BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 Plans for 2013 through 2015.	)))))))	Case No. 12-2190-EL-POR Case No. 12-2191-EL-POR Case No. 12-2192-EL-POR

ENTRY ON REHEARING

The Commission finds:

(1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.

(2) On July 31, 2012, FirstEnergy filed an application for approval of the Companies' energy efficiency and peak demand reduction program portfolio plans for 2013 through 2015 pursuant to Section 4928.66, Revised Code, Rules 4901:1-39-04, 4901:1-39-05, 4901:1-39-06, and 4901:1-39-07, Ohio Administrative Code (O.A.C.), and the Commission's February 28, 2012, entry in Case No. 12-814-EL-UNC. On March 20, 2013, the Commission issued an Opinion and Order approving the portfolio plans with modifications.

(3) Section 4903.10, Revised Code, indicates that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by filing an application within 30 days after the entry of the order upon the journal of the Commission. Under Rule 4901-1-35(B), O.A.C., any party may file a memorandum contra within ten days after the filing of an application for rehearing.

(4) On April 19, 2013 FirstEnergy, Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and Nucor Steel Marion (Nucor) filed applications for rehearing in this proceeding. In addition, a joint application for rehearing was

filed by the Environmental Law and Policy Center and Ohio Environmental Council (ELPC/OEC).

(5) On April 29, 2013, the Companies, OCC, Ohio Energy Group (OEG), IEU-Ohio, ELPC/OEC and Sierra Club filed memoranda contra the applications for rehearing.

(6) In addition, on April 5, 2013, OEG filed an "application for clarification" regarding the Opinion and Order. Thereafter, on April 15, 2013, FirstEnergy filed a memorandum contra the application for clarification.

(7) On May 15, 2013, the Commission granted the applications for rehearing for further consideration.

(8) In its first assignment of error, FirstEnergy claims that the Commission's directive in the Opinion and Order that the Companies bid planned energy efficiency resources into the 2016/2017 PJM base residual auction (BRA) is unjust and unreasonable given that the manifest weight of the evidence establishes that bidding planned energy efficiency resources into the BRA poses a significant risk to customers and the Companies. More specifically, FirstEnergy argues that the Commission's mandate is unsupported by the record; that the concurring opinion in this proceeding as well as Commissioner comments in *Demand Response Coalition v. PJM Interconnection, LLC*, FERC Docket No. EL13-57-000 demonstrate that the Commission's mandate is unreasonable, particularly in light of the General Assembly's review of energy efficiency; and that the Commission's determination that it reasonably balanced the risks of auction participation is unsupported by the record.

In its memorandum contra FirstEnergy's application for rehearing, OCC contends that FirstEnergy's application for rehearing should be denied because it improperly relies upon facts not in evidence, is contrary to the evidence, and will not benefit customers. More specifically, OCC argues that FirstEnergy's reliance on Senate Bill 58 is improper because it is not in evidence; that reliance on the concurring opinion of Commissioners Porter and Slaby does not support the application for rehearing because the Commissioners did not dissent but signed the majority opinion; because the Commission's comments in FERC Docket EL13-57-000 are irrelevant to this case; and because FirstEnergy witness Mikkelsen's testimony should not carry more weight than OCC witness Gonzalez, Staff witness Scheck, NRDC witness Swisher, Sierra Club witness Loiter, and OEG/Nucor witness Goins.

In its memorandum contra FirstEnergy's application for rehearing, the Sierra Club argues that the Opinion and Order does not require FirstEnergy to bid 75 percent of its non-eligible and eligible resources into the upcoming PJM BRA as the Companies argue in their application. The Sierra Club points out that Staff witness Scheck specifically referred to 75 percent of savings that can be qualified; that the Commission has consistently reaffirmed its support for bidding only eligible resources into these auctions, citing Case Nos. 12-814-EL-UNC and 12-1230-EL-SSO; and that the Commission has never directed the Companies to bid non-eligible resources into the auction. Further, the Sierra Club contends that the Commission would not require FirstEnergy to ignore the federally regulated bidding requirements of PJM and would not have such authority. The Sierra Club also contends that the Commission's requirement that FirstEnergy bid resources into the PJM capacity auction creates substantial customer savings and benefits, and that requiring only a portion of expected savings is sufficient to address the risks accompanying this bidding strategy.

On the other hand, in its second assignment of error, OCC alleges that the Commission erred in only requiring FirstEnergy to bid 75 percent of its planned energy efficiency resources into the BRA and thus failed to maximize benefits for customers. More specifically, OCC contends that the Commission should have directed FirstEnergy to bid all of its saved megawatts into the PJM BRA and that the Opinion and Order lacks specificity because the term "planned energy efficiency resources" is not defined as existing and planned resources that meet the PJM bidding requirements.

In its memorandum contra OCC's application for rehearing, FirstEnergy argues that OCC's proposal for PJM bidding strategy is unreasonable, unlawful, and unsupported by the record in this case. The Companies argue that the Commission should approve the Companies' strategy to bid only eligible, installed energy efficiency credits for which it has ownership rights at the time of the PJM auctions, provided that these credits are of scale, will meet PJM measurement and verification (M&V) standards, and are included in an M&V plan approved by PJM. Further, FirstEnergy contends that "planned energy efficiency resources" is sufficiently defined by PJM Manual 18 and that there is no basis to grant rehearing to clarify a term that is not ambiguous.

The Commission finds that rehearing on these assignments of error should be granted in part and denied in part. The Commission finds that rehearing on the basis that its requirement that the Companies bid 75 percent of planned energy efficiency resources into the PJM BRA is unjust and unreasonable should be denied. Neither FirstEnergy nor OCC have raised any new arguments in their respective applications for rehearing, and the Commission thoroughly considered these arguments in the Opinion and Order where the Commission established a reasonable balance to mitigate risks to both the Companies and ratepayers while lowering the net costs of the energy efficiency and peak demand reduction programs. Opinion and Order at 17-21.

However, the Commission grants rehearing to better align the interests of the electric distribution utility and the interests of its customers in support of the implementation of energy efficiency and peak demand reduction programs. At the hearing, Staff witness Scheck proposed that the Companies share in the revenues generated from bidding the resources into the PJM auctions (Staff Ex. 1 at 12; Tr. IV at 810-813). Consequently, the Commission finds that, in order to more reasonably balance the risk and potential benefits of auction participation for the Companies and ratepayers and to ensure that the interests of FirstEnergy and its customers are properly aligned, the Companies shall implement a pilot program through which the Companies may share in any revenue received in the PJM auctions. The Commission has previously found, in the interest of promoting fairness for ratepayers while encouraging companies to maximize the value of assets managed on behalf of ratepayers, that an 80/20 percent share of revenue between ratepayers and a company, respectively, is appropriate. *See In the Matter of the Application of Duke Energy*

Ohio, Inc., for an Increase in Rates, et al., Case No. 07-589-GA-AIR, Opinion and Order (May 28, 2008) at 21-22; *In the Matter of the Long-Term Forecast Report of Vectren Energy Delivery of Ohio and Related Matters, et al.*, Case No. 00-120-GA-FOR, Opinion and Order (Sept. 25, 2001) at 11-13. Similarly, we find here that FirstEnergy shall be entitled to receive 20 percent of any revenue obtained from bidding energy efficiency and demand response resources into the PJM auctions, while the remaining 80 percent shall be credited to ratepayers in order to offset the costs of energy efficiency and peak demand reduction programs. The Commission will review this pilot program in the next program portfolio proceeding.

(9) The Companies allege in their second assignment of error that the Commission's order that the Companies bid planned energy efficiency resources into the BRA is unlawful because it is beyond the Commission's statutory authority. FirstEnergy specifically argues that the Commission lacks authority to manage utilities or dictate their policies. Further, the Companies assert that the PJM BRA is not a utility service and is therefore not subject to the Commission's authority, and that an EDU's decision to bid demand resources into the PJM BRA is not a retail service provided to Ohio consumers within the scope of electric service. Consequently, the Companies conclude that a specific requirement to bid a specific amount of energy efficiency resources into a PJM BRA exceeds the Commission's authority to regulate the provision of electric service.

In its memorandum contra FirstEnergy's application for rehearing, the Sierra Club contends that these orders discussed by FirstEnergy are within the statutory authority of the Commission, which possesses broad authority to ensure that customers are protected from high capacity prices and to ensure reliable and cost-effective service for customers.

In its memorandum contra FirstEnergy's application for rehearing, OCC contends that FirstEnergy's argument that the Commission lacks jurisdiction is erroneous because the Commission is using its authority to regulate FirstEnergy, not PJM, and that the Commission is within its jurisdictional rights to order FirstEnergy to bid into the PJM BRA as part of its broad authority to interpret its rules and statutes to ensure reasonably priced electric service. OCC further points out that the Commission has statutory authority to ensure availability of reasonably priced retail electric service, protect at-risk populations, and determine whether any service provided by a utility is unjust, unreasonable, or unlawful. OCC continues that the Commission has broad discretion and authority to enforce Title 49 of the Revised Code and that it is part of the Commission's broad authority to require utilities to bid energy efficiency into the PJM BRA.

The Commission finds that rehearing on this assignment of error should be denied. As a preliminary matter, the Commission notes that FirstEnergy requested that the Commission authorize the Companies to bid energy efficiency resources into the PJM BRA in the applications filed in this proceeding as part of their cost recovery mechanisms (Application (July 31, 2012) at 12-13; Co. Ex. 1 at 15; Co. Ex. 12 at 87; Co. Ex. 13 at 87; Co. Ex. 14 at 87; Co. Ex. 23 at 3; Tr. 1 at 41-42). Having requested that the Commission authorize such bids, the Companies now belatedly and disingenuously claim that the Commission lacks the statutory authority to grant the request made by the Companies. However, the Commission has previously held that we have statutory authority to require an electric distribution utility to bid energy efficiency resources into the PJM auctions. *In the Matter of the Commission's Review of the Participation of The Cleveland Electric Illuminating Company in the May 2012 PJM Reliability Pricing Model Auction,* Case No. 12-814-EL-UNC, Entry (February 29, 2012) at 1-2. Further, the Commission notes that the energy efficiency resources generated by the Companies' energy efficiency resources are a valuable asset managed by the Companies on behalf of ratepayers. The Companies are required to manage such assets prudently in order to minimize the costs of the energy efficiency programs. If the Companies were to fail to prudently manage such assets by neglecting to bid the assets into the BRA, the Commission would be required to consider such failure in determining whether the Companies may obtain full recovery of the costs of the energy efficiency programs required to meet the Companies' statutory mandates in Section 4928.66, Revised Code.

(10) Further, in its third assignment of error, FirstEnergy argues that the Opinion and Order is unlawful and unreasonable because it did not authorize the Companies to recover through Rider DSE, or any other mechanism, any penalties or costs that the Companies could incur as a result of the Commission's order to bid planned energy efficiency resources into the BRA. The Companies contend that, if they fall short on demand resources in the event planned resources are insufficient, they will be required to replace those resources by purchasing capacity from PJM incremental auctions, which could be higher than the clearing price in the BRA. If this occurs, the Companies argue that they should be permitted to recover the cost differential through Rider DSE, along with any costs or penalties from PJM.

In its memorandum contra the Companies' application for rehearing, the Sierra Club argues that the Companies are mistaken in their argument that the Commission failed to authorize the Companies to recover PJM costs and penalties associated with auction participation through Rider DSE. To the contrary, the Sierra Club argues that the Opinion and Order approved the Companies' plans with few changes, and that the Companies' plans specifically provided that the Companies would be permitted to recover PJM costs and applicable penalties associated with PJM auctions (Co. Ex. 12 at 87).

The Commission finds that rehearing on this assignment of error should be denied. As Sierra Club points out, the Commission approved the Companies' applications except as specifically modified by the Commission. The Commission modified which energy efficiency resources should be bid into the BRA by requiring the Companies to bid in 75 percent of planned resources rather than only installed resources, but the Commission did not modify the provisions of the Companies' applications providing for the full recovery of PJM costs and applicable penalties associated with PJM auctions, including the costs of purchasing replacement capacity from PJM incremental auctions, to the extent that such costs or penalties are prudently incurred (Co. Ex. 12 at 87; Co. Ex. 13 at 87; Co. Ex. 14 at 87).

(11) OCC claims in its first assignment of error that the Opinion and Order fails to set forth detailed findings for its approval of the

Companies' proposed shared savings mechanism as required by Section 4903.09, Revised Code. More specifically, OCC claims that the shared savings mechanism adopted by the Commission is based upon the proposed mechanism of the utilities, which lacks proper support because the shared savings tiers are unreasonable and should be reduced; because the shared savings mechanism should be calculated on a pre-tax basis; because the cap on the shared savings mechanism is unreasonable; because the Commission found that the Utility Cost Test (UCT), rather than the Total Resource Cost (TRC), should be used to determine the net shared savings; and because the AEP-Ohio proceeding was a negotiated, stipulated case that should not be used as precedent in this proceeding.

FirstEnergy responds that the fact that the Commission approved a shared savings mechanism which differed from OCC's position at hearing is not a basis upon which to grant rehearing. With respect to OCC's argument that the Commission improperly relied upon the AEP-Ohio stipulation, FirstEnergy argues that, given that all electric distribution utilities are subject to the same statutory energy efficiency and peak demand reduction requirements set forth in Section 4928.66, Revised Code, it is reasonable for the Commission to try to incent all of the utilities in a similar way absent distinctions that would warrant modification of the mechanism. The Companies further note that, when such distinctions existed, the Commission explained its rationale for modifying the shared savings mechanism.

The Commission finds that rehearing should be denied. The provisions of the AEP-Ohio stipulation that the stipulation may not be used as precedent for future cases is an agreement only by and among the signatory parties to the stipulation The Commission will respect and enforce that agreement with respect to those signatory parties. The Companies, however, are not signatory parties to the AEP-Ohio stipulation and are not bound by that provision. Therefore, FirstEnergy is free to argue that the provisions of its shared savings mechanism should be consistent with the shared savings mechanism established for AEP-Ohio. Likewise, the Commission is not bound by the provision of the AEP stipulation that the stipulation may not be used as precedent for future cases. We have consistently held that, although parties may agree not to be bound by the provisions contained within a stipulation, these limitations do not extend to the Commission. *In re Ohio Power Company*, Case No. 12-1126-EL-UNC, Entry on Rehearing (April 24, 2013) at 3.

The remaining arguments raised by OCC in support of this assignment of error are not new and were thoroughly addressed by the Commission in the Opinion and Order. Opinion and Order at 12-17. Accordingly, rehearing on this assignment of error should be denied.

(12) IEU-Ohio claims, in its first assignment of error, that the Opinion and Order is unlawful and unreasonable because the Commission lacks statutory authority to require a mercantile customer to cede PJM bidding rights to FirstEnergy. More specifically, IEU-Ohio argues that the right to bid capacity attributes associated with energy efficiency products initially lies with the customer and is a right separate and apart from the right to obtain an exemption from Rider DSE2. Additionally, IEU-Ohio argues that the compliance requirements in Section 4928.66, Revised Code, have no linkage to the PJM wholesale capacity market. Consequently, IEU-Ohio concludes that it is unlawful and unreasonable for the Commission to require mercantile customers to cede their right to bid their capacity attributes into PJM's capacity market in order to obtain an exemption from Rider DSE2.

In its memorandum contra, the Sierra Club contends that the Opinion and Order does not create a forcible conveyance of PJM resources from any customer to FirstEnergy. More specifically, the Sierra Club argues that, under the Opinion and Order, FirstEnergy cannot require a customer to relinquish its energy credit rights but merely conditions program participation on a tender of such rights. Further, the Sierra Club argues that the design and operation of utility energy efficiency programs is a matter of Commission oversight and review.

The Commission previously rejected this argument by IEU-Ohio in the Opinion and Order, noting that Section 4928.66(A)(2)(c), Revised Code, provides that the Commission "may exempt" mercantile customers from the cost recovery rider for EE/PDR programs; therefore, there is no statutory prohibition against conditioning that exemption on the transfer of energy savings attributes. Opinion and Order at 42. The Commission finds that IEU-Ohio has presented no new argument that the Commission's decision was unreasonable or unlawful, and, consequently, finds that IEU-Ohio's application for rehearing on this matter should be denied.

(13) In its second assignment of error, IEU-Ohio alleges that the Opinion and Order is unlawful and unreasonable because it imposes an economic penalty on mercantile customers that discourages mercantile customers from committing their customer-sited capabilities to FirstEnergy. More specifically, IEU-Ohio argues that the Opinion and Order essentially requires the capacity resource value that is produced by mercantile customers' efforts transferred to benefit other customers, some of whom have or will receive incentives or point-of-purchase discounts rather than an exemption from Rider DSE2. IEU-Ohio argues that this imposes an unreasonable burden and prejudices mercantile customers from seeking an exemption from the rider.

Similarly, in its third assignment of error, IEU-Ohio argues that the Opinion and Order is unlawful and unreasonable because it violates cost causation regulatory principles and practices. More specifically, IEU-Ohio argues that the Commission has required the capacity resource value produced by mercantile customers' efforts to be transferred to benefit other customers, some of which will receive incentives or discounts rather than an exemption from Rider DSE2. IEU-Ohio argues that this imposes an unreasonable burden and prejudice on the right of mercantile customers to seek exemption from Rider DSE2, which is inconsistent with the principles of cost-causation and is unreasonable and unlawful.

The Commission finds that IEU-Ohio's application for rehearing on these assignments of error should be granted. As stated above, it was lawful for the Commission to condition exemption for mercantile customers from Rider DSE2 on the transfer of ownership of energy savings attributes. Nevertheless, as discussed in Finding (8), the Commission has determined on rehearing that the Companies should implement a pilot program that will enable FirstEnergy to receive 20 percent of any revenue obtained from bidding energy efficiency resources into the PJM BRA. Because this pilot program would enable FirstEnergy to receive potential profits on energy efficiency attributes that have been achieved independently by the mercantile customer and committed to the utility in exchange for exemption from Rider DSE2, the Commission finds, in the interest of fairness, that mercantile customers may seek exemption from Rider DSE2 or other rebates in lieu of exemption from Rider DSE2 pursuant to Section 4928.66(A)(2)(c), Revised Code, without being required to transfer ownership of energy attributes to FirstEnergy. The Commission further notes that this applies only to the mercantile customer program where the mercantile customer has achieved energy savings independent of the utility programs (Co. Ex. 12 at 59-61; Co. Ex. 13 at 59-61; Co. Ex. 14 at 59-61). Mercantile customers who participate in the other utility programs set forth in the program portfolio plans may be required to transfer ownership of the energy attributes to the Companies for bidding into the PJM auctions.

(14) In its first assignment of error, Nucor claims that the Opinion and Order fails to state a reasoned basis for declining to adopt the recommendation by Nucor and OEG to incorporate a reasonable cost cap on Rider DSE charges for Rate GT customers. Nucor continues that, if the Commission relied on FirstEnergy's argument that addressing OEG and Nucor's cost cap recommendation would be improper in this case because it would constitute single-issue ratemaking, the Commission erred because FirstEnergy's claim is wrong. More specifically, Nucor argues that the current ESP does not preclude the consideration of alternative rate designs for the DSE2 charge in portfolio proceedings, which is reasonable because it makes sense to evaluate the fairness and reasonableness of the DSE2 rate design in light of increased benchmarks and new EE/PDR programs that accompany each portfolio proceeding. Nucor acknowledges that the Commission might decline to adopt the cost cap recommendation in this proceeding and instead to address it in a future case, and that, if that is the case, Nucor will reintroduce the cost cap recommendation at a later time; however, Nucor argues that the Commission may address the cost cap in this case and administrative efficiency favors a decision now.

In its memorandum contra, FirstEnergy responds that Nucor has failed to demonstrate any prejudice as a result of the Commission's denial of the cost cap recommendation, as Nucor has admitted that the Commission may defer consideration of Nucor's arguments to a future proceeding. FirstEnergy also emphasizes that the Commission did not abuse its discretion in finding that issues regarding rate design for existing riders are better discussed in a standard service offer proceeding. Consequently, FirstEnergy contends that the Commission's determination was proper.

The Commission agrees with the Companies that Nucor has failed to demonstrate any prejudice as a result of the Commission's refusal to address Nucor's cost cap recommendation in this proceeding. The Commission declined to adopt Nucor's rate design recommendations, expressly finding that "issues regarding rate design for existing riders are better addressed in the Companies' next standard service offer proceeding." Opinion and Order at 42. The Commission finds that Nucor has presented no argument that the Commission's decision was unreasonable or unlawful and, consequently, finds that Nucor's application for rehearing on this matter should be denied.

(15) Nucor alleges, in its second assignment of error, that the Commission failed to make a ruling on the proper methodology to calculate the peak demand reduction benefit from interruptible load under Rider ELR. More specifically, Nucor contends that FirstEnergy should be required to use the definition of curtailable load in Rider ELR rather than the amount of Rider ELR interruptible load FirstEnergy chooses to register with PJM. Nucor points out that, in its reply brief, FirstEnergy stated that it was unopposed to using Nucor's proposed methodology, should the Commission so order, but that the Commission failed to rule on the issue. FirstEnergy did not address Nucor's argument in its memorandum contra.

The Commission finds that Nucor's application for rehearing on this issue regarding the proper methodology to calculate the peak demand reduction benefit for interruptible load under Rider ELR should be granted. The Commission finds that Nucor's proposal is reasonable and notes that the Companies' did not oppose Nucor's proposed methodology. Consequently, the Commission finds that FirstEnergy shall use the definition of curtailable load in Rider ELR rather than the amount of Rider ELR interruptible load the Companies choose to register with PJM.

(16) Nucor, in its third assignment of error, claims that the Opinion and Order is unclear whether FirstEnergy should be required to bid Rider ELR interruptible load into the annual BRAs. Nucor argues that Rider ELR interruptible load is an ideal capacity resource and should not be excluded from the BRAs, when inclusion of such resources could lower costs for customers. Likewise, OEG seeks clarification whether the Commission intended the phrase "planned energy efficiency resources" in the Opinion and Order to include FirstEnergy's interruptible load under Riders ELR and OLR.

In its memorandum contra, FirstEnergy argues that there is no ambiguity in the Opinion and Order regarding inclusion of Rider ELR interruptible load within the term "planned energy efficiency resources." FirstEnergy argues that Rider ELR interruptible load is a demand resource and not an energy efficiency resource and, further, that Rider ELR is only effective until May 31, 2016—thus, there will be no interruptible load under tariff for which the Companies can demonstrate ownership for the 2016/2017 delivery year, which begins June 1, 2016. Consequently, FirstEnergy concludes that there is no ambiguity that the Commission did not intend for the Companies to include demand resources from Rider ELR.

The Commission finds that Nucor's application for rehearing on this assignment of error should be denied. Riders ELR and OLR will expire prior to the start of the 2016/2017 delivery year, precluding these resources from being bid into the May 2013 PJM BRA for the 2016/2017 planning year. Consequently, the Commission finds that the interruptible load from Riders ELR and OLR cannot be considered a "planned" demand response resource for purposes of bidding into the BRA. However, in the event that Riders ELR and OLR are extended by the Commission in the future, we expect that the interruptible load will be bid into any subsequent incremental auctions for the 2016/2017 delivery year.

(17) In their first assignment of error, ELPC/OEC claim that the Opinion and Order improperly allows the Companies to rely on energy efficiency kits beyond those distributed in schools. More specifically, ELPC/OEC argue that the kits were proposed to achieve approximately 36 percent of aggregate residential savings and 32 percent of small mercantile savings during the plan period but that the Companies have failed to demonstrate that customers would not purchase the items provided in the kits if FirstEnergy did not provide them for free. ELPC/OEC point out that Staff witness Scheck did not endorse the Companies' use of kits, that ELPC/OEC witness Crandall testified that the kits were ineffective, and that NRDC witness Reed testified that the kits undermine the market channels already in place. Further, ELPC/OEC note that FirstEnergy witness Miller testified that the actual installation rate for CFLs provided in the kits for the Companies' Pennsylvania utilities was 70 percent three months after receipt, less than the 86 percent installation rate proposed by the Companies in this case derived from the draft Ohio Technical Reference Manual and regarding CFLs purchased through retail channels. Finally, ELPC/OEC indicate that they do support the distribution of energy efficiency kits in schools, citing ELPC/OEC witness Crandall's testimony that these kits will likely result in higher installation rates. ELPC/OEC conclude that the Commission should disallow some portion of the proposed kits or, alternately, should use a 70 percent installation rate for CFLs in kits.

In its memorandum contra, FirstEnergy responds that ELPC/OEC have failed to demonstrate that the Companies' strategy regarding efficiency kits and the Commission's approval were unreasonable or unlawful. To the contrary, FirstEnergy argues that the evidence presented at hearing demonstrates that the efficiency kits are an effective program included in the plans. FirstEnergy supports its argument by pointing out that, although Staff witness Scheck did not comment on whether the Companies were over-relying on the kits, he went on to agree that the kits did not contain excessive CFLs; that the CFLs would produce "a lot of savings"; and that the installation rates would be "pretty decent." FirstEnergy also argues that the application demonstrated the kits are cost-effective while providing significant savings for residential customers; that testimony demonstrated the kits provide customers with the opportunity to learn about efficiency without having to purchase anything; and, that testimony demonstrated the kits promote other efficiency programs among customers. The Companies argue that the kits should not circumvent normal retail channels, given the wide variety of lighting choices offered by retailers and that the bulbs included in the kit represent only a small percentage of potential opportunities for residential customers—leaving significant potential for retail sales. Finally, the Companies note that the risk of free ridership is low because the kits are an opt-in program. The Companies conclude that the Commission did not err in approving the energy efficiency kits.

Next, the Companies respond to ELPC/OEC's argument that the Commission should require the Companies to use a 70 percent installation rate for CFLs, rather than the 86 percent installation rate provided by the draft Ohio TRM. FirstEnergy argues that the installation rate proposed by ELPC/OEC is the rate at which Pennsylvania customers installed CFLs after only two to three months but that the one-year installation rate in Pennsylvania was substantially higher and ELPC/OEC produced no evidence that the Ohio installation rates would be inconsistent with the draft TRM. Further, FirstEnergy claims that Sierra Club witness Reed did not testify that he supported the installation rate of 70 percent but merely opined that "one could argue that maybe [81 percent is] a more appropriate number" (Tr. III at 664-665). The Companies conclude that it was appropriate to use the 86 percent installation rate provided in the draft TRM and to conservatively include EISA impacts for all CFLs contained in the kits for the entire plan period.

The Commission finds that the evidence in the record of this proceeding does not support ELPC/OEC's claim that the Companies improperly rely upon energy efficiency kits in their program portfolio plans. Staff witness Scheck did not agree that the Companies' proposed use of energy efficiency kits was excessive or that there were an excessive number of CFL light bulbs in the kits (Tr. IV at 831-832). In addition, the evidence presented at hearing indicated that because the kits are offered on an opt-in basis, the risk of free ridership is low (Tr. II at 344; Tr. III at 427-428). Further, the evidence at hearing supports a range of possible installation rates: the 81 percent rate proposed by the Ohio draft Technical Reference Manual for direct install (Tr. III at 664-665), the 82 to 84 percent installation rate experienced over time in other states (Tr. III at 649-651), and the 86 percent installation rate proposed by the Companies based upon the proposed Ohio draft Technical Reference Manual installation rate for retail sales (Tr. III at 664-665). Therefore, we find that the 70 percent installation rate proposed by ELPC/OEC is not supported by the evidence in the record. All other arguments raised by ELPC/OEC were fully considered by the Commission in the Opinion and Order. Opinion and Order at 24-25. Accordingly, rehearing on this assignment of error should be denied.

(18) In their second assignment of error, ELPC/OEC allege that the Opinion and Order improperly allows the Companies to discount standard T-8 linear fluorescent lighting. More specifically, ELPC/OEC argue that, although FirstEnergy witness Miller testified that T-12 fixtures would likely remain in retail stock or customer inventory for a period of time, this testimony is merely conclusory and cited to no facts or timeline regarding how long the T-12 fixtures would remain available. ELPC/OEC explain that the lack of timeline is problematic because the Companies' plans will remain in place through 2015 and the Opinion and Order did not require the Companies to stop incenting the standard T-8 fixtures once the T-12 fixtures are no longer available. Further, ELPC/OEC argue that FirstEnergy presented no evidence demonstrating that there are a substantial number of customers that would only replace their T-12 fixtures with standard T-8 fixtures, particularly given that Sierra Club witness Loiter testified that high performance T-8 fixtures are 46 percent more efficient than standard T-8 fixtures. ELPC/OEC also argue that Duke Energy Ohio began eliminating incentives for standard T-8 fixtures in July 2012 in favor of high performance T-8 fixtures and that Commonwealth Edison in Illinois typically incentivizes only high performance or reduced-wattage T-8 fixtures. ELPC/OEC conclude that the Commission should not allow incentives for standard T-8 fixtures, or that, alternately, the Commission should require FirstEnergy to track availability of T-12 fixtures and cease incentives when T-12 fixture inventory is exhausted.

In its memorandum contra, FirstEnergy contends that the Commission's order allowing the Companies to incent standard T-8 fixtures is reasonable. The Companies argue that ELPC/OEC has offered no means by which the Companies would be able to track availability of T-12 fixtures and that ELPC/OEC's argument that the Companies' plan will incent customers for items they would already purchase is incorrect. FirstEnergy points out that, as set forth in the Opinion and Order, 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 fixture to replace a T-12 fixture. Further, the Companies note that the tiered incentive structure offers a lower incentive for standard T-8 fixtures than is offered for higher efficiency options. Next, the Companies assert that their proposed plan promotes an affordable alternative for cost-conscious customers. Finally, the Companies contend that, although another Ohio utility and another state utility provide incentives for mainly high performance T-8 fixtures, there are no details surrounding the terms of these other programs, and evidence was heard that other utilities continue to provide incentives for standard T-8 fixtures. FirstEnergy concludes that the Commission appropriately rejected ELPC/OEC's criticism of the standard T-8 fixture incentives in the Opinion and Order.

In its memorandum contra, IEU-Ohio argues that the Opinion and Order fully addressed and rejected this argument by ELPC/OEC, determining that T-12 fixtures will likely remain in stock or inventory for a period of time, creating opportunities for actual energy savings by incenting T-8 fixtures.

The Commission finds that rehearing on this assignment of error should be denied. ELPC has raised no new arguments on rehearing and the Commission thoroughly addressed ELPC's arguments in the Opinion and Order. Opinion and Order at 27-28.

(19) ELPC/OEC allege, in their third assignment of error, that the Opinion and Order improperly allows the Companies to use the Energy Independence and Security Act of 2007 (EISA) standard as a baseline for determining savings rather than EISA-compliant CFLs. ELPC/OEC argue that the EISA standard is inflated and will allow FirstEnergy to receive credit

for savings not actually achieved in violation of Section 4928.66(a), Revised Code. More specifically, ELPC/OEC contend that FirstEnergy witness Miller testified that FirstEnergy does not know whether minimally EISA-compliant bulbs will be on the market in the future but that the Opinion and Order allows the Companies to count savings based on the EISA standards, even though the CFL may be the dominant product on the market. ELPC/OEC argue that this situation would make it unfair for FirstEnergy to claim savings based on a less efficient standard.

In its memorandum contra, the Companies point out that, as stated by the Commission, the Commission's Opinion and Order in Case No. 09-512-GE-UNC regarding EM&V standards clearly directs that compliance will be determined based on gross savings, not net savings. FirstEnergy argues that the Opinion and Order cannot be said to be an unreasonable approach to measuring savings under the circumstances. Further, FirstEnergy points out that the EISA standards are phased in over time, and that the Companies cannot predict what technologies will be available in the future. Consequently, the Companies conclude that the Commission should deny ELPC/OEC's application for rehearing on this matter.

In its memorandum contra, IEU-Ohio argues that the Commission considered and rejected ELPC/OEC's argument regarding the EISA standard in the Opinion and Order, finding that use of the EISA baseline was reasonable. IEU-Ohio contends that ELPC/OEC have no new argument that the Commission's decision was not reasonable.

The Commission finds that ELPC has raised no new arguments on rehearing and that the Commission thoroughly addressed this issue in the Opinion and Order. Opinion and Order at 28-29. Accordingly, rehearing on this assignment of error should be denied.

It is, therefore,

ORDERED, That the applications for rehearing filed by OCC and ELPC/OEC be denied. It is, further, ORDERED, That the applications for rehearing filed by FirstEnergy, IEU-Ohio, and Nucor be granted, in part, and denied, in part, as set forth herein. It is, further,

ORDERED, That copies of this entry on rehearing be served upon the parties and counsel of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby w/ concurring opinion

M. Beth Trombold

Asim Z. Haque

MWC/GAP/sc

Entered in the Journal

JUL 17 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 Plans for 2013 through 2015.	)	Case No. 12-2190-EL-POR Case No. 12-2191-EL-POR Case No. 12-2192-EL-POR

CONCURRING OPINION OF COMMISSIONER LYNN SLABY

I concur but write separately due to my continued concern regarding the risk companies take by bidding energy efficiency into the PJM Base Residual Auction (BRA). I believe the Companies should have been provided an additional incentive by allowing the Company to receive a higher percentage of the revenue if they were to bid over the mandated 75 percent. By providing the additional incentive I believe it would encourage companies to be more aggressive in their planning and encourage a higher percentage of the energy efficiency to be bid into the market. Together this would benefit both the consumers and the Companies.

Lynn Slaby

Lynn Slaby, Commissioner

LS/sc

JUL 17 2013

Entered in the Journal

Barcy F. McNeal

Barcy F. McNeal
Secretary