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 BY THE NATURAL RESOURCES DEFENSE COUNCIL, THE SIERRA CLUB AND CITIZEN POWER

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The Sierra Club, the Natural Resources Defense Council and Citizen Power ("Intervenors"), submit this reply brief regarding the 2013-2015 Energy Efficiency and Peak Demand Reduction Program Portfolio Plans ("Plan") of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy" or "Companies"), in accordance with the briefing schedule established in this proceeding.

I. Introduction

As discussed in detail in Intervenors' Post-Hearing Brief, FirstEnergy's proposed Energy Efficiency and Peak Demand Reduction Program Portfolio Plan ("Plan") fails to meet Ohio's statutory and administrative requirements. The Companies' Post-Hearing Brief attempts to address a few of the issues raised by Intervenors, but none of their arguments have merit.

First, the Companies try for the first time to defend their reliance on "banked savings,"[1] something they failed to even acknowledge in the Plan itself. It was Intervenors that discovered the Plan

[1] FirstEnergy Initial Brief at 11.

will not save the amount of additional energy each year that the Companies are required to save under Revised Code Section 4928.66(A)(1)(a) without extensively relying on "banked" savings from prior years. This reliance is contrary to requirement that the Companies submit a plan that will "meet or exceed" energy efficiency benchmarks on its own merits.[2] Simply put, reliance on "banked savings" is not warranted and that may be why FirstEnergy obscured its reliance until now.

Second, The Companies did not design programs to achieve the broad objectives the Commission has established for energy efficiency programs and program plans. But in its Initial Brief, the Companies argue that the Commission must approve the Plan because it is the only plan before the Commission. The Commission in fact has enough information to change the Plan as described in our initial brief.

Finally, turning to the key components of the Plan, FirstEnergy again fails to address significant flaws in its flawed Market Potential Study, Avoided Costs analysis, and overreliance on kits. Second, given the mitigation possibilities, FirstEnergy again fails to present any viable reasons for withholding forecasted savings from the PJM capacity auctions. Finally, FirstEnergy's proposed shared savings mechanism should modified to better serve customers and the public interest.

II. Reply Arguments

A. The Evidence in the Record Fails to Prove FirstEnergy Will Meet the Benchmarks.

As detailed in Intervenors' Initial Brief, the Companies' have failed to establish that the Plan will meet all statutory and regulatory requirements. The Companies' Post-Hearing Brief merely highlights the Plan's deficiencies by attempting to transfer the burden of proof from the Companies to Intervenors and by misrepresenting the evidence and arguments presented by Sierra Club and NRDC witnesses. Judging

[2] OAC 4901:1-39-04(A).

the Plan on its merits and the record before the Commission, it is clear that the Plan does not meet the requirements set forth in OAC 4901:1-39-04.

1. The Companies Have Failed to Meet the Burden of Proving the Plan Will Meet All Statutory and Regulatory Requirements

a. The Companies Cannot Transfer Their Burden to Intervening Parties

The Companies assert in their Post-Hearing Brief that the modifications and objections of other parties lacked "details sufficient to support adoption" and that "the only EE&PDR plans before the Commission that comply with all statutory and regulatory requirements … are those presented by the Companies."[3] This is an attempt to shift the Companies' burden of proof to Intervenors. Ohio Administrative Code, Section 4901:1-39-04(A) explicitly places the burden on "each electric utility" to "design and propose a comprehensive energy efficiency and peak-demand reduction program portfolio … which will … meet or exceed the statutory benchmarks for energy efficiency."[4] While Section 4901:1-39-04(A) clearly places the burden of proof on the Companies, Section 4901:1-39-04(D) allows "any person [to] file objections" as long as that person "specif[ies] the basis for all objections, including any proposed additional or alternative programs, or modifications[.]"[5] Section 4901:1-39-04(D) does not, as Companies propose, require parties proposing modifications to satisfy the evidentiary burden that is assigned to the Companies.

The Companies' attempt to shift their burden is not only without legal merit, it fails the practicality test. The Companies propose a portfolio Plan and they possess all the raw data necessary to evaluate the assumptions and inputs into their proposal. Through a discovery process - in this case an expedited process - intervenors must assess what data they need, what is missing, and then construct

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[3] Companies Post-Hearing Brief, p. 6.

[4] OAC 4901:1-39-04(A).

[5] OAC 4901:1-39-04(D).

independent analysis. To the extent intervenors find flaws in the Companies models and assumptions, those flaws and the suggested modifications should not be dismissed solely because intervenors cannot produce "sufficient details" in a limited timeframe. Moreover, where, as here, Intervenors find significant flaws in the Companies' analysis, those flaws should not be excused because no competing analysis exists to fully replace it. In essence, the Companies propose a scenario where they can submit an insufficient Plan, expedite discovery and record production on their own terms, and require the Commission to approve their Plan as being the most complete, insisting that all suggested modifications and objections to the Plan be ignored because the recommendations lack the detailed analysis required by the Companies. The Commission should not follow or condone this misguided attempt to shift the Companies' burden.

b. <u>There is No Plan Before the Commission that Meets All the Statutory and Regulatory Requirements</u>

Still, even following the Companies' logic that their Plan must be approved if it's the "only" plan presented that meets all the statutory and regulatory requirements, the problem remains that the Companies' Plan does not meet all statutory and regulatory requirements. Ohio Administrative Code, section 4901:1-39-04(A) mandates that the Companies produce a plan that will "meet or exceed the statutory benchmarks for energy efficiency."[6] Intervenors have presented evidence that the plans, as proposed, have serious flaws, insufficient information, and will not meet benchmarks without extensive reliance on "banked savings." Section 4901:1-39-04(A) clearly requires utilities to produce plans that will meet or exceed minimum benchmarks on their own merits and without significant reliance on banking from previous years.

The Companies, after failing to explicitly acknowledge in their Plan that they will not meet minimum benchmarks outlined in Revised Code Section 4928.66(A)(1)(a) without utilizing "banked savings", now attempt to discredit Intervenors' analysis on the basis that NRDC Witness Sullivan did not

[6] OAC 4901:1-39-04(A).

take those “banked savings” into account.[7] Witness Sullivan did not take into account banked savings because FirstEnergy’s accounting of its performance to-date is in such a state of disarray that determining the amount in the “bank” is “very, very difficult.”[8] Sullivan relied on the best information available: The Companies’ own projection of this Plan’s performance and the incremental annual benchmarks calculated based on a reasonable reading of Revised Code Section 4928.66(A)(1)(a), rather than the Companies’ own tortured reading that seeks to (in this case, at least) diminish the law’s requirement that the Companies save an additional amount of energy each year. The Companies’ entire theory for meeting minimum benchmarks relies upon their witness’ claim that a utility can design a portfolio around banked “surplus energy savings” in a subsequent year, even though that same witness was unable to cite any statutory or administrative support for this this interpretation.[9]

For the reasons stated in our initial brief, the Companies should not be allowed to *design a plan around* banked savings of uncertain quality and composition. Especially when –as in this case - cost-effective opportunities exist within the Companies’ service territories. As such, the Plan fails to meet the minimum benchmarks and should not be approved without significant modification.

2. FirstEnergy’s Flawed Market Potential Study and Inadequate Avoided Costs Prevent FirstEnergy from Offering a Comprehensive Plan and Diminish the Companies’ Ability to Comply with the Statutory Benchmarks in Future Years.

The Companies’ Market Potential Study likely underestimates the true achievable energy efficiency potential available within the Ohio Edison, Cleveland Electric Illuminating and the Toledo Edison service territories. According to FirstEnergy, this is not a problem because the

[7] FirstEnergy Brief at 11.

[8] Transcript at 1012, Lines 11-24.

[9] Transcript at 1105, Line 21.

amount and type of energy efficiency resources available over the study period does not matter.[10] FirstEnergy concludes that NRDC Witness Swisher's expert criticism of Market Potential Study and avoided costs are mere "philosophical and theoretical differences"[11] and irrelevant to the evaluation of the proposed plans.[12] Swisher's criticisms are not irrelevant. First, the Companies underestimated and poorly-estimated market potential and avoided costs are a microcosm of the Companies' poor effort that is displayed throughout the Plan. Moreover, it is a problem today that the Plan is based on bad information about avoided costs and market potential. It will be even more of a problem in the future as the benchmarks require the Companies to pursue deeper and perhaps less-cost effective energy efficiency projects. The Commission can rectify this problem by requiring the Companies to design the next plan using well-vetted and conventionally-analyzed avoided costs and market potential, as we advocated in our initial brief.

The Ohio law governing the program portfolios, Ohio Revised Code 4928.66(A)(1)(a), states that each electric distribution utility (EDU) "shall implement energy efficiency programs that achieve…a cumulative, annual energy savings in excess of twenty-two percent by the end of 2025." Ohio Administrative Code repeats the statutory language[13] and requires each EDU's program portfolio to meet a number of requirements:

> Each electric utility shall design and propose a comprehensive energy efficiency and peak-demand reduction program portfolio, including a range of programs that encourage innovation and market access **for cost-effective energy efficiency** and peak-demand reduction for all customer classes, which will achieve the statutory benchmarks for peak-demand reduction, **and meet or exceed the statutory benchmarks for energy efficiency**.[14]

[10] FirstEnergy Post-Hearing Brief at 17 (November 20, 2012).

[11] Id. at 17.

[12] Id.

[13] Ohio Adm. Code 4901:1-39-02(A).

[14] (Emphasis Added) Ohio Adm. Code 4901:1-39-04(A).

Employing inadequate avoided costs and an unorthodox market potential study are contrary to the several specific requirements of Ohio Administrative Code 4901:1-39-04(A). First, the Rule requires that the proposed programs be "comprehensive." A flawed market potential study and incorrect avoided costs that reduce cost-effectiveness calculations will eliminate some programs that otherwise might be cost-effective.[15] Eliminating some cost-effective programs diminishes the comprehensiveness of the portfolio, and therefore contradicts the plain language of the rule.

Second, the rule requires "a range of programs that encourage innovation and market access for cost-effective energy efficiency…." By eliminating some programs using untested methods and internally inconsistent, poorly-analyzed avoided costs, some cost-effective programs with the potential to encourage innovation and market access will be eliminated. Thus, these rule requirements remain unfulfilled.

Finally, the rule requires that the program portfolio "meet or exceed the statutory benchmarks for energy efficiency." By eliminating some programs that would be cost effective – coupled with significant reliance on banked savings - the narrow focus in the proposed Plans by FirstEnergy on the immediate, three-year period creates a very real prospect that the FirstEnergy EDUs will not meet their statutory targets in future years. The law – and the rule – require each EDU to have a program portfolio in place that will "meet or exceed" the energy efficiency benchmarks, not just for the three year plan period, but in preparation to meet the long-term goal of twenty-two percent savings generated by energy efficiency in 2025. To employ an untested, unreviewed approach[16] and declare it good enough because it has "market potential study" in its title is contrary to law and rule, and provides little useful information for substantial customer investment.

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[15] Tr. Vol. IV, page 727, lines 13-25, page 728, lines 1-6.

[16] Tr. Vol. II, page 221, lines 10-17.

Therefore, the Commission must consider the criticism of FirstEnergy's Market Potential Study and avoided cost issues and issue the appropriate recommendations in order to minimize the possibility that the Companies will fall short of the statutory benchmarks in future years.

3. The Kits Proposed by FirstEnergy are the Second Coming of FirstEnergy's 2009 Lightbulb Fiasco and Should be Rejected or Modified by the Commission.

The problems with the Kit deployment – including savings estimates - proposed by FirstEnergy are well-documented in the record.[17] In their initial brief, FirstEnergy attempts to over-simplify the comparison with kits in other states and cites material *outside the record* in an attempt to manufacture discord. This portion of the record requires additional clarity.

Sierra Club Witness Glenn Reed noted during the evidentiary hearing that programs offered by a utility should employ existing market channels: "One of the goals of the efficiency program should be to take advantage of and grow systems, market channels already in place."[18] Witness Reed then illustrates the problems with FirstEnergy's kit deployment as an educational tool by noting there are "While there may be some educational component to [sending kits directly to customers], I would argue that that level of promotion on a per-kit basis reduces the amount of CFLs that a homeowner would then likely purchase at retail."[19] Witness Reed then continues and succinctly reiterates his valid criticisms of this program.[20] The intervenors request the Commission reject this program and institute the recommendations of Sierra Club Witness Reed.[21]

FirstEnergy reaches outside the case record to make an inaccurate and disingenuous comparison. Referencing a case outside the record, FirstEnergy presents comment by NRDC –

[17] See the Testimony of Glenn Reed (Sierra Club Exhibit 2), page 5, lines 16-22, through page 8, line 4; and page 8 line 15 through page 10, line 16.

[18] Tr. Vol. III, page 661, lines 6-8.

[19] Id. at lines 17-21.

[20] Id. at page 661, line 22, through page 664, line 16.

[21] Sierra Club Exhibit 2, Direct Testimony of Glenn Reed, page 9, line 18 , through page 11, line 15.

from a different case not given judicial notice here - stating that a 100% installation rate for CFLs should be utilized.[22] NRDC was referring to the installation rate adjustment factor that evaluators recommended applying to CFLs *purchased* by customers. NRDC has consistently opposed efforts to give away large numbers of CFLs to customers who would otherwise buy bulbs in retailers. The Commission should reject FirstEnergy's argument about the installation rate of kit contents.

B. There Are No Justifiable Reasons to Withhold Capacity from the PJM Auction – and Withhold Benefits to Customers.

1. As Virtually All Parties Besides FirstEnergy Point Out: Forecasted Savings Will Benefit Customers and Should be Bid into the PJM Auction

In the initial brief, FirstEnergy repeats the reasons it why it does not plan to bid any energy efficiency savings in future PJM base residual auctions (BRAs).[23] But a more ambitious bid structure – one that includes forecast savings – is supported not only by the Intervenors, but by several other parties.[24] PJM rules allow for forecasted savings to be bid into the auction. The more capacity resources that are bid in, the higher the probability of a lower final capacity price. In addition, the revenue from efficiency resources flows back to customers and reduces the price customers pay for energy efficiency and peak demand reduction programs.[25] FirstEnergy expert witness Mikkelsen agreed that lower capacity prices are a benefit to FirstEnergy customers.[26]

[22] FirstEnergy Initial Brief at 14.

[23] FirstEnergy Initial Brief, pages 29-32.

[24] See: The Initial Brief by the Ohio Consumers' Counsel at 25; Initial Brief by the Environmental Law and Policy Center at 4; Initial Brief by Staff at 8; Initial Brief by the Industrial Energy Users at 4; Initial Brief by the Advanced Energy Economy Ohio; Initial Brief by the OMA Energy Group at 4; Initial Brief by the Ohio Energy Group at 11; Initial Brief by the Ohio Partners for Affordable Energy.

[25] Sierra Club Exhibit 1, Direct Testimony of Jeffrey Loiter at 4, lines 7-12.

[26] Tr. Vol. VI at 1146.

2. FirstEnergy Did Not Quantify the Risk of Bidding Forecast Savings into PJM; These Risks May be Mitigated by Strategies Presented by Sierra Club.

One of FirstEnergy's arguments is that it cannot bid forecasted savings into the auction because of the perceived significant risks.[27] However, FirstEnergy cannot cite or define severe financial harm as a risk because it has never quantified or even approached the Commission to inquire about mitigation.[28] As Staff expert Sheck correctly states: "There is a wealth of evidence that proves that FirstEnergy can mitigate its bidding risk, benefit customers, and potentially profit from bidding planned resources into PJM."[29] In addition, Staff and others have presented reasonable mitigation options that FirstEnergy admits it never even considered. For example, in addition to Sierra Club and OCC witnesses, Staff expert Scheck shared in his direct testimony (and as noted in the Staff's brief), a number of reasonable recommendations that FirstEnergy could employ to mitigate any potential risks. Yet, FirstEnergy expert Mikkelsen stated during cross examination that the only mitigation strategy that they considered was not bidding any forecasted resources into the auction.[30] Failing to consider any risk mitigation other than to withhold forecasted resources does not provide a demonstration that FirstEnergy's plan is reasonable. The Intervenors request the Commission employ its statutory authority and modify FirstEnergy's Plan to include eligible forecast resources in their future PJM bids.

3. The Intervenors Believe that Ownership of Energy Efficiency Resources has been Settled by the Commission in FirstEnergy's ESP Case.

[27] FirstEnergy Brief at 30.

[28] Transcript Vol. VI at 1128.

[29] Staff Initial Brief at 10.

[30] Transcript Vol. VI at 1150.

The Commission ordered that the "Companies should take steps to amend their energy efficiency programs to ensure that customers, knowingly and as a condition of participation in the programs, tender ownership of the energy efficiency resources to the Companies."[31] We agree with FirstEnergy that the Companies have acted in compliance with the Commission Order in ESP Case by changing all of their applications to reflect an automatic transfer of ownership rights in September of this year.[32]

AEE-Ohio encourages the bidding of all energy efficiency resources in order to gain the resulting financial windfall, and lower overall cost of programs.[33] However, AEE-Ohio has recommended clarification of the Commission order on this issue as it relates to ownership of savings.[34]

AEE-Ohio states the ability for self-direct customers to avoid paying the cost-recovery mechanism.[35] But it is important to note that the rider costs are then charged to other customers within the class. If a customer prefers to bid in energy efficiency savings from a self-direct program, they may do so by foregoing any incentive or rebate and retaining the revenue from a successful bid. An aggregate bid of capacity into a PJM auction, conducted by a utility, will result in the greatest savings to all customers. For these reasons, the Intervenors support the

[31] In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish A Standard Service Offer, Case No 12-1230-EL-SSO et al., Entry at 38, July 18th, 2012.

[32] Cross Examination of John C. Dargie, Hearing Transcript Volumne I, page 97, Line 21.

[33] AEE-Ohio Initial Brief at page 4.

[34] AEE-Ohio Initial Brief at page 4.

[35] Id.

Commission's directive to require ownership as a means of participating in FirstEnergy's efficiency programs.

4. FirstEnergy May Employ Existing Processes if it Perceives a Chilling Effect on Program Participation, and Therefore the Commission Should Reject FirstEnergy's Request to Re-Open the Ownership Issue.

The Commission need not do anything in this case to address FirstEnergy's concern regarding ownership having a chilling effect on program participation. Company witness Dargie requests that the Companies be permitted to petition the Commission for a modification of the ownership directive.[36] The Ohio Revised Code and Ohio Administrative Code already contemplate the need to request changes from the Commission. Both contain procedures that may be employed by FirstEnergy if one or more of the Companies perceive such action is warranted.[37] Therefore, this request should be rejected.

C. FirstEnergy's Shared Savings Mechanism Should be Modified to Accurately Couple Incentives to the Companies' Performance in Delivering Energy Efficient Programs and Safeguard Consumer Interests.

1. The Incentive Mechanism Should not be Triggered by Simply Exceeding the Energy Efficiency Benchmarks

FirstEnergy believes that the shared savings mechanism should be triggered if a Company exceeds the R.C. § 4928.66(A)(1) energy targets in a given year because the purpose of shared savings is to incentivize the Companies to exceed their statutory benchmarks.[38]

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[36] Direct Testimony of John C. Dargie , page 18.

[37] O.R.C. 4901.13, 4901.18, 4905.26, Ohio Administrative Code 4901-1-34.

[38] Post-Hearing Brief of FirstEnergy at 24.

FirstEnergy provides no citation for this contention. In fact, as described in Sullivan's testimony, the purpose of shared savings mechanisms is to "to provide IOUs an earnings opportunity when their energy efficiency programs are successful by offering shareholders a portion of the net benefits customers receive (that is, the benefits from avoiding costlier energy sources less the cost of the efficiency programs) as a reward for excellent performance at saving energy and lowering customer bills, provided minimum performance thresholds are met."[39] Thus, it is important to only reward the utility for its own actions that actually saved energy. As described in our initial brief, a shared savings mechanism for the Companies should not be triggered by activities that the Companies had little or nothing to do with or would have happened anyway, and the Companies should not get a portion of the "savings" from such projects.

From the consumer's point-of-view, it makes little sense to reward FirstEnergy for actions that are mainly performed by customers such as mercantile self-direct projects or savings that would have happened in the absence of the shared savings mechanism such as baseline T&D projects. By allowing such savings to trigger the shared savings mechanism, FirstEnergy is attempting to earn shared savings even when it provides only a fraction of the benefits to customers that they could have. After all, under the Plan, only 69% of the Companies energy savings are projected to come from its own proactive actions to increase efficiency.[40]

FirstEnergy's proposal to include all of the projects toward the shared savings benchmark is also incompatible with their approach regarding calculating shared savings. FirstEnergy has recognized that some programs should not be counted towards shared savings, such as historical mercantile customer projects, business-as-usual T&D projects, or non-verified benefits from

[39] Direct Testimony of Dylan Sullivan, Page 12, Line 5.

[40] NRDC Hearing Ex. 4 No. 4, Direct Testimony of Dylan Sullivan at 19.

behavioral programs.[41] The implied reasoning is that these types of projects, from a qualitative standpoint, do not benefit consumers in a way that should be incentivized through shared savings. But under FirstEnergy's proposed mechanism, these same programs would be promoted because they would help determine the incentive percentage used in the calculation of shared savings. This inconsistency should be remedied by not counting these types of projects towards the calculation of the shared savings benchmarks and additionally, in the name of equity, adjusting the shared savings benchmark by subtracting the mercantile self-direct load from the three-year average sales from which the annual energy efficiency benchmarks are determined.[42]

2. The Shared Savings Should not Include Mercantile Customer Projects, Business-As-Usual T&D Projects, or the Online Audit Program

Under the shared savings proposal of FirstEnergy, once the shared savings mechanism is triggered the Companies will retain a percentage of the Adjusted Net Benefits.[43] However, these Adjusted Net Benefits include the "savings" from projects that should not be included: The Companies had little involvement in the generation of the energy savings such as mercantile customer programs installed after March 23, 2011, the Companies are already earning a return on T&D projects: and the online audit program many not reflect additional action by customers. Furthermore, in their Post-Hearing Brief, FirstEnergy does not articulate the reasoning behind their decisions to include these items in the Adjusted Net Benefits. The Companies should only be allowed to count the type of projects that shared savings incentives are designed to encourage.

3. The Proposed Incentive Tiers Should Be Modified

[41] Post-Hearing Brief of FirstEnergy at 25.

[42] Initial Brief by the NRDC, The Sierra Club, and Citizen Power at 62.

[43] Post-Hearing Brief of FirstEnergy at 25-26.

The Companies have proposed five incentive tiers. Incentive tier one is reached at any level below 100% compliance and corresponds to an incentive percentage of 0%. Incentive tier two is reached at 100% compliance and corresponds to an incentive percentage of 5%. Incentive tier three is reached at compliance greater than 105% and corresponds to an incentive percentage of 7.5%. Incentive tier four is reached at compliance greater than 110% and corresponds to an incentive percentage of 10%. Incentive tier five is reached at compliance greater than 115% and corresponds to an incentive percentage of 13%.[44]

The Companies claim that the design of their shared savings mechanism was partially influenced by American Electric Power-Ohio's recently approved mechanism,[45] but the tiers proposed by the Companies are actually identical. But the proposed incentive mechanism does not take into account the difference between FirstEnergy's lucrative lost revenue recovery mechanism, which allows the Companies to earn "lost-revenues" even when they are over-collecting their distribution revenue requirement, and AEP's decoupling mechanism, which does not.[46]

The Companies acknowledge that the determination of the incentive tiers is a policy decision to be made by the Commission.[47] One might ask whether it is correct policy to use the same incentive tiers for AEP and FirstEnergy, a company that is collecting lost revenues and who has had a negative attitude towards energy efficiency programs.[48] However, it should be acknowledged that there is a difference between the policy question of how much incentive is proper and the empirical question of how effective are different incentive tiers. FirstEnergy has not provided any empirical evidence supporting their

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[44] Post-Hearing Brief of FirstEnergy at 26.

[45] Post-Hearing Brief of FirstEnergy at 22.

[46] Initial Brief by the NRDC, The Sierra Club, and Citizen Power at 62.

[47] Post-Hearing Brief of FirstEnergy at 27.

[48] NRDC Hearing Ex. 4 No. 4, Direct Testimony of Dylan Sullivan at 20.

proposed tiers.[49] Given the lack of evidence, a more conservative incentive tier structure is appropriate. Indeed, as recognized by FirstEnergy, the majority of the intervenor witnesses have proposed tiers with lower incentive percentages.[50] The Companies incentive tiers should be as described in our Initial Brief.[51]

4. The Incentive Mechanism Should be Capped at $10 Million Dollars per Year

FirstEnergy has stated that the amount of the incentive from the shared savings mechanism should not be arbitrarily capped.[52] We agree with this assessment.[53] Instead, we propose a non-arbitrary cap of $10 million per-year, split among the three individual Companies, proportional to the non-Mercantile Self-Direct load each Company serves.[54] This ten million dollar annual cap is designed to incentivize FirstEnergy to significantly exceed the planned savings in their portfolio while providing some consumer assurances concerning the ultimate cost of the energy efficiency programs.[55]

5. A Modified Incentive Mechanism is Should be Adopted

Nucor Steel Marion, Inc. (“Nucor”) and The Ohio Energy Group (“OEG”) have urged the Commission to reject the proposed incentive mechanism.[56] Although the incentive mechanism as proposed by FirstEnergy is not aligned with the public interest, a properly designed incentive mechanism

[49] Initial Brief by Nucor Steel Marion, Inc. at 15.

[50] Post-Hearing Brief of FirstEnergy at 26.

[51] Initial Brief by the NRDC, The Sierra Club, and Citizen Power at 63.

[52] Post-Hearing Brief of FirstEnergy at 27.

[53] In Testimony, Sierra Club did not recommend capping a shared savings incentive when coupled with the recommendations provided herein, as the savings to customers will far exceed the payment to the Company and will encourage deeper investments in energy efficiency savings.

[54] Initial Brief by the NRDC, The Sierra Club, and Citizen Power at 63.

[55] NRDC Hearing Ex. 4 No. 4, Direct Testimony of Dylan Sullivan at 20.

[56] Post Hearing Brief of The Ohio Energy Group at 8-10; Initial Brief by Nucor Steel Marion, Inc. at 15-18.

benefits consumers by encouraging utilities to invest in the lowest cost, least risky, and cleanest resources (i.e., energy efficiency).[57]

Nucor and OEG cite FirstEnergy's past performance in order to argue that incentives are not necessary for overcompliance.[58] However, the goal of a shared savings mechanism is not simply to promote overcompliance of the energy efficiency benchmarks in a single year. The goal of shared savings is to incentivize utilities to create well-designed energy efficiency programs that benefit consumers by achieving sustained savings. One year of overcompliance is not dispositive of the benefits of a properly designed energy efficiency program.

Additionally, Nucor and OEG are concerned about the costs of the EE/PDR programs and the potential for an incentive mechanism to significantly increase those costs.[59] However, Nucor and OEG both acknowledge that the additional programs encouraged by the incentive mechanism may be cost effective, which by definition requires that the benefits outweigh the costs.

III. Conclusion

For the reasons stated above, the Natural Resources Defense Council, Sierra Club and Citizen Power respectfully request the Commission adopt the changes to FirstEnergy's Plan as described. The Public Utilities Commission of Ohio should expect and ensure the same level of energy efficiency performance from the FirstEnergy Electric Distribution Utilities Companies that it does from other Ohio electric distribution utilities.

[57] NRDC Hearing Ex. 4 No. 4, Direct Testimony of Dylan Sullivan at 11.

[58] Post Hearing Brief of The Ohio Energy Group at 8; Initial Brief by Nucor Steel Marion, Inc. at 16.

[59] Post Hearing Brief of The Ohio Energy Group at 9; Initial Brief by Nucor Steel Marion, Inc. at 17.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Reply Brief by the Natural Resources Defense Council, the Sierra Club, and Citizen Power* has been served upon the following parties via electronic mail on November 30, 2012.

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