance their preferred structure for incentive levels.[214] ELPC/OEG appears to support the Companies' proposed incentive levels.[215] Staff argues that the top-tier incentive level should be set only marginally higher than the rate-of-return the Companies would earn on investments that are not energy efficiency related.[216] The Companies believe that a tiered structure starting with a 5% incentive for exceeding the benchmarks by up to 105%,[217] and progressing up to a 13% incentive for exceeding the benchmarks by more than 115%, is reasonable and supported by the record.[218] Companies Witness Demiray estimated that, for the Proposed Plans as filed, an annual average shared savings for one of the Companies, at the top tier of 13%, would be approximately $2.7 million.[219] This, when coupled with the

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[212] Demiray Testimony, p. 10. The Companies believe this is consistent with Staff's recommendation that "historical" self-direct mercantile consumption not be counted. *See* Staff Brief, p. 12-13.

[213] Demiray Testimony, p. 11.

[214] NRDC Brief, p. 63; OCC Brief, p. 10; OEG Brief, p. 10; Nucor Brief, p. 19; Staff, p. 12.

[215] ELPC/OEC Brief, pp. 36-37 (supporting AEP Ohio incentive structure).

[216] Staff Brief, p. 12.

[217] OCC argues that the Companies should not receive an incentive for exactly meeting the benchmark, but only for exceeding it. OCC Brief, p. 8. The Companies have no objection.

[218] Demiray Testimony, p. 10; Reed Testimony, p. 23; Tr. Vol. VI, pp. 851-55 and Company Exh. 17 (*Aligning Utility Incentives with Investment in Energy Efficiency*, National Action Plan for Energy Efficiency, November 2007, pages 6-1 and 6-2).

[219] Tr. Vol. III, pp. 489-90. With a top tier of 10%, the annual average would be approximately $2.1 million. *Id.*

recovery of shared savings, provides the Companies with a reasonable incentive through the shared savings mechanism. Based on this record, the Commission should approve the Companies' proposed incentive structure.

The parties' briefs also address the question of whether there should be a cap on the total annual incentive. Staff opposes a cap, and this position appears to be supported by OHA.[220] Curiously, although Sierra Club Witness Reed opposes a cap, the Sierra Club joined a brief with the NRDC that supports a cap.[221] The reasons given by NRDC are that the Companies allegedly have a "poor track record" of running energy efficiency programs and NRDC does not trust the Companies.[222] Yet, if either of these subjective beliefs were true (the Companies object to the first and cannot speak to the second), they would still not be a sound basis for opposing a cap. As OCC Witness Gonzalez admitted, any cap is a disincentive to increased energy efficiency savings.[223] Thus, Staff Witness Scheck opposes a cap because it "may disincentivize [the Companies] from implementing EE measures that go beyond the minimum statutory requirements."[224] Given the disincentive resulting from a cap and the level of savings at issue, the Commission should approve the Companies' proposed incentive structure.

OCC stands alone in arguing for use of the TRC test to determine savings, and also argues that the savings should be calculated on a pre-tax basis.[225] The lack of utility of the TRC test for calculating savings was addressed in the Companies' Post-Hearing Brief and admitted by

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[220] Scheck Testimony, p. 11; OHA Brief, p. 7.

[221] Reed Testimony, p. 23; NRDC Brief, p. 62. Nucor also supports a cap, but does not explain this position in its brief. Nucor Brief, pp. 18-19.

[222] NRDC Brief, p. 62.

[223] Tr. Vol. IV, pp. 862-63.

[224] Scheck Testimony, p. 11. Mr. Scheck explained that the SEET trigger is a natural cap for the Companies. *Id.*

[225] OCC Brief, pp. 10-11, 12-14.

OCC Witness Gonzalez.[226] Calculating savings on an after-tax basis is consistent with the AEP Ohio shared savings incentive mechanism,[227] and provides the appropriate signal to the Companies' management as to the potential impact to the Companies and their bottom line if they were to exceed the benchmarks.[228] Both of OCC's recommendations should be rejected.

OCC also seeks an offset to shared savings for some undefined level of EE/PDR resources not bid into the 2015/16 PJM BRA.[229] OCC's brief falsely argues that the Companies had 65 MW to bid into this auction but only bid 36 MW.[230] As OCC's witness reluctantly agreed on cross-examination, the 65 MW identified by the Companies was contingent upon those resources qualifying under a PJM-approved Measurement & Verification ("M&V") plan and the Companies obtaining ownership and/or control of the resources prior to the auction.[231] In addition to lacking any factual support, OCC's proposal also is nonsensical. While the Commission has encouraged the Companies to bid into PJM auctions those eligible resources for which the Companies have ownership rights, OCC believes the Companies should be penalized for not bidding into PJM auctions any and all forecasted resources for which the Companies lack ownership rights. Further, OCC believes that the 2013 shared savings incentive, if any, should be discounted based on an undefined amount of auction revenues that will not be received starting in July 2015. The only conclusion to be drawn from this is that OCC supports a shared

[226] Co. Br., p. 23; Tr. Vol. IV, pp. 855-57.

[227] AEP Ohio POR Order, pp. 7-8.

[228] Additionally, if pre-tax values are used, then the incentive percentages should be adjusted upward to account for tax consequences.

[229] OCC Brief, pp. 16-17.

[230] *Id.* OPAE repeats this misstatement in its brief, leading to adoption of OCC's mistaken conclusion. OPAE Brief, pp. 25-26.

[231] Tr. Vol. IV, pp. 871-72 and Company Exh. 18.

savings incentive mechanism that is completely unworkable. Given the lack of logic and lack of record support for OCC's proposal, the Commission should reject it.

The shared savings incentive mechanism included in the Proposed Plans balances the interests of all parties and represents a reasonable approach that should be approved as filed.

E. The Companies' Collaborative Process is Effective and, Regardless, Does Not Present A Basis for Rejection of the Plans.

In 2010, the Companies implemented a process through which interested stakeholders could meet to discuss issues related to the Companies' energy efficiency and peak demand reduction portfolio plans ("the Collaborative"). The Collaborative process includes numerous stakeholders, including all of those represented in this proceeding. Yet, only ELPC/OEC claims the process was ineffective and should be changed.[232] It suggests that the Commission direct the Companies "to provide meeting materials at least one week in advance of Collaborative meetings" and, per ELPC/OEC Witness Crandall, the Commission should direct the Companies to hold quarterly meetings.[233] No such directive is necessary because the Companies already do both.[234] The Companies have always tried to provide materials at least a week in advance of meetings when circumstances allow for it, and the Vice President of Energy Efficiency made an express commitment to the Collaborative to try to accommodate this request for every meeting going forward.[235] Moreover, the Companies already hold meetings at least quarterly, provided

[232] ELPC/OEC Brief, p. 42. Although NRDC Witness Sullivan makes several recommendations for improvement of the process in his direct testimony (at 9), as he acknowledged during his cross examination, the Companies already do each of those recommendations. *See* Tr. Vol. 5, pp. 969-970.

[233] ELPC/OEC Brief, p. 43.

[234] The Companies also already do what is being suggested by NRDC Witness Sullivan. *See* Tr. Vol. V, pp. 969-970.

[235] Tr. Vol. III, pp 475-476.

that there are issues to discuss,[236] something ELPC/OEC's witness may have known had he attended more than "a few" of the Collaborative meetings.[237] These meeting dates have been scheduled in advance at the beginning of each year.

ELPC/OEC's complains that it was "kept in the dark" while the Proposed Plans were being developed and that it received only a PowerPoint presentation and met once in 2012 before the Proposed Plans were filed. [238] This simply is not true. As NRDC Witness Sullivan acknowledged, the Companies provided NRDC and other Collaborative members not only with the 42-page PowerPoint slide deck, but also with a significant amount of other information related to the Companies plans, including: (i) a sector level kilowatt hour and megawatt savings by year analysis; (ii) a sector level program budget by year analysis; (iii) program level cumulative savings projections; (iv) portfolio of specific assignment of energy efficiency costs by program and sector; (v) allocation of costs to customer sectors; (vi) annual lifetime costs, lifetime benefits, TRC results, lifetime kWh savings, megawatt savings by sector and program, but not by subprogram; (vii) projected units by measure, by year; (viii) program descriptions; (ix) incentive levels on a program specific basis; (x) incremental cost measures on a measure-specific basis; and (xi) model rebates on a measure specific basis.[239] NRDC Witness Sullivan also acknowledged that he could not recall any instance where the Companies refused to discuss an issue raised by a collaborative member if the information was available.[240]

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[236] Dargie Testimony, pp. 8-9.

[237] Tr. Vol. V, p. 1028. *See also* Tr. Vol III, p. 560 (Sierra Club Witness Loiter did not participate in any meetings); Tr. Vol. V, p. 961 (NRDC was not as consistent or productively engaged in the collaborative process).

[238] ELPC/OEC Brief, p. 43-44.

[239] Tr. Vol. V, pp. 962-69.

[240] Tr. Vol. V, pp. 969-970.

Equally false is ELPC/OEC's claims that the Collaborative only met once in 2012 prior to the filing of the Proposed Plans. As Mr. Dargie explained, the Companies started sharing their thoughts on the development of the Proposed Plans and the programs and measures to be included and continued discussions with both the subcommittees and full Collaborative several times before the end of 2011.[241] Another update on plan development and on the development of the Market Potential Study was provided during the Collaborative meeting held on February 24, 2012. Complete modeling results were provided to the Collaborative group on June 29, 2012. On July 10, 2012, the Companies presented the near final results of both the Proposed Plans and the Market Potential Study to the Collaborative group.[242] At each of the meetings, including the last one held on July 10, the Companies solicited input and suggestions on how the Proposed Plans could be improved.[243] Yet, virtually none of the suggested changes to, or criticisms of, the program portfolio now under consideration were raised in the Collaborative by any member, including ELPC/OEC's witness.[244]

Not only was ELPC/OEC the only party to complain about the Collaborative process, but noticeably absent from the record are recommendations from Staff for improvement to the process. The Commission addressed the Collaborative process during the Companies' last portfolio case and directed Staff "to continue to monitor the collaborative and to make any

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[241] Dargie Testimony, p. 10.

[242] *Id*. Although Commission Rules established a deadline for filing the Proposed Plans of April 15, 2013 (OAC 4901:1-39-04(A)), the Commission ordered the Companies to move up the date for filing the Proposed Plans to no later than July 31, 2012. *See* 12-814 Entry at 3-4. As a result, the July 10, 2012 meeting was the last meeting before filing of the Proposed Plans on July 31, 2012.

[243] *Id*.

[244] *See*, *e.g.*, Tr. Vol V, p. 1028, 1038 (ELPC/OEC Witness Crandall did not raise his concerns regarding marketing materials or kit installation rates at any Collaborative meeting). *See also* Tr. Vol III, p. 560 (Sierra Club Witness Loiter did not present any of his recommendations to the Collaborative).

appropriate recommendations to improve the collaborative process *in conjunction with [the Companies'] next program portfolio plan filing* or such other time as Staff deems appropriate."[245] Staff regularly attends the Collaborative meetings[246] and participated in the recent evidentiary hearings. Nowhere in Staff's testimony are there any complaints related to the Collaborative process, nor are there any suggestions for improvements.

ELPC/OEC's claims that the Collaborative is ineffective should be rejected, especially since the Companies already comply with the recommendations for change suggested by ELPC/OEC and have demonstrated that ELPC/OEC's other allegations are false. Moreover, none of ELPC/OEC's criticisms justify rejection of the Proposed Plans.

II. THE INTERVENORS HAVE FAILED TO PRESENT GROUNDS FOR REJECTING THE PROPOSED PLANS.

A. The Commission Should Reject Intervenors' Objections to the Companies' PJM Bidding Proposal.

1. The Companies' proposal for bidding demand resources into PJM auctions is lawful and consistent with Commission directives.

Although there is no statutory requirement imposed on any EDU to participate in the PJM capacity market, the Commission has directed the Companies to obtain ownership of energy efficiency resources generated by their energy efficiency programs, to verify the energy savings to qualify for participation in PJM BRAs, and to bid qualifying resources into the BRAs.[247] In advance of the most recent BRA in May 2012, the Commission also directed the Companies to work with Staff to identify cost-effective energy efficiency and peak demand reduction resources

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[245] Case No. 09-1947-EL-POR et al, Opinion and Order at 20 (Mar. 23, 2011) (italics added.)

[246] Tr. IV, p. 800.

[247] ESP III Order, p. 38. The Companies have asked that the Commission find in its Order approving the Proposed Plans that publication notice is sufficient to automatically transfer ownership of energy efficiency credits to the Companies in those circumstances where the Companies cannot obtain consent through standard terms and conditions. No party has objected to this form of notice.

that could be offered into the May 2012 BRA.[248] OCC and ELPC/OEC seek to convert these directives into a broad mandate to aggressively bid forecasted resources into the next several BRAs.[249] However, at no time did the Commission direct the Companies to act unreasonably or to take unnecessary risks. The Companies' proposed bidding strategy for future PJM auctions, as described in the Companies' Post-Hearing Brief and as further described below, is both reasonable and consistent with the Commission's prior directives.

To be clear, customers will not receive any benefit in this Plan Period from bids into the PJM BRAs. This is a three-year plan for the period ending December 31, 2015. The next PJM BRA will be held in May 2013 for the delivery year starting June 1, 2016. Compensation from PJM for demand resources starts during the applicable delivery year once delivered into the PJM capacity market pursuant to a PJM-approved post-installation M&V report. Thus, PJM BRA bidding will not generate any revenues during the Plan Period and, except for any costs associated with developing an Initial M&V Plan and participating in the BRA, will not have any impact on Rider DSE. The Companies' ultimate bidding strategy for upcoming PJM BRAs will have an impact only on future portfolio plan charges.

2. Intervenors unreasonably demand that the Companies aggressively bid forecasted energy efficiency resources into PJM auctions.

ELPC/OEC, NRDC, OCC, OMAEG, Nucor and OEG all recommend that the Companies be ordered to aggressively bid energy efficiency resources in the PJM BRAs and incremental auctions. All seek to have the Companies go well beyond the Commission's directive in Case No. 12-1230-EL-SSO, which focused on ownership and eligibility of energy efficiency

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[248] 12-814 Entry at 2.

[249] *See* OCC Brief, pp. 18-20; ELPC/OEC Brief, pp. 8-11.

resources.[250] Indeed, while the Companies have committed to bid eligible, installed resources for which the Companies have obtained ownership rights, OCC seeks to add not only "planned" resources permitted under PJM rules but also "forecasted" or "saved" resources that are not.[251] The Companies cannot bid resources into a PJM auction that do not qualify and that are neither installed nor planned.[252]

The parties opposing the Companies' PJM bidding strategy appear to lack an understanding of what energy efficiency resources the PJM rules allow to be bid into an auction. The starting point is Section 4.4 of PJM Manual 18, which defines an Energy Efficiency Resource as:

> a project that involves the installation of more efficient devices/equipment, or the implementation of more efficient processes/systems, exceeding then-current building codes, appliance standards, or other relevant standards, at the time of installation, as known at the time of commitment, and meets the requirements of Schedule 6 (section M) of the Reliability Assurance Agreement. The EE Resource must achieve a permanent, continuous reduction in electric energy consumption at the End Use Customer's retail site (during the defined EE Performance Hours) that is not reflected in the peak load forecast used for the Base Residual Auction for the Delivery Year for which the EE Resource is proposed. The EE Resource must be fully implemented at all times during the Delivery Year, without any requirement of notice, dispatch, or operator intervention.[253]

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[250] ESP III Order, p. 38.

[251] *See* OCC Brief, p. 24. *See also* OCC Brief, pp. 17-18 (inventing a new term of "saved MW" and suggesting that the Companies should bid into PJM all "saved MW" – apparently using an estimate of all portfolio savings, regardless of whether those savings are eligible or planned).

[252] *See* Tr. Vol. IV, pp. 1128-29, 1138.

[253] IEU-Ohio Exh. 2, PJM Manual 18 § 4.4. The time period of energy efficiency installations and their associated eligibility, in addition to the modeling of Energy Efficiency Resources in the PJM capacity market, is presented in PJM Manual 18B: Energy Efficiency Measurement &Verification. *See* IEU-Ohio, Exh. 3.

An Energy Efficiency Resource may be bid into an auction if it is "existing", meaning that it has an approved Post-Installation M&V Report or if it is "planned", in which case it must satisfy the following criteria:

- EE installation must be scheduled for completion prior to Delivery Year;
- EE installation is not reflected in peak load forecast posted for the BRA for the Delivery Year initially offered;
- EE installation exceeds relevant standards at time of installation as known at time of commitment;
- EE installation achieves load reduction during defined EE Performance Hours; and
- EE installation is not dispatchable.[254]

A planned resource must have an Initial M&V Plan submitted to PJM no later than thirty days before an auction and approved by PJM within ten days of receipt.[255] The Initial M&V Plan may cover multiple Energy Efficiency Resources but must clearly document the estimated value of each Energy Efficiency Resource covered in the plan.[256]

Thus, under PJM's rules, energy efficiency resources that are not installed and verified prior to an auction must, at minimum, have a documented energy efficiency value during the defined performance hours and be scheduled for completion prior to the applicable delivery year.[257] While NRDC sought during cross-examination of Companies Witness Mikkelsen to draw parallels between the construction of a generating facility and forecasted energy efficiency

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[254] IEU-Ohio Exh. 2, PJM Manual 18 § 4.4.

[255] IEU-Ohio Exh. 3, PJM Manual 18B § 5.1.1.

[256] IEU-Ohio Exh. 3, PJM Manual 18B § 2.1. A "nominated value" must be provided, which means "the expected average demand (MW) reduction during the defined EE Performance Hours in the Delivery Year", which must be at least 0.1 MW. IEU-Ohio Exh. 2, PJM Manual 18 § 4.4.1.

[257] ELPC/OEC misrepresents the PJM requirement as "only that they will be available" by the delivery year. ELPC/OEC Brief, p. 4. As a review of the rules reveals, more is involved.

resources, there is an easy and major distinction: a generating plant will have a defined construction schedule under which its operation can be projected for a specific delivery year three or more years in the future; the scheduling of energy efficiency resources is much more uncertain and variable.[258] As a result, the Companies plan to bid eligible installed energy resources for which they have ownership rights.

As explained in detail in the Companies' Post-Hearing Brief, the Companies intend to prudently manage risk to the Companies and their customers by bidding into PJM auctions all eligible, installed energy efficiency resources for which the Companies have ownership rights at the time of the auction, provided that these resources are of sufficient scale, will meet PJM M&V standards and are included in an M&V plan approved by PJM.[259] This by no means includes all projected savings from the Companies' energy efficiency programs, nor could it. It is impossible for any party to guess accurately what resources will be installed, which of those installed resources will qualify to meet the projected commitments and M&V standards, and which of those the Companies will have ownership rights to for a delivery year at least three years in the future.[260] Yet some parties ask that the Companies take a gamble and engage in financial arbitrage, on the theory that it could pay off for customers starting in 2016.[261] The Companies do not believe this is a reasonable approach. The Commission should not dictate a required approach for bidding into PJM for the Companies when no such requirement exists for other

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[258] *See* Tr. Vol. VI, pp. 1177-78.

[259] Co. Br., pp. 28. *See* Dargie Testimony, p. 15; Company Exh. 23, Rebuttal Testimony of Eileen M. Mikkelsen ("Mikkelsen Rebuttal"), p. 3.

[260] Mikkelsen Rebuttal, p. 5.

[261] Mikkelsen Rebuttal, pp. 4-5; Tr. Vol. IV, p. 866 (OCC Witness Gonzalez agreeing that bidding resources into a PJM auction that a CSP, in some cases, does not own or have rights to is financial arbitrage).

Ohio EDUs, particularly if the requirement is directed by the wishes of Intervenors with a clear bias towards maximizing the bid revenue with reckless or little regard for the risks of doing so.

Multiple parties misrepresent Staff's position as being that the Companies should bid 75% of projected savings into each PJM BRA.[262] In fact, Staff Witness Scheck made clear during the hearing that the Companies should only bid 75% of those capacity resources the Companies "can actually claim."[263] He further explained that the Companies can claim resources to the extent they can establish ownership, including through a long-term contract.[264] He is not recommending that the Companies bid future resources that the Companies do not have under contract at the time of bidding.[265] Mr. Scheck also explained that the 75% would not include resources that might not be eligible under PJM rules.[266] As such, the Companies believe that the difference between their position and Staff's position is that the Companies plan to bid eligible resources that are both owned and installed, while Staff is recommending that the Companies bid 75% of eligible resources that are owned and either installed or planned. Although the Companies welcome Staff's recommendations, the Companies continue to believe that their bidding strategy assumes the risk level most appropriate for an electric distribution utility.

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[262] *See*, *e.g.*, ELPC/OEC Brief, p. 17; OCC Brief, p. 23.

[263] Tr. Vol. IV, p. 804.

[264] Tr. Vol. IV, pp. 804-07.

[265] Tr. Vol. IV, p. 807-08.

[266] Tr. Vol. IV, p. 805. Because the Companies would be offering 75% of eligible resources under contract, which is a subset of all resources under the Proposed Plans, the Companies do not believe any scenario exists under which bidding planned resources would be profitable to the Companies. *See* Staff Brief, p. 11. The amount offered and cleared would not exceed the annual statutory peak demand reduction benchmark. *Id.*

ELPC/OEC also misstates the origin of the energy efficiency resources at issue by describing them as "resources that the Companies plan on installing by the delivery year but that the Companies have not actually installed at the time of the BRA."[267] If the Companies did plan to install resources on its own, it could schedule those resources in a manner that could qualify them as "planned" resources under PJM rules. But the Proposed Plans include very few resources installed by the Companies themselves.[268] To the contrary, the energy efficiency resources at issue are projected to be installed by the Companies' customers in various shapes and sizes, and at various times, as determined by each customer. ELPC/OEC's view leads it to conclude that the Companies should bid anticipated savings into the PJM BRA from the Companies' planned (projected) customer installations. However, as Companies Witness Mikkelsen explained, there is a substantial difference between "planned" savings from the Proposed Plans and what is a "planned" resource for purposes of PJM rules:

> one of those [PJM] requirements is that the installation – or that the project or technology is scheduled to be installed prior to the delivery year. And when I think about our energy efficiency plans, we have a forecast for participation rates and a number of other assumptions that underlie what might occur with respect to those plans; and to me, that's very different than having great certainty that you have that installation scheduled for implementation prior to the delivery year.[269]

Some portion of customer resources generated by the Proposed Plans will be eligible and owned by the Companies; some portion will not.[270]

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[267] ELPC/OEC Brief, p. 5.

[268] It is possible that T&D projects planned for completion prior to a delivery year could qualify for purposes of bidding into a PJM BRA.

[269] Tr. Vol. VI, p. 1154.

[270] Mikkelsen Rebuttal, pp. 5-6.

ELPC/OEC and others suggest that the Companies have not carried the burden of showing that the risks of bidding forecasted savings into PJM outweigh the benefits.[271] Yet the Companies carry no such burden. There is no dispute that their proposed strategy is prudent. The question is whether the aggressive strategy proposed by ELPC/OEC, OCC and others to engage in financial arbitrage is one that will generate benefits that outweigh the obvious risks. Indeed, ELPC/OEC uses an example of bidding 316 MW into the 2015/16 BRA, with 10 MW of that 316 MW not being available for delivery, to show that an aggressive bidding strategy could be worthwhile. Two obvious problems with this example immediately come to mind, however. First, the issue before the Commission is bidding into future auctions, starting with the 2016/17 BRA. ELPC/OEC's example benefits from knowing what the deficiency charge is for the 2015/16 BRA. The deficiency charge for future auctions is unknown.[272] Second, the assumed shortfall of 10 MW is unsupported by the record. If we assume for purposes of ELPC/OEC's calculation that the 200 MW of interruptible load currently in place is not available in future auctions and is instead replaced by contracted demand resources, this would generate a penalty of $31.3 million and a cost to Rider DSE of $16.2 million.[273] As Companies Witness Mikkelsen testified, this outcome is one of many possibilities that justifies the Companies' proposed bidding strategy.[274]

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[271] ELPC/OEC Brief, pp. 13-18.

[272] PJM could amend its rules in the future, prior to any one of the next three auctions that will occur during the Plan Period, to increase the deficiency charge. *See* Mikkelsen Rebuttal, p. 6. This is particularly likely if PJM determines that auction participants are engaging in financial arbitrage by bidding "planned" energy efficiency resources or demand resources that lack sufficient bona fides.

[273] 200 MW x $428.4/MW-day x 365 = $31.3 million. 116 MW x $357/MW-day x 365 = $15.1 million. $15.1 million in PJM revenue - $31.3 million in PJM penalties = -$16.2 million.

[274] *See* Mikkelsen Rebuttal, pp. 5-6. In the ELPC/OEC example, it also is not a question of taking a risk to gain $38.3 million or not taking a risk and receiving no PJM revenues. Under the Companies'

Indeed, ELPC/OEC fails to understand how contracted demand resources are used as part of the Proposed Plans, which leads it to conclude that these resources are not an uncertainty of the plans.[275] It suggests that the Companies simply use their estimate of how many MWs of contracted demand resources they will obtain in the future and simply not bid this amount into the PJM BRA.[276] ELPC/OEC does not have the timing right. The Companies acquire contracted demand resources to satisfy their statutory benchmarks during the year of the applicable benchmark.[277] To use the May 2013 BRA for the 2016/17 Delivery Year as an example, the Companies will not know in advance of the May 2013 auction what amount of contracted demand resources they will need to acquire for years 2016 and 2017. Instead, the Companies will review plan implementation during those years and cover any demand response shortfall using contracted demand response.[278] Thus, the Companies do not have an estimate today, and will not have an estimate in advance of each BRA, of the amount of contracted demand resources it will acquire three and four years in the future.

OCC and ELPC/OEC suggest that the Companies can purchase capacity from PJM incremental auctions to cover shortfalls as a risk mitigation strategy. However, as Companies Witness Mikkelsen explained, "not knowing what future incremental auctions will clear at, to rely on that as a strategy for meeting an open future position creates a situation where the company may end up paying more for that resource than they were compensated for that

existing strategy, customers already are in line to receive millions of dollars in PJM revenues starting in 2015. *See* Tr. Vol. III, pp. 531-32.

[275] ELPC/OEC Brief, p. 19.

[276] *Id.*

[277] *See* Tr. Vol. II, pp. 320-23.

[278] *See* Tr. Vol. II, pp. 322-23.

resource in the BRA."[279] OCC and ELPC/OEC suggest that this hedging strategy could benefit ratepayers because incremental auctions typically have cleared at lower prices than their associated BRA.[280] Yet, for purposes of the ATSI zone, this is based on a "trend" of one auction in a constrained zone, which is not a reliable trend at all.[281] Additionally, although incremental auctions in the PJM unconstrained zone have cleared lower than BRAs historically, there is no basis for assuming that the fundamental dynamics creating this trend will continue into the future.[282] Sierra Club Witness Loiter professed no knowledge of whether future prices in incremental auctions would be higher or lower than BRAs, but stated that the Companies would be responsible for the difference resulting from a higher incremental auction price.[283] Staff Witness Scheck recommended that the Commission **not** count on a future hedging strategy that relies on price separation between the incremental auctions and a BRA, because "there is no guarantee going forward that the incremental auction will always be lower than the BRA."[284] Betting on future incremental auctions to cover shortfalls in energy efficiency resources creates its own set of risks which are not controllable by the Companies.[285]

OCC proposes that customers assume the Companies' risk of any PJM penalties for capacity obligations cleared in the PJM BRA but not delivered, provided the Companies have

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[279] Tr. Vol. VI, p. 1131.

[280] ELPC/OEC Brief, pp. 17-18; OCC Brief, p. 23.

[281] *See* Tr. Vol. IV, pp. 891-92 (OCC Witness Gonzalez acknowledging that he has no idea whether the price differential will continue in the future and noting that the "trend" he is relying upon does not apply to constrained zones); Tr. Vol. III, p. 630 (Sierra Club Witness Loiter admitting limited knowledge of the ATSI zone). *See also id.*, pp. 630-31 (Sierra Club Witness Loiter agreeing that plant closings could impact future incremental auction prices).

[282] *See* Tr. Vol. III, pp. 534, 537-38.

[283] Tr. Vol. III, pp. 577-78.

[284] Tr. Vol. IV, p. 810.

[285] Mikkelsen Rebuttal, p. 5.

prudently managed their portfolio and used their best efforts to deliver the capacity savings.[286] This "hold harmless" recommendation is qualified, however, by an after-the-fact audit and prudency review process.[287] As the discussion above and in the Companies' Post-Hearing Brief should make clear, there is no simple answer to the amount of energy efficiency resources resulting from the Proposed Plan and the 2016-18 portfolio plan of the Companies that will be PJM eligible and under ownership of the Companies for future delivery years starting with the 2016/17 Delivery Year. Under OCC's audit and prudency review process, what determination is the Commission to make following the May 2013 BRA as to whether the Companies bid the correct amount of resources for the 2016/17 Delivery Year? No one will be able to say until 2016/17 whether the resources OCC hopes will materialize actually will be deliverable into the PJM capacity market. If OCC's or ELPC/OEC's recommendations are adopted, the Commission lacks any ability to define at the time of a BRA what the "right" level of resources is to be bid. As a result, any prudency review would inevitably become bogged down by subjective estimates of various parties as to what should have been bid, and the Companies would needlessly be exposed to risk. OCC's proposal is reasonable in theory, but unreasonable in practice. In contrast, the Companies' bidding strategy can be objectively reviewed to determine whether those resources that are eligible, installed and owned by the Companies were bid into the BRA.

OCC also proposes that the Companies review the specifics of their bidding strategy with all Collaborative members in a Collaborative meeting at least 120 days prior to the May 2013 BRA.[288] Given that OCC expects to be told in this meeting the exact number of MWs that the

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[286] OCC Brief, p. 22. This recommendation is conspicuously absent from the briefs of NRDC, ELPC/OEC and OPAE, although all recommend an aggressive bidding strategy.

[287] *Id.*, pp. 22-23.

[288] OCC Brief, p. 25.

Companies will offer, the timing is unrealistic – PJM approval of Initial M&V Plans could come as late as 20 days before the auction.[289] In addition, any discussion at such a meeting likely would revolve around MWs not offered and, thus, would likely degenerate into arguments over whose forecast is best. Under the Companies' existing bidding strategy, these arguments are unnecessary. Regardless, the Companies consider the specific details of future bid amounts to be confidential and would object to revealing such details to the Collaborative or other external parties prior to an auction.

3. Nucor and OEG unreasonably demand that the Companies bid ELR resources into the PJM BRA for delivery years when Rider ELR is not in effect.

Nucor and OEG focus their arguments on the interruptible load currently under contract pursuant to Rider ELR and argue that this load should be considered to be a planned demand resource and bid into the PJM BRAs starting with the 2016/17 Delivery Year.[290] However, because Rider ELR is only effective until May 31, 2016, there is no interruptible load under tariff that the Companies can demonstrate ownership of at this time for the 2016/17 Delivery Year.

Under PJM's auction rules, Existing and Planned Demand Resources may participate in a BRA.[291] Existing Demand Resources must be designated by the CSP offering the resource as being available in the future Delivery Year for which an auction is held. Planned Demand

[289] OCC suggests that "there is little mystery concerning the quantity of MW that the Utilities can bid into in the PJM BRA" because EE/PDR Portfolio Plans are public information. OCC Brief, p. 25. Yet OCC Witness Gonzalez, who claims to have reviewed the Companies' Portfolio Plans, could only estimate that the Companies will bid more than 36 MW into the next auction. Tr. Vol. IV, pp. 898. He also agreed that the PJM BRA delivery years take place outside the time period of the Companies' Portfolio Plans, and retreated to the argument that someone could at least look at the benchmark levels and hazard a guess. Tr. Vol. IV, pp. 896-97. OCC can take this "little mystery" position only by ignoring all testimony presented at hearing.

[290] Nucor Brief, pp. 20-25; OEG Brief, pp. 11-12.

[291] IEU-Ohio Exh. 2, PJM Manual 18, § 4.3.3.

Resources are resources that are scheduled to be capable of providing demand reduction on or before the start of a delivery year.[292] The demand resources proffered by Nucor and OEG, however, are neither available to nor scheduled by the Companies on or after June 1, 2016.[293] Customers currently taking service under Rider ELR are free to contract with a CSP to bid interruptible load into the May 2013, May 2014 or May 2015 auctions, and some customers already may have done so.[294] Indeed, the fact that the Companies will not bid this load into future auctions does not mean that it will be "wasted" as suggested by Nucor,[295] since any number of CSPs can acquire this load and bid it into future auctions.[296] Because of the lack of a tariff or contract for these demand response resources, the Companies do not believe they can bid the resources into the May 2013 auction as either an Existing or Planned Demand Resource.

In the alternative, Nucor asks the Companies to extend Rider ELR beyond May 31, 2016 or "make a representation" that it will offer Rider ELR in its next ESP. This, of course, is prejudging the next ESP (or MRO). The Companies believe it is not reasonable simply to assume that Rider ELR, in the current or an amended form, will continue beyond May 31, 2016.[297] The Companies may not want or need to continue Rider ELR beyond May 31, 2016.[298] Even if Rider ELR is continued beyond May 31, 2016, it is possible that the terms of the tariff could change such that bidding rights to the demand reduction resources would be opened to the

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[292] *Id.*

[293] Mikkelsen Rebuttal, pp. 7-8; Tr. Vol. II, pp. 258-59.

[294] Tr. Vol. II, pp. 259-60, 261-62; Tr. Vol. VI, pp. 1177, 1178-79; Mikkelsen Rebuttal, p. 9.

[295] *See* Nucor Brief, p. 22.

[296] *See* EnerNOC Brief, pp. 7-8 (describing open, competitive market opportunities that resulted in doubling of demand response resources cleared in May 2012 BRA compared to May 2011 BRA).

[297] Mikkelsen Rebuttal, p. 9.

[298] Tr. Vol. VI, p. 1181.

competitive market so that customers receive the benefit of market pricing. Or customers may simply choose not to take service under the tariff and rely on market pricing. It also is possible that the Companies will not need these demand reduction resources in future years to satisfy their PDR benchmarks. This is particularly true if the Commission allows CSP-contracted demand resources to be counted for purposes of the Companies' Demand Reduction Program. Regardless, the Commission should not accept Nucor's invitation in this proceeding to set interruptible tariff rates for the next ESP proceeding.

4. Ownership of Mercantile Customer Program demand resources should be conclusively determined.

As part of the Mercantile Customer Program application process, the Companies currently are obtaining both a commitment of demand resources and ownership of those resources. Staff Witness Scheck opined, however, that mercantile customers with self-directed energy efficiency projects for which the Commission has granted an exemption from the DSE2 charge are not required to transfer rights to the associated demand resources to the Companies.[299] IEU-Ohio and AEEO similarly object to the Companies requiring transfer of ownership as a condition of the DSE2 charge exemption application.[300] They recommend that the commitment of these resources to the Companies under the Mercantile Customer Program be distinguished from a transfer of ownership for purposes of PJM participation. The Companies are requiring a transfer of ownership because the Commission directed the Companies to obtain ownership, despite harboring concerns regarding the chilling effect this might have on customer

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[299] Tr. Vol. IV, pp. 769-71 (distinguishing customers who obtained rebate, who did commit rights to the Companies, from customers who obtained a rider exemption).

[300] IEU-Ohio Brief, pp. 5-6; AEEO Brief, pp. 3-4.

participation in the Mercantile Customer Program.[301] The Companies would not object to distinguishing in their self-directed mercantile contracts between commitment and ownership of resources, should the Commission make clear that obtaining ownership of these resources is not required.

B. Nucor's and OEG's Criticisms of the Existing DSE2 Charge Do Not Justify Amendments to the Proposed Plans.

Nucor and OEG criticize the allocation of costs to GT customers and the manner in which the DSE2 charge collects those costs from GT customers.[302] However, as Nucor/OEG witness Goins testified, the Companies' filing in this proceeding has not put at issue any rate design questions and does not propose any changes to the DSE2 charge.[303] And Dr. Goins agreed that he is expressing concerns only with regard to the DSE2 charge – one of two charges that are part of Rider DSE – and not offering an opinion on the rate design of the DSE1 charge, on the rate design generally applicable to the Companies' other rate schedules, or on the rate design for the GP, GSU or GT schedules.[304] Thus Nucor and OEG improperly seek to engage in single-issue ratemaking in this proceeding without a holistic review of the rate structure for GP, GSU and GT customers.[305]

Moreover, Nucor and OEG appear confused regarding the allocation of costs to rate schedules. Nucor cites Dr. Goins' testimony for the proposition that the costs of mercantile programs are allocated to the GP, GSU and GT schedules based on forecasted kWh sales and

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[301] *See* Dargie Testimony, pp. 15-18. AEEO shares the concern of a chilling effect. AEEO Brief, p. 4.

[302] Nucor Brief, pp. 7-14; OEG Brief, pp. 2-8.

[303] Goins Testimony, p. 7; Tr. Vol. II, p. 243.

[304] Tr. Vol. II, p. 243.

[305] R.C. § 4928.143(B)(2)(h) authorizes single-issue ratemaking in the context of an Electric Security Plan proceeding, but this is not an Electric Security Plan proceeding.

then argues that costs should not be allocated based on energy.[306] OEG does not describe how costs currently are allocated, but it recommends that they should be allocated based upon projected program expenditures by rate schedule.[307] In fact, as Dr. Goins testified, mercantile customer program costs were initially allocated to the GP, GSU and GT schedules based on forecasted kWh sales, but subsequently reallocated based on actual program costs by rate schedule.[308] As a result, the DSE2 charge to GT customers reflects actual GT program costs.[309] The Companies can allocate forecasted program costs on a rate-schedule specific basis (as recommended by OEG) and, as occurs today, the rates developed based on forecasted costs will be reconciled based on actual costs incurred by rate schedule. Thus, the Commission need not attempt to fix an allocation problem that does not exist.

Nucor and OEG also complain that the DSE2 charges for GT customers have been volatile and "inordinately high", and they propose various mitigation measures, including a $120,000 or $500,000 annual cap on DSE2 charges.[310] However, although the DSE2 charge for GT customers has been variable in its initial stages, Dr. Goins has no opinion as to why it has been variable.[311] For the Commission to develop a solution to the alleged problem, the Commission necessarily requires evidence of what is causing the problem. For example, if the variability in the DSE2 charge is caused by the number of exemptions from the DSE2 charge granted to mercantile customers, the Commission might look to the exemption process for a

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[306] Nucor Brief, pp. 8, 12.

[307] OEG Brief, p. 3.

[308] Goins Testimony, p. 7; Tr. Vol. II, p. 244.

[309] Tr. Vol. II, p. 244.

[310] Nucor Brief, pp. 8-15; OEG Brief, pp. 2-3, 5-8.

[311] Tr. Vol. II, p. 244.

solution.[312] Dr. Goins also lacks an understanding of the magnitude of the problem – he testified that the DSE2 charge for the largest industrial customers could exceed $1 million annually, but he admitted on cross-examination that he had no idea whether this was true for any customer.[313] He performed no billing analysis.[314] Nucor and OEG have skipped the necessary step of a root-cause analysis and, thus, the Commission lacks a sound basis for modifying the DSE2 rate design for GT customers.

Likewise, the proposed caps and other alternative remedies lack record support. Dr. Goins did not know what impact his proposed $10,000 monthly cap would have on Nucor, let alone what impact it would have on OEG members or generally on any GT customer.[315] He did not determine what the DSE2 charge would be under any of his alternative proposals, based on current or projected spending.[316] Although he proposes collecting any amounts that exceed the cap from all GP, GSU and GT customers, he did not perform an analysis of what impact this would have on GP and GSU customers.[317] He was aware that this would likely increase administrative costs for those customers.[318] It also would result in the actual costs of EE/PDR programs that were allocated to GT customers being recovered from GP and GSU customers, which is inconsistent with Nucor's and OEG's argument in favor of having program costs allocated using actual costs for GT customers. Other rate design alternatives similarly lack

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[312] Notably, in Case No. 10-834-EL-POR, the Commission is examining the process for opting out of EE/PDR riders, which may include attempts to increase stability for those that are paying the rider costs.

[313] Tr. Vol. II, pp. 282-83.

[314] Tr. Vol. II, p. 281.

[315] Tr. Vol. II, pp. 244-45.

[316] Tr. Vol. II, p. 247.

[317] Tr. Vol. II, p. 245-46.

[318] *Id.*

evidentiary support.[319] Although Nucor suggests that the Companies could have submitted rebuttal testimony demonstrating that the proposed cap would negatively impact customers,[320] the Companies had no burden to rebut opinion lacking in any evidentiary support.

The most charitable description of the evidence submitted by Nucor and OEG in this proceeding is that it could form the basis for future discussions among the parties regarding the Companies' Rider DSE rate design. It does not provide a sound basis for the Commission to modify the DSE2 charge in this proceeding.

C. The Commission Should Reject NRDC's Unlawful Recommendation to Create a Board to Administer Residential Programs.

NRDC is unhappy with the statutory mandate imposed on EDUs to implement EE/PDR programs and, instead, would prefer that an ad hoc board of OCC, NRDC, OPAE, an HVAC contractor and a municipal corporation take charge of EE/PDR programs in the Companies' territories, or at minimum the residential portion of the portfolio.[321] This simply is not permitted under Ohio law, which states that "an electric distribution utility shall implement energy efficiency programs" and "an electric distribution utility shall implement peak demand reduction programs".[322] If an EDU fails in its charge, it is the utility that is at risk of being assessed a forfeiture.[323] And the Commission is obligated by law to produce "an annual report containing the results of its verification of the annual levels of energy efficiency and of peak demand

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[319] *See* Goins Testimony, pp. 13-14; Tr. Vol. II, p. 246-47 (declining block design proposed, but no details provided).

[320] Nucor Brief, p. 13.

[321] NRDC Brief, p. 64-65.

[322] R.C. § 4928.66(A)(1)(a), (A)(1)(b).

[323] R.C. § 4928.66(C).

reductions achieved by each electric distribution utility".[324] As a creature of statute, the Commission has only the authority conferred upon it by the General Assembly. *Canton Storage & Transfer Co. v. Pub. Util. Comm.*, 72 Ohio St. 3d 1, 5 (1995). Nowhere in Title 49 has the General Assembly authorized the Commission to (i) create such an ad hoc board;[325] (ii) judge the success of the board;[326] (iii) appoint or remove members from the board;[327] and (iv) authorize funding for such an organization[328] – all as suggested by NRDC Witness Sullivan. The Commission's jurisdiction extends only to EE/PDR program design and implementation **by EDUs**; it does not also include ad hoc boards.

Regardless, NRDC's proposal is based on its representative's personal opinion and lacks a sound basis in fact. NRDC Witness Sullivan feels that, because the Companies do not embrace his philosophies related to energy efficiency, the Companies' management is allegedly "hostile to the energy efficiency benchmarks and resents being made to run energy efficiency programs," has an alleged " supply-side bias," and is allegedly "unwilling to dedicate management attention" to energy efficiency.[329] History suggests otherwise.

As Companies Witness Dargie explained, the Companies' management has devoted more than fifty employees to energy efficiency and peak demand reduction issues[330] and has employed numerous consultants and program administrators, including Black & Veatch Corporation, ADM Associates, Inc., Honeywell International Inc., JACO Environmental, Power Direct and SAIC

[324] R.C. § 4928.66(B).

[325] NRDC Brief, p. 63.

[326] Tr. Vol. V, p. 978.

[327] *Id.*, pp. 981-982.

[328] *Id.*, p. 980.

[329] NRDC Brief, pp. 63-64.

[330] Dargie Testimony, p. 8.

Inc., to assist in the development and implementation of the energy efficiency programs.[331] FirstEnergy recently received a national award from Kohl's Department Stores as one of the three best utility partners for energy efficiency.[332] Furthermore, since the statutory energy efficiency targets were established in R.C. § 4928.66, all of the Companies have achieved their peak demand reduction targets each year and, except for Ohio Edison, the Companies have achieved their annual energy efficiency targets.[333] Ohio Edison received an amendment to its 2010 energy efficiency benchmark for cause,[334] and it has complied with the Commission's directives with regard to its 2011 benchmark.[335] All of the Companies are expected to achieve both their peak demand and cumulative energy efficiency targets for 2012.[336] Accordingly, there is no basis to support NRDC's recommendation to strip from the Companies the oversight of the residential programs – especially if such oversight was given to a board that has no accountability for compliance with the statutes,[337] and would require the hiring of additional consultants[338] and the duplication of systems,[339] both of which increases costs to customers.

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[331] Dargie Testimony, p. 9.

[332] Tr. Vol. IV, pp. 830-31.

[333] Tr. Vol. I, pp. 96-97.

[334] *See In re Application of [the Companies] to Amend Their Energy Efficiency and Peak Demand Reduction Benchmarks*, Case No. 11-126-EL-EEC, et al., Finding and Order at 5 (May 19, 2011).

[335] *See* Affidavit of John C. Dargie, filed as Exhibit 3 to the Companies' *Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to The Public Utilities Commission of Ohio For the Period January 1, 2011 to December 31, 2011,* Case No. 12-1533-EL-EEC, et al. (May 15, 2012). The Hearing Examiner took administrative notice of this affidavit. Tr. Vol. V, pp. 915-17. *See also* Proposed Plans, Appendix A (showing 2011 annualized actual and potential energy and demand results).

[336] *See* Demiray Rebuttal, Exh. EGD-R1 (showing in Column 5 the anticipated cumulative pro rata savings from energy efficiency programs as of year-end 2012); Direct Testimony of Bradley D. Eberts, Exh. BDE-1 (showing in column 10 energy efficiency cumulative benchmarks for 2012); *id.*, Exh. BDE-3 (showing in column 10 peak demand reduction benchmarks for 2012).

[337] Tr. Vol V, p. 986.

[338] *Id.*, pp. 976-977.

NRDC's recommendation to "devolve administration and implementation of the residential portfolio to a board" is unfounded both in law and fact and should be rejected.

D. The Commission Should Grant the Companies' Request for a Waiver of Certain Rules.

The Companies have requested a waiver, to the extent necessary, from the requirements of a future rule that could adopt the customer classifications in the draft application template under consideration in Case No. 09-714-EL-UNC.[340] No party has objected to this request, and the Commission should grant it.

The Companies also have requested a waiver to permit the use of an annualized methodology instead of a pro rata methodology for determining savings.[341] Only ELPC/OEC recommends against the granting of this waiver,[342] while Staff expressly recommends that the waiver be granted.[343] Although ELPC/OEC acknowledges that such a waiver was granted in AEP Ohio's recent portfolio case, it claims that this fact has no bearing on this case because the waiver request was "one aspect of a settlement agreement among the parties that contained numerous issues."[344] It is curious that parties made numerous comparisons to the AEP portfolio plan proceeding throughout this proceeding,[345] but ELPC/OEC seeks to discount its value when doing so is convenient to ELPC/OEC's argument. Nevertheless, the fact that AEP Ohio was

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[339] *Id.*, pp. 989-990.

[340] Dargie Testimony, pp. 13-14.

[341] *Id.*

[342] ELPC/OEC Brief, p. 38.

[343] Scheck Testimony, p. 3.

[344] *Id.*, p. 41.

[345] *See*, *e.g.*, NRDC Witness Sullivan's flawed comparison to projected savings to customers (Sullivan Testimony, pp. 4-5); NRDC Witness Sullivan's comparison to caps on shared savings mechanisms (Sullivan Testimony, p. 19); NRDC Witness Swisher's comparison to AEP data center, retro-commissioning and new construction programs (Swisher Testimony, pp. 11-12, 17, 21.)

authorized to use the annualized savings approach is indeed relevant to the Companies' request. As Mr. Fitzpatrick explained, "[b]ecause Electric Distribution Utilities ("EDUs") are all subject to the same statutory requirements, the measurement of results for purposes of compliance should be consistently applied for all EDUs."[346] This is especially true when the use of the pro rata methodology increases costs that must be borne by customers.

ELPC/OEC tries to negate this fact by noting that costs could be reduced if the Companies kept track of measure installation on a weekly, monthly or even quarterly basis.[347] ELPC/OEC's argument misses the point for several reasons. First, regardless of the frequency used to monitor measure installation, the Companies lose the economies of scale associated with its processes and systems that support energy efficiency programs across multiple jurisdictions and incur costs for customization of tracking and reporting processes and protocols among other things because they cannot track and report like their sister utilities do in other states that use the annualized savings methodology.[348] Second, if the Companies track measures on a quarterly basis, as ELPC/OEC suggests,[349] then the accuracy ELPC/OEC claims to result from the pro rata methodology is significantly diminished, thus defeating the purpose for advocating the use of this methodology. Moreover, as Mr. Fitzpatrick explained, "[t]he pro rata methodology creates an impression of accuracy that simply does not exist. The entire energy efficiency process involves estimates and assumptions, several of which are for upwards of fifteen or more years. Therefore, … it is somewhat impractical to focus on this single aspect of energy efficiency and

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[346] Fitzpatrick Testimony, p. 13.

[347] ELPC/OEC Brief, pp. 39-40.

[348] Fitzpatrick Testimony, p. 11. At least 23 states (including Pennsylvania and Maryland, where other FirstEnergy utilities participate in EE/PDR programs, and Wisconsin, the home state to ELPC/OEC Witness Crandall) prefer the use of the annualized rather than pro rata savings approach. *Id.*, p. 11-12.

[349] ELPC/OEC Brief, pp. 39.

attempt such precision."[350] This supposed precision is further reduced by the fact that the pro rata methodology does not properly match costs with benefits, because the entire cost of the program is incurred in the year in which the measure is implemented, but the savings results straddle two years, unless it is installed on the first day of the year.[351] Finally, ELPC/OEC fails to recognize that the statutory targets continue to increase. The additional programs that must be included under the pro rata methodology will eventually be put into place, even under the annualized approach. The costs, however, under the annualized methodology are incurred later in the process, which spreads costs out over a longer period of time and reduces bill impacts – a result that may be preferable given these difficult economic times.[352]

ELPC/OEC also relies on the Commission's reasoning in the Companies' prior portfolio case[353] to justify its recommendation for rejection of the Companies' request to use the annualized savings methodology during the Plan Period.[354] However, what ELPC/OEC fails to recognize or refuses to acknowledge is that the Commission's rationale in the aforementioned ruling would equally apply to the use of the pro rata methodology under the AEP Ohio portfolio plans. Given their granting of the waiver in AEP Ohio's case, it appears the Commission has reconsidered its position since issuing its ruling in the Companies' prior portfolio case. Again,

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[350] Fitzpatrick Testimony, p. 12.

[351] *Id.*

[352] *Id.*, pp. 12-13. ELPC/OEC also misses the point of Mr. Fitzpatrick's example of accelerating costs by approximately $51.2 million. ELPC/OEC Brief, p. 40. This example was utilized by Mr. Fitzpatrick to demonstrate the fact that costs are indeed accelerated under the pro rata methodology. While the magnitude under the Proposed Plans may not be as great as that created under the Existing Plans, the fact remains that costs are accelerated because additional measures and programs must be included during the initial year of a measure installation to make up for the differential created by only counting it for part of the year under the pro rata methodology.

[353] Case No. 09-1947-EL-POR *et al*.

[354] ELPC/OEC Brief, pp. 40-41.

regardless of the Commission's reasons for granting AEP Ohio's request, to deny the Companies' request for similar treatment would be inequitable. Given that all EDUs face the same statutory requirements *and potential penalties*, the same methodology for determining compliance with those statutes should be utilized uniformly throughout the state.

Accordingly, for all of the reasons set forth above, the Companies' ask that the Commission grant their request to use the annualized savings methodology when determining savings during the Plan Period and to diverge from the draft plan template specific to different customer classifications.

CONCLUSION

For the reasons set forth above and in the Companies' Post-Hearing Brief, the Companies respectfully ask that the Commission approve the Proposed Plans and their associated costs, approve the requested waivers, and authorize the Companies' proposed approach to determining ownership rights in cases where specific program terms and conditions are not available.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this **Reply Brief** was filed electronically this 30th day of November, 2012, with the Public Utilities Commission of Ohio Docketing Information System. Notice of this filing will be sent via e-mail to the list below.

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