

**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) Case No. 16-743-EL-POR
Energy Efficiency and Peak Demand)
Reduction Program Portfolio Plans for)
2017 through 2019.)

**POST-HEARING BRIEF
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Electric energy efficiency programs can benefit electric utility customers. But FirstEnergy's proposed utility-administered energy efficiency programs are unnecessarily expensive for customers. Under FirstEnergy's settlement in this case (which the PUCO Staff and the Consumers' Counsel did not sign),¹ customers could pay hundreds of millions of dollars for FirstEnergy's energy efficiency programs over the next three years: \$286.5 million in program costs and nearly \$47 million in utility profits—a total of more than \$111 million per year.² That is too much in program costs for customers to pay. It also is too much in profit for customers to pay to FirstEnergy.

Just last month, the Public Utilities Commission of Ohio ("PUCO") addressed the need for limits on what customers pay to utilities for energy efficiency. The PUCO stated: "The addition of an annual cost cap is a reasonable response to concerns which have been raised regarding potential increases in the costs of the EE/PDR programs, and the annual cost cap should incent AEP Ohio to manage the costs of the programs in the

¹ Joint Ex. 1 (the "Settlement").

² Joint Ex. 1, Exhibit A; Joint Ex. 1 § V.T.

most efficient manner possible. In light of the importance of the annual cost cap, the Commission notes that we will be reluctant to approve stipulations in other program portfolio cases which do not include a similar cap on EE/PDR program costs."³

Consistent with this ruling, the PUCO should modify the Settlement in FirstEnergy's case to require an annual "cost cap" on the total program costs and shared savings that customers will pay. The PUCO Staff and the Office of the Ohio Consumers' Counsel ("OCC") have proposed an annual cap of 3% of each FirstEnergy utility's total sales to ultimate customers.⁴ This would limit customer energy efficiency charges to about \$80.1 million per year, instead of the \$111 million annual charge proposed in the Settlement.

This \$80.1 million annual cost cap would provide more of the protection that Ohioans need and deserve—protection that the Settlement lacks.

I. BACKGROUND

Ohio electric distribution utilities were required, beginning in 2009, to offer energy efficiency programs to their customers.⁵ In each of 2017, 2018, and 2019, the electric distribution utility's programs must meet an annual energy savings "benchmark" or "statutory minimum" of 1.0% of the utility's "baseline."⁶ The baseline is the average of

³ Opinion & Order ¶ 32, In re Application of Ohio Power Co. for Approval of its Energy Efficiency & Peak Demand Reduction Program Portfolio Plan for 2017 through 2020, Case No. 16-574-EL-POR (Jan. 18, 2017).

⁴ PUCO Staff Ex. 1 (Donlon Direct); OCC Ex. 9B (Spellman Direct).

⁵ Ohio Revised Code ("R.C.") 4928.66(A)(1)(a).

⁶ R.C. 4928.66(A)(1)(a).

the total kilowatt hours the utility sold in the preceding three calendar years, subject to certain adjustments.⁷

Consistent with R.C. 4928.66, FirstEnergy filed an application in this proceeding (the "Application") seeking approval of a portfolio of energy efficiency programs for the years 2017, 2018, and 2019.⁸ The Application proposed an array of energy efficiency programs that targeted energy savings of about 2.4 million MWh over three years at a cost to FirstEnergy's customers of about \$458 million.⁹

Certain details related to FirstEnergy's energy efficiency portfolio, however, were and continue to be litigated in another PUCO proceeding. In FirstEnergy's fourth electric security plan case,¹⁰ FirstEnergy agreed, in a settlement, (a) to reactivate in 2017 energy efficiency programs that it had suspended for 2015 and 2016, and (b) to "strive to achieve over 800,000 MWh of energy efficiency annually, subject to customer opt outs."¹¹ In exchange, the other parties to this ESP IV settlement (but not OCC) agreed that FirstEnergy could increase the amount of shared savings that FirstEnergy could collect from customers from \$10 million a year after tax (about \$15.6 million in actual customer payments) to \$25 million a year after tax (about \$39 million in actual customer

⁷ R.C. 4928.66(A)(2)(a) (defining "baseline" and identifying certain adjustments for nonresidential customer opt-outs and customers with reasonable arrangements); R.C. 4928.66(A)(2)(c) (identifying baseline adjustments to account for certain mercantile customers and for weather and other factors).

⁸ Joint Ex. 1, Exhibit B.

⁹ See Joint Ex. 1, Exhibit A (\$322.9 million in program costs under the Application); OCC Ex. 6 (\$39 million a year in shared savings for three years, a total of \$117 million); OCC Ex. 9B, Exhibit RFS-5 (\$18 million over three years for the Community Connections program).

¹⁰ Case No. 14-1297-EL-SSO (the "ESP IV Case").

¹¹ OCC Ex. 1 § V.E.3.

payments).¹² The Application reflected this agreement by targeting 805,557 MWh in energy savings per year and providing a \$25 million after-tax shared savings cap.¹³

Subsequently, however, the PUCO modified the ESP IV settlement to require FirstEnergy to substantially reduce the amount that it can charge customers for energy efficiency. First, the PUCO ruled that FirstEnergy could not charge customers higher profits (shared savings) as a result of energy savings that they achieved on their own.¹⁴ Second, the PUCO ruled that FirstEnergy could not charge customers \$39 million a year in profits for energy efficiency. Instead, the annual limit on shared savings would remain \$15.6 million per year (\$10 million per year after taxes).¹⁵ Third, the PUCO ruled that FirstEnergy could not charge customers for programs that target 800,000 MWh in energy savings per year. Instead, FirstEnergy is "expected in the energy efficiency program portfolio plans to budget for the annual statutory energy efficiency mandate rather than the [800,000 MWh] goal."¹⁶

Following the PUCO's Fifth Entry on Rehearing in the ESP IV Case, FirstEnergy modified the energy efficiency portfolio that it filed in its Application. The modified portfolio was attached to the Settlement between FirstEnergy and several parties to this energy efficiency portfolio case. Among other things, the Settlement (a) prohibits FirstEnergy from charging customers higher profits as a result of energy savings they

¹² Id.

¹³ Joint Ex. 1, Exhibit A; Joint Ex. 1, Exhibit B at 106-07.

¹⁴ Fifth Entry on Rehearing ¶ 324, In re Application of Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Authority to Provide for a Standard Serv. Offer, Case No. 14-1297-EL-SSO (Oct. 12, 2016) (the "Fifth Entry on Rehearing").

¹⁵ Id. ¶ 326.

¹⁶ Id. ¶ 325.

achieve on their own,¹⁷ (b) lowers the annual cap on shared savings from \$25 million after tax to \$10 million after tax,¹⁸ and (c) reduces the scope of the portfolio to target 1.78 million MWh over three years instead of 2.4 million MWh.¹⁹

The PUCO Staff, OCC, and the Ohio Hospital Association oppose the Settlement. FirstEnergy, Energy Management Solutions, Inc., EnerNOC, Ohio Partners for Affordable Energy, IGS Energy, and four environmental parties support the Settlement (the "Signatory Parties"). The Ohio Manufacturers' Association, the Kroger Co., and Industrial Energy Users-Ohio are not Signatory Parties but do not oppose the Settlement.

The PUCO Staff and OCC filed testimony opposing the Settlement.²⁰ The crux of their respective positions is that the Settlement would permit FirstEnergy to charge customers too much for energy efficiency. The PUCO Staff and OCC witnesses also testified that the Settlement's proposal to charge customers for shared savings would need to be modified to protect customers from paying excessive profits to FirstEnergy. In response, FirstEnergy and the environmental parties submitted rebuttal testimony challenging the PUCO Staff's and OCC's proposal for an annual cap on the amount of program costs and shared savings that customers would pay.²¹

The PUCO should adopt the PUCO Staff's and OCC's recommendation for an annual \$80.1 million cap on total program costs and shared savings as set forth in the testimony of PUCO Staff witness Patrick Donlon and the testimony of OCC witness

¹⁷ Joint Ex. 1 § V.T.

¹⁸ Id.

¹⁹ Id., Exhibit A.

²⁰ PUCO Staff Ex. 1 (Donlon Direct); OCC Ex.9B, 9C (Spellman Direct).

²¹ Company Ex. 16 (Demiray Rebuttal); Company Ex. 17 (Miller Rebuttal); Environmental Ex. 1 (Neme Rebuttal).

Richard Spellman. The PUCO should also modify FirstEnergy's proposed shared savings mechanism to prevent FirstEnergy from profiting excessively from energy efficiency at customer expense.

II. BURDEN OF PROOF AND STANDARD OF REVIEW

In PUCO proceedings, the applicant bears the burden of proof.²² In the context of a settlement, the signatory parties "bear the burden to support the stipulation" and must "demonstrate that the stipulation is reasonable and satisfies the Commission's three-part test."²³ And in electric energy efficiency cases, whether there is a settlement or not, the utility must prove that its proposed energy efficiency program portfolio is consistent with State policy under R.C. 4928.02 and satisfies the requirements of R.C. 4928.66.²⁴

In PUCO proceedings, a settlement is merely a recommendation to the PUCO on behalf of the settling parties.²⁵ A settlement is not binding on the PUCO,²⁶ and the PUCO has the discretion to give each settlement the weight that the PUCO believes it deserves. The recommendations provided in a settlement do not trump the arguments of non-signatory parties. Nor do they alter the role of the PUCO as a regulator that must "determine what is just and reasonable from the evidence presented at the hearing."²⁷

²² In re Application of the Ottoville Mut. Tel. Co., Case No. 73-356-Y, 1973 Ohio PUC LEXIS 3, at *4 ("the applicant must shoulder the burden of proof in every application proceeding before the Commission"); In re Application of the Ohio Bell Tel. Co., No. 84-1435-TP-AIR, 1985 Ohio PUC LEXIS 7, at *79 (Dec. 10, 1985) ("The applicant has the burden of establishing the reasonableness of its proposals.").

²³ Opinion and Order at 18, In re Application Seeking Approval of Ohio Power Co.'s Proposal to Enter into an Affiliate Power Purchase Agmt. for Inclusion in the Power Purchase Agmt. Rider, No. 14-1693-EL-SSO, (Mar. 31, 2016).

²⁴ Ohio Adm. Code ("OAC") 4901:1-39-04(E).

²⁵ Duff v. PUCO, 56 Ohio St. 2d 367, 379 (1978).

²⁶ Id. See also OAC 4901-1-30(E).

²⁷ Duff, 56 Ohio St. 2d at 379.

In evaluating settlements, the ultimate issue for the PUCO's consideration is whether the agreement "is reasonable and should be adopted."²⁸ In answering this question, the PUCO has adopted the following three-prong test:²⁹

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit customers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?

The PUCO has often taken into account the diversity of interests among the signatory parties, finding that diversity of interests is indicative of serious bargaining.³⁰

III. ARGUMENT

A. The Settlement does not benefit customers or the public interest.

1. **The PUCO should approve an \$80.1 million annual cost cap to limit the amount that customers will pay for energy efficiency program costs and utility profits (shared savings).**
 - a. **An annual cap on program costs and shared savings benefits customers by lowering the amount that they pay for energy efficiency.**

Energy efficiency is important. It is also important to place limits on the amount that FirstEnergy can charge customers for energy efficiency.

²⁸ Opinion & Order at 9, In re Application of Vectren Energy Delivery of Ohio, Inc. for Authority to Amend its Tariffs, Case No. 04-571-GA-AIR, (Apr. 13, 2015).

²⁹ Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123, 126 (1992).

³⁰ See, e.g., In re Application of the Dayton Power & Light Co. for Approval to Modify its Competitive Bid True-up Rider, Case No. 14-563-EL-RDR (Sep. 9, 2015); In re Application of the Columbus S. Power Co. & Ohio Power Co., Case No. 05-376-EL-UNC (Feb. 11, 2015); In re Application of Columbus S. Power Co. & Ohio Power Co., for an Increase in Electric Distrib. Rates, Case No. 11-351-EL-AIR (Dec. 14, 2011); In re Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co. & The Toledo Edison Co. for Authority to Provide a Standard Serv. Offer, Case No. 14-1297-EL-SSO (Mar. 31, 2016).

The cost of energy efficiency in Ohio is rising.³¹ The energy efficiency rider for each of the three FirstEnergy companies³² is now one of the highest riders on customers' bills.³³ As PUCO Staff witness Donlon testified, there is "concern[] with the overall costs of programs that are being passed back for customers to pay."³⁴

An annual cap of \$80.1 million would protect customers from these rising energy efficiency costs.³⁵ It would "encourage FirstEnergy to spend customer funds as wisely as possible."³⁶ It would allow "substantial financial support for energy efficiency measures and programs" while at the same time providing "an upper limit to rate impacts on customers of utility-administered energy efficiency programs."³⁷ It would require FirstEnergy "to pick the most cost effective and efficient means of achieving their benchmarks, thus avoiding unnecessary charges to customers."³⁸ And it would "provide some price assurances to customers while still supporting energy efficiency and allowing the utilities to meet or exceed their statutory mandate levels."³⁹

The PUCO should protect customers from paying too much for energy efficiency. It should modify the Settlement to require an annual limit of \$80.1 million on total program costs and utility profits (shared savings).

³¹ PUCO Staff Ex. 1 (Donlon Direct) at 5:105.

³² Each of the Ohio Edison Company, the Toledo Edison Company, and the Cleveland Electric Illuminating Company shall be referred to as a "Company."

³³ PUCO Staff Ex. 1 (Donlon Direct) at 5:104-07; Tr. II at 328:9-23 (Donlon).

³⁴ Tr. II at 364:6-8 (Donlon).

³⁵ PUCO Staff Ex. 1 (Donlon Direct) at 7:149-155 ("A cost cap on program costs and shared savings would control the cost of energy efficiency.").

³⁶ OCC Ex. 9B (Spellman Direct) at 15:9-11.

³⁷ OCC Ex. 9B (Spellman Direct) at 15:12-17.

³⁸ PUCO Staff Ex. 1 (Donlon Direct) at 7:152-54.

³⁹ PUCO Staff Ex. 1 (Donlon Direct) at 5:108-10.

b. FirstEnergy can achieve its statutory minimum energy savings under an \$80.1 million cost cap.

FirstEnergy claims that it is not possible for it to achieve its statutory minimum energy savings under the PUCO Staff's and OCC's proposed \$80.1 million annual cost cap. The record does not support FirstEnergy's claim.

i. Nonresidential customer opt-outs could significantly reduce the Companies' statutory benchmarks, which would lower the cost of compliance that customers pay.

The significance of nonresidential customer opt-outs cannot be ignored. But that is what FirstEnergy has done. In the Settlement, FirstEnergy calculated its annual benchmarks by assuming there will be no nonresidential customer opt outs.⁴⁰ FirstEnergy created a program budget—which customers pay—based on these benchmarks.⁴¹ But if nonresidential customer opt-outs were taken into account, the benchmarks would be lower, and the amount that customers would have to pay for energy efficiency would be lower as well.

When Senate Bill 221 first established energy savings benchmarks for the State of Ohio in 2008, the PUCO was given the authority to exempt certain mercantile customers from paying for energy efficiency programs.⁴² In 2014, the General Assembly passed Senate Bill 310 ("SB 310").⁴³ SB 310 added two new avenues for nonresidential customer opt-outs.

⁴⁰ Joint Ex. 1, Exhibit B at 2.

⁴¹ Joint Ex. 1, Exhibit A.

⁴² R.C. 4928.66(A)(2)(c) (effective July 31, 2008).

⁴³ http://archives.legislature.state.oh.us/bills.cfm?ID=130_SB_310

First, section 8 of SB 310 permitted customers to opt out of a utility's amended portfolio beginning January 1, 2015.⁴⁴ FirstEnergy amended its portfolio,⁴⁵ so its nonresidential customers were permitted to opt out under SB 310 section 8. SB 310 also added a new opt-out section to R.C. Chapter 4928. This new section, R.C. 4928.6611, permits nonresidential customers to "opt out of the opportunity and ability to obtain direct benefits from the utility's portfolio plan."

In summary, from 2008 to 2014, nonresidential customers could request to opt out of a utility's portfolio plan under R.C. 4928(A)(2)(c). From 2015 to 2016, nonresidential customers could opt out under section 8 of SB 310 and could also continue to opt out under R.C. 4928(A)(2)(c). And beginning January 1, 2017, nonresidential customers can opt out under R.C. 4928.6611 and can continue to opt out under R.C. 4928(A)(2)(c).

Nonresidential customer opt outs impact compliance with Ohio's energy savings mandates. By law, each Ohio electric distribution utility is required to achieve energy savings of 1.0% of its baseline in 2017, 2018, and 2019.⁴⁶ If an electric distribution utility has a baseline of 20,000,000 MWH for 2017, for example, then it must achieve energy savings in 2017 of 200,000 MWh. The baseline is the average of the utility's three previous years' energy sales, subject to certain adjustments.⁴⁷ One of those adjustments is to reduce the baseline to account for nonresidential customer opt-outs.

When a nonresidential customer opts out, its energy usage is subtracted from the utility's sales for purposes of calculating the baseline.⁴⁸ For instance, if a nonresidential

⁴⁴ SB 310, Section 8.

⁴⁵ Tr. I at 66:2-13 (Miller).

⁴⁶ R.C. 4928.66(A)(1)(a).

⁴⁷ R.C. 4928.66(A)(1)(a); R.C. 4928.66(A)(2)(a).

⁴⁸ R.C. 4928.66(A)(1)(a); R.C. 4928.66(A)(2)(a); Company Ex. 1, Exhibit. DJM A-2.

customer uses 500 MWh and opts out of the utility's energy efficiency portfolio, 500 MWh is subtracted from the utility's energy sales.⁴⁹ And because the benchmark is 1% of the baseline, a reduction in the baseline also reduces the benchmark. In the example above, a 500 MWh reduction in the baseline would result in a 5 MWh reduction in the annual benchmark.⁵⁰

FirstEnergy's most recent annual report shows that nonresidential customer opt outs were significant in 2012, 2013, and 2014. Between 2012 and 2014, Ohio Edison's total sales were between 24 and 25 million MWh per year.⁵¹ Nonresidential customers with total usage of about 2 million MWh opted out in each of 2012, 2013, and 2014.⁵² Thus, nonresidential customer opt outs reduced the 2015 baseline⁵³ by about 8% for Ohio Edison. Cleveland Electric's opt-out results for 2012 to 2014 were similar, with an opt-out rate of about 7 to 8% of total energy sales.⁵⁴ Toledo Edison, in contrast, experienced a much higher opt-out rate. In each of 2012, 2013, and 2014, Toledo Edison had total sales of around 10 million MWh.⁵⁵ But nonresidential customers with a total usage of around 3 million MWh opted out in each of 2012, 2013, or 2014. For Toledo Edison, therefore, opt-outs reduced the baseline by nearly 30% for 2015. The following tables summarize

⁴⁹ Tr. I at 18:2-10 (Mullins).

⁵⁰ Tr. I at 18:11-14 (Mullins).

⁵¹ See Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to the Public Utilities Commission of Ohio for the Period January 1, 2015 to December 31, 2015 at Exhibit 1 (May 12, 2016), Case No. 16-941-EL-EEC, available at <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=4e204199-e503-49e0-956e-42082e420bb7> (the "2015 Annual Report"). The Attorney Examiner took administrative notice of the 2015 Annual Report. See Tr. V at 581:18-25.

⁵² Id.

⁵³ It is the 2015 baseline because the 2015 baseline is based on the previous three years' sales, *i.e.*, 2012, 2013, and 2014.

⁵⁴ 2015 Annual Report.

⁵⁵ Id.

the opt-out results for each of the three FirstEnergy Companies for 2012, 2013, and 2014.⁵⁶

Company	Year	Sales (MWh)	Opt Outs (MWh)	Opt Outs as % of Total Sales
OE	2012	24,440,821	1,957,610	8.01%
	2013	24,304,505	2,061,605	8.48%
	2014	24,927,292	2,177,644	8.74%

Company	Year	Sales (MWh)	Opt Outs (MWh)	Opt Outs as % of Total Sales
CEI	2012	18,804,605	1,368,544	7.28%
	2013	18,712,244	1,386,893	7.41%
	2014	18,733,302	1,481,169	7.91%

Company	Year	Sales (MWh)	Opt Outs (MWh)	Opt Outs as % of Total Sales
TE	2012	10,381,477	2,931,611	28.24%
	2013	10,528,690	3,103,750	29.48%
	2014	10,543,885	3,159,742	29.97%

Nonresidential opt outs have the potential to materially impact the Companies' baselines and benchmarks, especially in the Toledo Edison territory. But in the Settlement, FirstEnergy did not account for nonresidential opt outs.⁵⁷ In fact, FirstEnergy did not even try to account for nonresidential customer opt outs.⁵⁸ Instead, FirstEnergy calculated its baselines for 2017, 2018, and 2019 with an assumption that there would be zero opt-outs.

This assumption is unreasonable. As discussed above, the baseline for a particular year is the average of the previous three years' sales, subject to certain adjustments. So for 2017, the baseline would be the average sales, adjusted for opt-outs and other

⁵⁶ Id.

⁵⁷ See Joint Ex. 1, Exhibit B at 2 (providing tables with each Company's benchmark, but noting that the benchmarks do not include opt outs); Tr. I at 24:8-11 (Mullins).

⁵⁸ Tr. I at 19:15-19 ("Q: . . . [D]id the companies attempt to forecast the number of opt-outs there would be in 2017, 2018, or 2019? A: No, we did not.") (Mullins).

permissible adjustments, from 2014, 2015, and 2016. FirstEnergy has actual opt-out data from at least 2014 and 2015. The 2014 data is found in FirstEnergy's 2015 Annual Report.⁵⁹ And although it may not be publicly available, FirstEnergy has actual opt-out data from 2015 as well.⁶⁰ FirstEnergy's baselines for 2017, therefore, could have incorporated actual opt-out data from at least 2014 and 2015. FirstEnergy's 2018 baseline (which is the average of adjusted sales from 2015, 2016, and 2017) could similarly have incorporated actual opt-out data from at least 2015.

But FirstEnergy calculated the 2017 and 2018 baselines assuming zero opt outs for 2014, 2015, 2016, and 2017. This assumption inflated the baseline, and accordingly, the 1.0% statutory benchmark. If nonresidential customer opt-outs were taken into account in calculating the baselines for 2017 and 2018, the baselines and benchmarks would be lower. In the case of Toledo Edison in particular, where nonresidential opt-outs accounted for nearly 30% of all energy usage, the baselines and benchmarks would be significantly lower.

FirstEnergy also erred by failing to forecast opt-out data for 2016, 2017, and 2018, which could have been used to calculate more accurate baselines and benchmarks for 2017, 2018, and 2019.⁶¹ Nothing prevented FirstEnergy from using historical opt-out data to estimate future customer opt outs.⁶² If anything, FirstEnergy's historical opt-out data might underestimate the number of nonresidential opt-outs in 2017, 2018, and 2019,

⁵⁹ See 2015 Annual Report at Exhibit 1 (showing 2,177,644 MWh in opt-outs for Ohio Edison for 2014; 1,4871,169 MWh in opt-outs for Cleveland Electric for 2014; and 3,159,742 MWh in opt-outs for Toledo Edison for 2014).

⁶⁰ Tr. V at 588:15-16 (Miller) ("The companies have data for opt outs from 2015.").

⁶¹ Tr. I at 19:15-19 (Mullins) ("Q: . . . [D]id the companies attempt to forecast the number of opt-outs there would be in 2017, 2018, or 2019? A: No, we did not.").

⁶² Tr. I at 19:15-25 (Mullins).

given that the new opt-out option under R.C. 4928.6611 only took effect on January 1, 2017.⁶³

Because FirstEnergy's ignored opt-out data, it overstated the amount of energy savings that the Companies need to achieve in 2017, 2018, and 2019. As a result, FirstEnergy overestimated the amount that it needs to spend on programs to satisfy its statutory mandate. In determining whether the Companies can comply with R.C. 4928.66(A)(1)(a) by achieving at least the statutory minimum energy savings, the PUCO should consider that the actual benchmarks for 2017, 2018, and 2019 will likely be materially lower than as reported by FirstEnergy in the Settlement.

ii. FirstEnergy's historical energy efficiency results demonstrate that FirstEnergy can achieve its statutory benchmark energy savings at a cost to customers that is below an \$80.1 million annual limit.

OCC witness Richard Spellman testified that FirstEnergy must achieve energy savings at a first-year cost of about 15 cents per kWh to meet its statutory minimum.⁶⁴ Environmental witness Chris Neme clarified that this was the combined number for the three FirstEnergy Companies.⁶⁵ According to Mr. Neme, Ohio Edison must achieve energy savings at a first-year cost of about 16 cents per kWh, Cleveland Electric must achieve energy savings at a first-year cost of about 15 cents per kWh, and Toledo Edison must achieve energy savings at a first-year cost of about 13 cents per kWh.⁶⁶

⁶³ R.C. 4928.6611.

⁶⁴ OCC Ex. 9B (Spellman Direct) at 17:4-8.

⁶⁵ Environmental Ex. 1 (Neme Direct) at 16.

⁶⁶ Environmental Ex. 1 (Neme Direct) at 16.

FirstEnergy's historical energy efficiency results confirm that each of these numbers is reasonable.

Historical energy efficiency results can be used to assess the potential cost of compliance for 2017-2019.⁶⁷ From 2013-2015, FirstEnergy's Ohio programs saved 2,107,607 MWh.⁶⁸ During that same period, the total cost of FirstEnergy's programs was about \$133.8 million.⁶⁹ In this three-year period, therefore, FirstEnergy achieved first-year energy savings at a cost of just 6.3 cents per kWh.⁷⁰

In other words, from 2013-2015, FirstEnergy achieved energy savings at a cost less than half of what would be necessary to meet its statutory benchmarks under the PUCO Staff's proposed cost cap for 2017-2019. FirstEnergy could spend twice as much per first-year kWh in 2017-2019 and still achieve its statutory minimum energy savings. The PUCO, therefore, has sufficient evidence to conclude that each of the FirstEnergy Companies can comply with R.C. 4928.66(A)(1)(a) under an \$80.1 million per-year cost cap.⁷¹

⁶⁷ Tr. II at 338:19-341:7.

⁶⁸ 2015 Annual Report at Table 2-2.

⁶⁹ 2015 Annual Report at Table 3-1 (adding up all the numbers from Table 3-1

⁷⁰ \$133.8 million divided by 2,107,607 MWh.

⁷¹ See PUCO Staff Ex. 1 (Donlon Direct) at 5 (testifying that FirstEnergy can meet or exceed their statutory benchmark under the PUCO Staff's proposed cost cap); Tr. 459:16-19 (Donlon) ("it is actually Staff's belief that the company can achieve the mandate and all that they need to under the cap with their current plan"); Tr. 462:17-20 (Donlon).

iii. PJM revenues will effectively increase the cost cap by \$2-\$2.5 million a year. This will further enhance the Companies' ability to meet their benchmarks under the cost cap.

The Settlement requires FirstEnergy to offer eligible energy efficiency resources into PJM base residual or incremental capacity auctions.⁷² Under the PUCO Staff's proposal for a cost cap, any PJM revenues that FirstEnergy passes back to customers will raise the \$80.1 million cost cap.⁷³ That is, the cap will effectively increase by the amount of any PJM revenues passed back to customers.⁷⁴

FirstEnergy estimates that it will receive between \$2 million and \$2.5 million per-year in PJM revenues from 2017 to 2019.⁷⁵ FirstEnergy also expects that PJM revenues resulting from the 2017-2019 programs will be higher than those resulting from its 2015-2016 programs because most of FirstEnergy's programs were suspended in 2015 and 2016.⁷⁶

An increase in the cost cap of about \$2 million per year as a result of PJM revenues is not inconsequential. Under the Settlement, FirstEnergy's residential behavioral program has an annual budget of \$2.3 million, and it is projected to achieve 125,788 MWh in energy savings.⁷⁷ FirstEnergy's large nonresidential lighting program has a \$2.1 million annual budget and is projected to save nearly 50,000 MWh.⁷⁸

⁷² Joint Ex. 1 § V.Q.

⁷³ PUCO Staff Ex. 1 at 7:138-47.

⁷⁴ Tr. II at 323:6-11 (Donlon); Tr. IV at 510:2-6 (Neme).

⁷⁵ Tr. V at 629:11-22 (Miller).

⁷⁶ Tr. V at 572:2-7 (Miller).

⁷⁷ Joint Ex. 1, Exhibit A.

⁷⁸ Id.

\$2 million per-year could pay for the entire residential school education program.⁷⁹

\$2 million per-year could pay for the small nonresidential appliance turn-in, appliances, consumer electronics, agricultural, and data center programs combined.⁸⁰

In short, the PUCO Staff's proposal to increase the cost cap by the amount of any PJM revenues passed back to customers increases the likelihood that FirstEnergy can achieve its statutory minimum energy savings under the cap.

iv. FirstEnergy is not *entitled* to shared savings. If FirstEnergy spends the entire \$80.1 million on program costs as opposed to shared savings, then customers would benefit even more from FirstEnergy's programs.

FirstEnergy suggests that the \$80.1 million cost cap is unreasonable in part because it would be difficult for the Companies to meet their statutory benchmarks while still achieving the maximum amount of shared savings (about \$15.6 million per year).⁸¹ This argument is a red herring because it wrongly assumes that FirstEnergy is entitled to shared savings. FirstEnergy may like to profit from energy efficiency programs by charging customers for shared savings,⁸² but there is simply no entitlement to such profits.

FirstEnergy witness Edward Miller, for example, claims that the PUCO "has ruled that the Companies are at least entitled to the *opportunity to earn* up to \$10 million per

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Company Ex. 17 (Miller Rebuttal) at 4:18-22 (stating that the proposed cost cap would make it "nearly impossible" for FirstEnergy to collect the maximum amount of shared savings); Tr. V at 580:17-581:5 (Miller).

⁸² Environmental Ex. 1 (Neme Rebuttal) at 15:229-30 ("the Companies, understandably, will endeavor to achieve the maximum shareholder incentive levels that they can").

year in after tax shared savings."⁸³ The PUCO has made no such ruling. The PUCO has merely ruled that *if* FirstEnergy's programs save enough energy at a low enough cost, FirstEnergy can charge customers up to \$10 million after tax for shared savings.⁸⁴

Indeed, outside of Ohio, numerous other states have recognized that it is not essential for utilities to profit from the energy efficiency programs that they offer to their customers. At least 16 other states offer energy efficiency programs with no shared savings mechanism at all.⁸⁵ And in those states that do allow shareholder incentives, the incentive payments are typically much lower than those available in Ohio.⁸⁶

OCC Witness Spellman testified that the Companies can reasonably achieve energy savings at a cost of about 15 cents per first-year kWh, which would allow them to achieve their statutory minimum energy savings under the PUCO Staff's proposed cost cap. FirstEnergy is not entitled to charge customers shared savings so that it can profit from energy efficiency. Customers do not benefit from paying shared savings to FirstEnergy; FirstEnergy and its shareholders benefit from customers paying shared savings to FirstEnergy. If FirstEnergy were to spend the entire \$80.1 million annual cap on programs, then customers would receive the benefits of \$80.1 million worth of programs at a cost of 15 cents per kWh or less. This would be a good result for consumers.

⁸³ Company Ex. 17 (Miller Rebuttal) at 10:4-7.

⁸⁴ Opinion and Order at 95, ESP IV Case (Mar. 31, 2016) (discussing the cap on shared savings but at no point ruling that FirstEnergy is entitled to any shared savings); Fifth Entry on Rehearing ¶ 326, ESP IV Case (ruling that the shared savings cap shall be \$10 million after tax for 2017, 2018, and 2019, but never stating that FirstEnergy is entitled to any shared savings).

⁸⁵ OCC Ex. 9B (Spellman Direct) at 40:8-9.

⁸⁶ OCC Ex. 9B (Spellman Direct), Exhibit RFS-2.

v. There are numerous ways that FirstEnergy could adjust its portfolio to achieve its statutory minimum energy savings under the \$80.1 million cost cap.

Under the PUCO Staff's proposal, the FirstEnergy Companies could spend up to \$80.1 million per year from 2017 to 2019 (\$240.3 million total) and would need to achieve 1,587,140 MWh in energy savings.⁸⁷ The Settlement, however, targets energy savings of 1,781,833 MWh at a cost of around \$286.5 million.⁸⁸ FirstEnergy, therefore, would need to reduce the scope of its programs by about \$15.4 million per year, or \$46.2 million over three years, to stay within the cap while still achieving at least 1,587,833 MWh in energy savings.

There are numerous ways that FirstEnergy could rebalance its portfolio to achieve this goal:

Eliminate the small nonresidential Audits & Education Program. One solution would be to eliminate the small nonresidential Audits & Education program. This program will cost \$42.8 million over three years but will save only 100,555 MWh over that same time period.⁸⁹ At a cost of nearly 43 cents per first-year kWh,⁹⁰ this program produces relatively expensive savings. Eliminating this program from the portfolio would reduce the total cost of the portfolio from \$286.5 million to \$243.7 million, which is \$81.2 million per year. It would also reduce the projected energy savings from 1,781,833 to 1,681,278 MWhs, which is still substantially higher than the statutory minimum. Once

⁸⁷ Company Ex. 1, Exhibit DJM-A2. This assumes no opt outs and no PJM revenues. Once those are taken into account, the required energy savings is lower and the annual spending limit is higher, each of which makes statutory compliance less costly.

⁸⁸ Joint Ex. 1, Exhibit A; Environmental. Ex. 1 (Neme) at 14:210; OCC Ex. 9B (Spellman Direct) at 7:4.

⁸⁹ Joint Ex. 1, Exhibit A.

⁹⁰ \$42.8 million divided by 100,555 MWh.

PJM revenues (estimated to be between \$2 and \$2.5 million per year) are taken into account, the \$81.2 million budget would be under the PUCO Staff's proposed cap.

Reduce spending on the residential HVAC program. FirstEnergy could also adjust the portfolio to eliminate the substantial increase in cost for its residential HVAC program (which provides rebates to customers who purchase HVAC equipment). In its Application, the residential HVAC program had a budget of \$8,665,309 and was projected to save 27,580 MWh of energy.⁹¹ Under the Settlement, FirstEnergy increased the cost of the HVAC program by over \$3.2 million.⁹² But that additional \$3.2 million is projected to increase savings under the HVAC program by just 1,291 MWh.⁹³ These additional energy savings, therefore, come at an excessive cost of \$2.48 per kWh.⁹⁴ This is *15 times* the per-kWh cost of energy savings under the entire portfolio.⁹⁵ Customers do not benefit from energy savings at a cost of \$2.48 per kWh. If the HVAC program remains in the portfolio, FirstEnergy should scale it back to at most the \$8,665,309 budget originally planned for in the Application.

Encourage competitive bidding. FirstEnergy could also reduce the cost of its programs through the use of competitive bidding. OCC witness Spellman testified that competitive bidding "is the best way to achieve maximum savings for customers at the lowest cost."⁹⁶ Mr. Spellman also noted that based on his 40 years of experience as an energy efficiency expert, competitive bidding is "the best way to do business to ensure

⁹¹ Joint Ex. 1, Exhibit A.

⁹² Id.

⁹³ Id.

⁹⁴ Tr. I at 83:3-21 (Miller).

⁹⁵ Tr. I at 83:3-21 (Miller).

⁹⁶ OCC Ex. 9B (Spellman Direct) at 69:9-10.

you are getting high quality, the best price, the best ideas, and innovation."⁹⁷ He also explained how competitive bidding is consistent with the PUCO's core mission of providing safe and reliable electric service to Ohioans while promoting a competitive environment.⁹⁸ Competitive bidding, therefore, could reduce the costs that customers pay for energy efficiency and could make it easier for FirstEnergy to achieve its statutory minimum energy savings within the \$80.1 million annual cost cap.

Remove or scale back programs that save energy at a higher cost. Exhibit A to this brief provides several examples of ways that FirstEnergy could adjust its portfolio to reduce the total cost that customers pay for energy efficiency programs while still saving enough energy to satisfy the statutory savings requirements. These examples are by no means exhaustive. They are merely examples of the countless ways that FirstEnergy could modify its program mix to achieve the statutory minimum energy savings at a more reasonable cost. For simplicity, these examples propose elimination of individual programs. But FirstEnergy could, as it did when modifying the portfolio from the Application to the Settlement, make minor modifications on a program-by-program basis to reduce costs. This would be consistent with the PUCO's directive in FirstEnergy's ESP IV Case that FirstEnergy should achieve greater energy savings "by efficiently administering the approved programs and achieving energy savings for the least cost."⁹⁹

⁹⁷ Tr. II at 305:15-306:14 (Spellman).

⁹⁸ Tr. II at 306:2-10 (Spellman).

⁹⁹ Fifth Entry on Rehearing ¶ 325, ESP IV Case (Oct. 12, 2016).

- c. No party to this proceeding has disputed that there should be limits on the amount that FirstEnergy can charge customers for energy efficiency program costs and utility profits (shared savings).**

The Settlement does not include an annual cap limiting the amount that FirstEnergy can charge customers for program costs and shared savings.¹⁰⁰ Instead, it has a three-year budget for program costs, coupled with an annual cap on shared savings.¹⁰¹ At hearing, various witnesses quibbled over the semantic difference between a "cost cap" and a "budget."¹⁰² But ultimately, all parties that submitted evidence in this case (FirstEnergy, the PUCO Staff, OCC, and the Environmental Parties) agree that there should be limits on the amount that FirstEnergy can charge customers for energy efficiency program costs and shared savings:

- OCC and the PUCO Staff advocated for an \$80.1 million annual cap on energy efficiency program costs and shared savings.¹⁰³
- The Settlement, which FirstEnergy and each of the Environmental Parties signed, includes a three-year budget and an after-tax \$10 million annual cap on shared savings.¹⁰⁴
- Environmental Party witness Neme testified: "The Commission should approve both a portfolio of energy efficiency programs and a not-to-exceed budget for spending on those programs."¹⁰⁵

¹⁰⁰ See generally Joint Ex. 1.

¹⁰¹ Joint Ex. 1, Exhibit A (budget); Joint Ex. 1 § V.T (\$10 million annual cap on shared savings).

¹⁰² Tr. V at 574:9-576:1 (Miller); Tr. IV at 523:10-524:3 (Neme); Tr. IV at 523:14-15 (objection from FirstEnergy counsel that the meaning of the word "cap" is unclear); Tr. IV at 523:16-17 (response from OCC counsel that the word "cap" is a standard English word).

¹⁰³ OCC Ex. 9B (Spellman Direct) at 14-23; PUCO Staff Ex. 1 (Donlon Direct) at 3-7.

¹⁰⁴ Joint Ex. 1.

¹⁰⁵ Environmental Ex. 1 (Neme Rebuttal) at 32:503-04.

- FirstEnergy witness Miller testified: "the approved budget [under the Settlement] will serve as a 'cap' that will control the costs of the Revised Plans, including all program costs and shared savings."¹⁰⁶

The question, then, is not whether there should be a limit on the amount that customers pay. Instead, the question is what that limit should be. FirstEnergy and the Environmental Parties believe that the limit should be about \$111 million per year.¹⁰⁷ OCC and the PUCO Staff, in contrast, have proposed an annual cap of \$80.1 million, which can be increased by the amount of any PJM revenues passed back to customers.

FirstEnergy's and the Environmental Parties' objections to the methodology for calculating the cap are a distraction to the real issue. Ultimately, these parties' objections to the PUCO Staff's proposed cost cap is that the \$80.1 million number is, in their opinion, too low. But \$80.1 million is not too low for the consumers who have to pay that amount. OCC and the PUCO Staff have demonstrated that \$80.1 million in annual spending is more than adequate for FirstEnergy to run a robust portfolio of energy efficiency programs for all customer classes. OCC and the PUCO Staff have demonstrated that FirstEnergy can meet the statutory requirements for energy savings within an \$80.1 million annual budget. And OCC and the PUCO have demonstrated that an upper limit of \$80.1 million per year benefits customers and the public interest by lowering the amount that customers are charged for energy efficiency on their electricity bills.

The PUCO's policy for energy efficiency should support two goals. First, the PUCO should encourage adequate spending on energy efficiency programs to allow

¹⁰⁶ Company Ex. 17 (Miller Rebuttal) at 4:9-10.

¹⁰⁷ Joint Ex. 1; Tr. IV at 523:3-8 (Neme).

FirstEnergy to achieve its statutorily required energy savings. Second, the PUCO should limit the amount that customers can be charged for energy efficiency programs and utility profits to minimize the impact on customers' electric bills.

The Signatory Parties proposal for \$111 million in annual spending satisfies the first goal, but not the second. The PUCO Staff's and OCC's proposal satisfies both. The PUCO should limit customer charges for energy efficiency to \$80.1 million per year as proposed by the PUCO Staff and OCC.

- 2. The Settlement would make it easier for FirstEnergy to charge customers for profit (shared savings) without any reciprocal benefit to customers.**
 - a. The Settlement would require customers to pay the maximum level of profit (shared savings) to FirstEnergy in 2017, even if FirstEnergy does not meet its statutory benchmark. This does not benefit customers or the public interest.**

In its Application, FirstEnergy proposed that customers pay shared savings to FirstEnergy if it exceeds the annual statutory benchmark energy savings.¹⁰⁸ The Settlement alters this for 2017. In 2017, each Company would be eligible for shared savings if its programs achieve energy savings 14% below the statutory minimum.¹⁰⁹ This is unreasonable.

FirstEnergy witness Demiray explained how this would work, using Ohio Edison as an example. In 2017, Ohio Edison's statutory minimum energy savings is 241.23 GWh.¹¹⁰ Without the 14% reduction, Ohio Edison would only be eligible for shared

¹⁰⁸ Joint Ex. 1, Exhibit B at 106-07.

¹⁰⁹ Joint Ex. 1 § V.R.

¹¹⁰ Company Ex. 6 (Demiray Direct) at 6:10-12; Company Ex. 1 at Exhibit DJM-A2.

savings if its programs achieved more than 241.23 GWh of energy savings in 2017.¹¹¹ But under the Settlement, Ohio Edison would be eligible for shared savings in 2017 if it achieved only 207.46 GWh of energy savings.¹¹² In fact, Ohio Edison would be eligible for the highest possible level of shared savings if it achieved 238.58 GWh of energy savings in 2017—which is still below the 241.23 GWh statutory minimum.¹¹³ Customers should not pay the maximum level of profit to their utility when the utility fails to even achieve the statutory minimum energy savings.

To protect customers from unnecessary charges, the PUCO should reject the proposal in the Settlement to lower the amount of energy savings that FirstEnergy must achieve in 2017 to be eligible for shared savings.

- b. FirstEnergy claims that it should be eligible for profit (shared savings) by achieving 14% below the statutory minimum in 2017 because of the alleged delay in the procedural schedule in this case. Any such delay does not justify a reduction in the threshold for shared savings.**

According to FirstEnergy, it should be eligible for profit (shared savings) by reaching 14% below the statutory minimum in 2017 because the hearing in this case was postponed on several occasions.¹¹⁴ Any delays in the procedural schedule in this case do not justify FirstEnergy charging customers for shared savings when FirstEnergy does not achieve its statutory benchmark.

First, the Companies contributed to the postponements of the hearing in this case. On June 27, 2016, the PUCO Staff filed a motion for continuance of the hearing

¹¹¹ Joint Ex. 1, Exhibit B at 106.

¹¹² Company Ex. 6 (Demiray Direct) at 6:12-14.

¹¹³ Tr. I at 151:1-14 (Demiray).

¹¹⁴ Company Ex. 5 (Miller Direct) at 18:14-15.

originally scheduled for July 25, 2016.¹¹⁵ All parties, including FirstEnergy, agreed to Staff's request.¹¹⁶ The Attorney Examiner granted the PUCO Staff's request for a continuance.¹¹⁷ On September 29, 2016, the PUCO Staff filed a motion for continuance of the hearing scheduled for October 11, 2016.¹¹⁸ Again, FirstEnergy did not file an objection to this motion.¹¹⁹ The Attorney Examiner granted the PUCO Staff's request for a continuance.¹²⁰ The Attorney Examiner then scheduled the hearing in this case for November 21, 2016.¹²¹ This time, FirstEnergy filed a motion to continue the hearing.¹²² The Attorney Examiner granted FirstEnergy's motion.¹²³ Finally, following the filing of the Settlement, the Attorney Examiner scheduled the hearing for January 23, 2017.¹²⁴

FirstEnergy did not oppose any of the PUCO Staff's requests to continue the hearing in this case, and FirstEnergy itself asked the Attorney Examiner to postpone the hearing in November 2016. Customers should not pay higher profit (shared savings) to FirstEnergy because of procedural delays that FirstEnergy created and consented to.

Second, Ohio Senate Bill 310 limited the PUCO's authority to take action with respect to energy efficiency portfolio plans before January 1, 2017. Section 7 of SB 310 states: "Prior to January 1, 2017, the Commission shall not take any action with regard to any portfolio plan or application regarding a portfolio plan, except those actions

¹¹⁵ OCC Ex. 3.

¹¹⁶ Entry ¶ 4 (June 28, 2016).

¹¹⁷ Id.

¹¹⁸ OCC Ex. 3.

¹¹⁹ Id.

¹²⁰ Entry (Sept. 30, 2016).

¹²¹ OCC Ex. 3.

¹²² Id.

¹²³ Entry (Nov. 22, 2016).

¹²⁴ Entry (Dec. 14, 2016).

expressly authorized or required by Section 6 of this act and actions necessary to administer the implementation of existing portfolio plans."¹²⁵ The General Assembly's intent is clear from the plain language of SB 310: the PUCO was not to hold a hearing or otherwise consider FirstEnergy's portfolio Application or Settlement in 2016. The January 23, 2017 hearing date was about as early as permitted by law. Thus, there was no "delay" in the procedural schedule, and the timing of the hearing does not justify making it easier for FirstEnergy to charge customers for profits on energy efficiency programs.

c. FirstEnergy will have ample opportunity to achieve its statutorily mandated energy savings in 2017.

FirstEnergy claims that it is unlikely to achieve its statutory minimum energy savings in 2017 as a result of delays in the procedural schedule.¹²⁶ This is false for at least two reasons.

First, several of FirstEnergy's 2017 programs are already active and available for customer participation. In particular, small and large nonresidential customers can participate in FirstEnergy's Custom and Custom Buildings programs.¹²⁷ Importantly, these nonresidential programs are expected to achieve a substantial portion of the total energy savings in the portfolio. Combined, these programs are projected to save around 483,000 MWh over three years—over 27% of the entire energy savings under the Settlement.¹²⁸ Thus, even if there is a slight delay in implementing some of FirstEnergy's

¹²⁵ Emphasis added.

¹²⁶ Company Ex. 5 (Demiray Direct) at 18:22-6:1.

¹²⁷ OCC Ex. 4; Tr. I at 92:23-96:14 (Miller).

¹²⁸ Tr. I at 88:6-12 (Miller).

programs, other programs are already resulting in energy savings that count toward FirstEnergy's statutory benchmark.

Second, as discussed above, the Settlement (and the targeted energy savings contained therein) assumes that there will be no nonresidential customer opt-outs. Thus, while the Settlement budgets for savings of around 594,000 MWh per year,¹²⁹ and while FirstEnergy assumes a statutory benchmark of around 530,000 MWh per year,¹³⁰ the benchmark, after accounting for opt outs, could be substantially lower than 530,000 MWh per year. This undermines FirstEnergy's claim that it will not be able to reach the statutory mandate without using banked energy savings.

FirstEnergy has not established that it cannot achieve its statutorily required energy savings in 2017. The PUCO should not allow FirstEnergy to charge customers for shared savings when the Companies achieve energy savings that don't meet the statutory benchmark.

3. The proposed shared savings mechanism would cause customers to pay excessive profits to FirstEnergy.

a. Each of the three FirstEnergy Companies should have its own annual cap on shared savings that customers must fund.

The Settlement proposes a \$10 million after tax (\$15.6 million before tax) annual limit on the amount of profit (shared savings) that customers can pay.¹³¹ This \$10 million cap applies to the total shared savings paid by customers of Ohio Edison, Toledo Edison,

¹²⁹ Joint Ex. 1, Exhibit A.

¹³⁰ Company Ex. 1, Exhibit DJM-A2.

¹³¹ Joint Ex. 1, § V.T.

and Cleveland Electric combined.¹³² In other words, the sum of the shared savings paid by the three Companies' customers cannot exceed \$10 million (after tax) per year.¹³³

A single cap for the three Companies combined illegally and unreasonably entangles the business operations of Ohio Edison, Toledo Edison, and Cleveland Electric. Electric distribution utilities have exclusive service territories in Ohio.¹³⁴ Ohio Edison cannot collect charges from Ohioans in Toledo Edison's territory, for example, and vice versa.¹³⁵ The Ohio energy efficiency statutes similarly require each electric distribution utility (*i.e.*, Ohio Edison, Toledo Edison, and Cleveland Edison) to satisfy the energy savings and peak demand reduction requirements individually, and not as a combined "FirstEnergy" entity.¹³⁶ The fact that Ohio Edison, Toledo Edison, and Cleveland Electric have a common parent entity does not alter their status as separate operating companies and separate business entities with separate customers, under Ohio law.

But because the Companies have a common parent and are proposing a joint portfolio, they have proposed a single shared savings cap across the three Companies rather than an individual cap for each Company. This is unfair to each Company's customers because it could result in one Company's customers paying more shared

¹³² Tr. I at 145:2-5 (Demiray).

¹³³ Tr. I at 146:4-9 (Demiray).

¹³⁴ R.C. 4933.81-4933.83.

¹³⁵ *Id.*

¹³⁶ R.C. 4928.66(A)(1) (providing energy savings and demand reduction requirements for each "electric distribution utility"); R.C. 4928.66(A)(2) (requiring energy savings baselines to be calculated for each "electric distribution utility"); R.C. 4928.66(C) (providing for penalties for failure to achieve the required benchmark energy savings by each "electric distribution utility"). See also R.C. 4928.01(A)(6) (defining "electric distribution utility" to include only an "electric utility"); R.C. 4928.01(A)(11) (defining "electric utility" as a company with a certified territory); R.C. 4928.01(A)(3) (defining "certified territory" as that established under R.C. 4933.81 to 4933.90).

savings as a result of one of the *other* Company's energy efficiency program performance.

The following example demonstrates the inequity of imposing a single cap for the three FirstEnergy operating Companies.¹³⁷

Scenario 1. Suppose, under the proposed portfolio, that in 2018, Ohio Edison, Cleveland Electric, and Toledo Edison all meet their annual and cumulative benchmarks and are all eligible for shared savings. Suppose further that each of Ohio Edison, Cleveland Electric, and Toledo Edison would receive \$10 million in shared savings for a total of \$30 million. Because of the shared savings cap, however, the combined shared savings paid by customers would be reduced to \$10 million.¹³⁸ Thus, none of the Companies would collect \$10 million, but instead, each would collect somewhere around \$3.33 million from its customers.

Scenario 2. Suppose now that Ohio Edison meets its annual and cumulative benchmarks in 2018, but Cleveland Electric and Toledo Edison do not. Suppose that Ohio Edison's performance is the same as in Scenario 1 such that it would receive \$10 million in shared savings under the shared savings mechanism. Because Cleveland Electric and Toledo Edison did not meet their annual and cumulative benchmarks, they would not be entitled to any shared savings.¹³⁹ But because the total shared savings across all three Companies is less than the \$10 million cap, Ohio Edison's customers would pay the entire \$10 million to Ohio Edison.

¹³⁷ See OCC Ex. 9B (Spellman Direct) at 61:2-62:4.

¹³⁸ For purposes of simplicity, this example ignores the fact that shared savings is paid on an after-tax basis. The underlying principle of this argument does not rely on tax issues.

¹³⁹ Tr. I at 147:23-148:6 (Demiray) (confirming that one Company could qualify for shared savings in a given year even if the other two did not).

In other words, under Scenario 1, Ohio Edison's customers would pay about \$3.33 million in shared savings, and under Scenario 2, Ohio Edison's customers would pay \$10 million in shared savings, even though Ohio Edison's energy efficiency program performance was identical in both scenarios.¹⁴⁰ In effect, Ohio Edison's customers would pay higher rates in Scenario 2 based on the business operations of Toledo Edison and Cleveland Electric. This would violate R.C. 4933.83 and would illegally entangle the business operations of the three operating Companies.

The PUCO should modify the Settlement to provide the following annual after-tax shared savings caps: \$4.91 million for Ohio Edison, \$3.35 million for Cleveland Electric, and \$1.74 million for Toledo Edison.¹⁴¹ These caps are based on the projected energy savings for each Company's individual programs, and together, they total the same \$10 million after-tax amount found in the Settlement.¹⁴² This would protect customers of each Company from paying too much shared savings to their respective operating Company.

- b. Customers should not pay higher profit (shared savings) to FirstEnergy as a result of the Energy Special Improvement District and Mercantile Customer Programs because FirstEnergy is not responsible for any of the savings from these programs.**

FirstEnergy's proposed portfolio includes three "programs" that merely count customer energy savings: the Customer Action Program, the Energy Special Improvement District ("ESID") program, and the Mercantile Customer Program. The

¹⁴⁰ See Tr. I at 147:23-148:6 (Demiray) (confirming that it is possible for one of the Company's customers to pay the entire \$10 million after tax shared savings amount).

¹⁴¹ See OCC Ex. 9B (Spellman Direct) at 62.

¹⁴² OCC Ex. 9B (Spellman Direct) at Exhibit RFS-3.

ESID program captures savings that townships and municipalities achieve by creating Energy Special Improvement Districts under R.C. 1710.061.¹⁴³ The Mercantile Customer Program captures savings from projects that mercantile customers (and not FirstEnergy) initiated and directed.¹⁴⁴ And under the Customer Action Program, FirstEnergy performs surveys and collects data on savings that customers achieved on their own.¹⁴⁵

The PUCO does not allow utilities to charge customers for shared savings based on energy savings that customers achieve on their own. In addressing FirstEnergy's request to charge customers shared savings for the Customer Action Program, the PUCO concluded: "The Commission has never allowed shared savings for programs like the historic mercantile customer program which involves no action by the Companies to achieve the energy savings."¹⁴⁶

Consistent with this precedent, the Settlement does not permit FirstEnergy to count savings from the Customer Action Program for purposes of shared savings.¹⁴⁷ But the Settlement does not similarly restrict FirstEnergy's right to charge customers higher profits as a result of the ESID and Mercantile Customer programs. In fact, FirstEnergy witness Demiray confirmed that the Companies intend to charge customers higher shared savings on account of savings from the ESID and Mercantile Customer programs.¹⁴⁸

Savings from the ESID and Mercantile Customer Programs should not count for any purpose when determining how much shared savings customers will pay to

¹⁴³ OCC Ex. 9B (Spellman Direct) at 51:19-52:1.

¹⁴⁴ OCC Ex. 9B (Spellman Direct) at 52:4-5.

¹⁴⁵ OCC Ex. 9A (Initial Spellman Direct) at 41:9-13.

¹⁴⁶ Fifth Entry on Rehearing ¶ 324, ESP IV Case.

¹⁴⁷ Joint Ex. 1 § V.R.

¹⁴⁸ Tr. I at 162:15-20 (Demiray).

FirstEnergy. "FirstEnergy does not administer the ESID programs, does not encourage townships and municipalities to create ESIDs, and does not otherwise contribute to any of the savings achieved by these programs. FirstEnergy does not administer the Mercantile Customer Program and does not contribute to any of the savings. In each of these programs, the customer achieves savings outside of FirstEnergy's programs, and FirstEnergy merely counts those savings towards its benchmark and to increase its profits."¹⁴⁹ Accordingly, "the savings achieved from Historical Mercantile Projects and Energy Special Improvement Districts should [] not be used in the shared savings calculations."¹⁵⁰

- c. **The Settlement requires customers to pay for programs that target 594,000 MWh in energy savings per year. Thus, customers should not pay profit (shared savings) to FirstEnergy if FirstEnergy's programs achieve only the statutory minimum savings of about 530,000 MWh.**

Under the Settlement, FirstEnergy has agreed to target energy savings of around 594,000 MWh per year.¹⁵¹ This is substantially higher than the Companies' combined statutory minimum energy savings of around 530,000 MWh per year.¹⁵² FirstEnergy, however, proposes that it be eligible for shared savings for reaching the statutory minimum, not the higher 594,000 MWh target.¹⁵³ This proposal is unreasonable.

If the Settlement is approved, customers will pay higher program costs to target 594,000 MWh in annual energy savings instead of the statutory benchmark of about

¹⁴⁹ OCC Ex. 9B (Spellman Direct) at 55:10-16.

¹⁵⁰ PUCO Staff Ex. 1 (Donlon Direct) at 11:217-19.

¹⁵¹ Joint Ex. 1, Exhibit A.

¹⁵² Company Ex. 1, Exhibit DJM-A2.

¹⁵³ Joint Ex. 1 § V.R; Joint Ex. 1, Exhibit B at 105-06.

530,000 MWh.¹⁵⁴ Customers should not pay higher program costs for a portfolio that targets savings above the statutory minimum but then be required to pay shared savings when the Companies merely achieve that minimum. It is a "fundamental principle of shared savings [] that it serves to reward only exemplary performance."¹⁵⁵ The Settlement, however, would reward FirstEnergy for poor performance.¹⁵⁶ "There is no justification for rewarding FirstEnergy's shareholders for implementing programs that achieve anything less than 100% of their budgeted savings targets."¹⁵⁷

If the PUCO approves the Settlement, the Settlement should be modified to provide that each of the Companies will not be eligible for shared savings unless it achieves energy savings greater than the budgeted savings in the Settlement.

B. The Settlement should be rejected because the signatory parties are not diverse.

In recent decisions, the PUCO has stressed that no single party may "veto" a settlement and that a diversity of interests among the signatory parties to a settlement is not strictly necessary under the PUCO's three-prong settlement test.¹⁵⁸ At the same time, however, it would be shortsighted, and bad regulatory policy, to conclude that the interests of the parties to a proceeding (both signatory parties and opposing parties) are irrelevant.

¹⁵⁴ OCC Ex. 9B (Spellman Direct) at 33:14-15 ("a portfolio that targets 600,000 MWh per year will have higher program costs than a portfolio that targets under 530,000 MWh per year"); 34:17-19 ("FirstEnergy has budgeted for programs to reach nearly 600,000 MWh, and customers will pay the increased program costs associated with that budget").

¹⁵⁵ OCC Ex. 9B (Spellman Direct) at 34:21-22.

¹⁵⁶ Id. at 34:22-35:1.

¹⁵⁷ Id. at 35:1-3.

¹⁵⁸ See, e.g., Opinion & Order ¶ 18, In re Application of Globe Metallurgical, Inc. for Approval of a Unique Arrangement, Case No. 16-737-EL-AEC (Oct. 26, 2016); Fifth Entry on Rehearing ¶ 225, ESP IV Case.

Indeed, the PUCO has agreed that the parties' interests matter; it has frequently analyzed the diversity of the parties to a settlement and their respective interests in the case.¹⁵⁹ A settlement that has broad support from all parties should be given substantial weight by the PUCO. Likewise, a settlement that has the support of only a few parties with narrow or special interests should be more heavily scrutinized. In either case, a settlement must be evaluated based on the merits of its substance and not merely on its signatures.

In evaluating the Settlement in this case, the PUCO should weigh heavily that consumers—who pay for the programs—are not Signatory Parties to the Settlement. Eleven parties are Signatory Parties to the Settlement. Three of these eleven are the Companies. Another four are environmental parties with virtually identical interests among them.¹⁶⁰ These environmental parties do not pay the costs of FirstEnergy's energy efficiency programs that they support using other people's money. And they do not pay the shared savings that they are asking customers to fund.¹⁶¹ EnerNOC represents its interests as a provider of demand response software.¹⁶² IGS represents its interests as a competitive retail electric service provider.¹⁶³ Energy Management Solutions performs audits of industrial facilities, and despite accepting its signature on the Settlement,

¹⁵⁹ See, e.g., In re Application of the Dayton Power & Light Co. for Approval to Modify its Competitive Bid True-up Rider, Case No. 14-563-EL-RDR (Sep. 9, 2015); In re Application of the Columbus S. Power Co. & Ohio Power Co., Case No. 05-376- EL-UNC (Feb. 11, 2015); In re Application of Columbus S. Power Co. & Ohio Power Co., for an Increase in Electric Distrib. Rates, Case No. 11-351-EL-AIR (Dec. 14, 2011); In re Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co. & The Toledo Edison Co. for Authority to Provide a Standard Serv. Offer, Case No. 14-1297-EL-SSO (Mar. 31, 2016).

¹⁶⁰ OCC Ex. 9B (Spellman Direct) at 71:12-72:2.

¹⁶¹ Id.

¹⁶² Id.

¹⁶³ Id.

FirstEnergy opposes Energy Management Solutions' intervention in this case.¹⁶⁴ OPAE represents its own interests as the provider of FirstEnergy's Community Connections program.¹⁶⁵

In contrast, the Ohio Consumers' Counsel represents FirstEnergy's 1.9 million residential customers—customers who will pay many millions of dollars to fund FirstEnergy's energy efficiency programs and many millions of dollars in profits to FirstEnergy's shareholders. OCC recommends that the PUCO reject the Settlement. The PUCO Staff and the Ohio Hospital Association oppose the Settlement as well.¹⁶⁶ The other major consumer representatives (Industrial Energy Users-Ohio, Ohio Manufacturers' Association, and the Kroger Co.) are not Signatory Parties to the Settlement either, even though they do not oppose it.¹⁶⁷

OCC does not suggest that the PUCO should give *zero* weight to the Signatory Parties' signatures merely because they represent narrow interests and do not pay for FirstEnergy's programs. But the PUCO should consider the Signatory Parties' narrow interests, as compared to the broad interests represented by the non-Signatory Parties, in deciding whether the Settlement is right for the State of Ohio and its consumers. The fact that Signatory Parties with narrow interests approve of the Settlement does not mean that the Settlement represents sound regulatory policy. It simply means that the Settlement might benefit those narrow interests.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Id.

As Ohio Supreme Court Justice Paul Pfeifer recently and aptly stated: "[T]he purpose of the PUCO . . . is to protect the customers of public utilities."¹⁶⁸ FirstEnergy's customers do not support the Settlement. The PUCO should protect them from paying too much for energy efficiency by modifying the Settlement to require an \$80.1 million cap on annual spending for program costs and utility profits.

C. The Settlement violates regulatory principles and practices.

1. The Settlement violates the PUCO's October 12, 2016 Entry on Rehearing in FirstEnergy's ESP IV case.

In FirstEnergy's ESP IV Case, FirstEnergy and other parties signed a settlement that required FirstEnergy to "strive to achieve over 800,000 MWh of energy savings annually, subject to customer opt outs," in this energy efficiency portfolio case.¹⁶⁹ The PUCO approved this settlement but with an important clarification regarding the 800,000 MWh energy savings target.

The PUCO interpreted the "strive to achieve" language to mean that achieving 800,000 MWh of energy savings was "simply a goal."¹⁷⁰ As the PUCO explained, FirstEnergy is "expected in the energy efficiency portfolio plans to budget for the annual statutory energy efficiency mandate rather than the [800,000 MWh] goal."¹⁷¹ In other words, FirstEnergy cannot inflate its program budget to target the 800,000 MWh goal; instead, customers should only pay for programs that are designed to reach the statutory benchmark.¹⁷² To strive to achieve the 800,000 MWh goal, the PUCO ruled that

¹⁶⁸ Ohio Consumers' Counsel v. PUCO, 121 Ohio St. 3d 362, 372 (Pfeifer, J. dissenting).

¹⁶⁹ OCC Ex. 1 (ESP IV Stipulation) § V.E.3.b.

¹⁷⁰ Fifth Entry on Rehearing ¶ 325, ESP IV Case (Oct. 12, 2016).

¹⁷¹ Id. (emphasis added).

¹⁷² Id.

FirstEnergy must efficiently administer its programs and achieve energy savings for the least cost.¹⁷³

PUCO Orders and Entries are effective immediately.¹⁷⁴ They remain effective while an application for rehearing is pending.¹⁷⁵ There must be a fundamental regulatory principle that a settlement cannot violate a binding PUCO Order or Entry.¹⁷⁶ The Settlement violates the PUCO's Entry on Rehearing because it does not budget for the statutory energy efficiency mandate—it budgets for substantially above the energy efficiency mandate.

The combined statutory energy efficiency mandate for the three FirstEnergy Companies is 1,587 GWh from 2017 to 2019.¹⁷⁷ The Settlement, however, budgets for 1,782 GWh, more than 12% above the statutory minimum.¹⁷⁸ FirstEnergy explained that it budgeted for 1,782 GWh over three years, instead of the 1,587 GWh statutory mandate, because it wanted a "cushion" above the mandate.¹⁷⁹ But the ESP IV Fifth Entry on Rehearing does not state that FirstEnergy's portfolio can budget for the statutory mandate *plus a cushion*. It plainly states that FirstEnergy shall "budget for the annual statutory

¹⁷³ Id. ("The Commission expects the goal to be achieved by efficiently administering the approved programs and achieving energy savings for the least cost rather than by setting the program budget to the stipulated goal.")

¹⁷⁴ R.C. 4903.15.

¹⁷⁵ R.C. 4903.10(B).

¹⁷⁶ R.C. 4903.10(B) (the fact that an application for rehearing is pending "shall not excuse any person from complying with the order").

¹⁷⁷ The combined baselines for all three Companies for 2017, 2018, and 2019 are 53,523 GWh; 52,799 GWh; and 52,393 GWh, for a total of 158,714 GWh. See Company Ex. 1, Exhibit DJM-A2, Column 8. The statutory mandate for 2017, 2018, and 2019 is 1.0% of the baseline. See R.C. 4298.66(A). 1% of 158,714 GWh is 1,587 GWh.

¹⁷⁸ Joint Ex. 1, Exhibit A (1,781,833 MWh targeted from 2017-2019 for all three Companies combined).

¹⁷⁹ Tr. I at 71:9-13 (Miller).

energy efficiency mandate."¹⁸⁰ The Settlement violates the ESP IV Fifth Entry on Rehearing by requiring customers to pay for programs under a budget that is substantially higher than would be necessary to achieve the statutory benchmark.

The PUCO should not approve the Settlement because it violates the plain language of a PUCO Entry.

2. The Settlement violates the regulatory principle that a utility should only be permitted to charge customers for profit (shared savings) if it exceeds the statutory minimum energy savings.

The Settlement would permit each of the FirstEnergy Companies to charge customers for shared savings if it achieves energy savings 14% below the statutory minimum in 2017.¹⁸¹ In fact, the Companies could charge customers the highest level of shared savings for achieving savings below the statutory minimum.¹⁸² This violates the PUCO's regulatory principle that a utility should only be permitted to charge customers for shared savings if it exceeds the statutory minimum energy savings.¹⁸³

IV. CONCLUSION

Electric energy efficiency programs can benefit all customers, including those who do not participate in the programs. But the PUCO should protect customers from paying too much for utility-run energy efficiency programs. FirstEnergy's Settlement would require customers to pay too much for energy efficiency. The PUCO should modify the Settlement to limit the amount of program costs and profits (shared savings)

¹⁸⁰ Fifth Entry on Rehearing ¶ 325, ESP IV Case (Oct. 12, 2016).

¹⁸¹ Joint Ex. 1 § V.R.

¹⁸² See section III.A.ii.a above.

¹⁸³ PUCO Staff Ex. 1 (Donlon Direct) at 8:165-167 ("Shared savings is a Commission-created incentive mechanism to encourage the Companies to exceed the state-mandated level of energy efficiency in a cost effective manner."); 9:190-10:198.

that FirstEnergy's customers will pay to FirstEnergy. A cap on FirstEnergy's energy efficiency program costs and shared savings is the most administratively-efficient method to limit these charges to consumers. The PUCO should adopt the PUCO Staff's and OCC's proposal for an \$80.1 million (3% of total sales) cost cap on annual energy efficiency charges to customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Post-Hearing Brief was served by electronic transmission upon the parties below this 21st day of February 2017.

/s/ Christopher Healey

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Exhibit A
Potential Adjustments to Portfolio to
Reduce Costs that Consumers Pay for Energy Efficiency Programs

	Settlement			Under Cost Cap (Scenario 1)			Under Cost Cap (Scenario 2)			Under Cost Cap (Scenario 3)		
	MWh	Budget	\$/kWh	MWh	Budget	\$/kWh	MWh	Budget	\$/kWh	MWh	Budget	\$/kWh
Appliance Turn In	80,821	\$17,574,641	\$0.217	80,821	\$17,574,641	\$0.217	80,821	\$17,574,641	\$0.217	80,821	\$17,574,641	\$0.217
School Education	20,884	\$5,858,205	\$0.281	20,884	\$5,858,205	\$0.281	20,884	\$5,858,205	\$0.281	20,884	\$5,858,205	\$0.281
EE Kits	146,270	\$22,961,165	\$0.157	146,270	\$22,961,165	\$0.157	146,270	\$22,961,165	\$0.157	146,270	\$22,961,165	\$0.157
Audits & Education	25,304	\$10,012,916	\$0.396	25,304	\$10,012,916	\$0.396	25,304	\$10,012,916	\$0.396	25,304	\$10,012,916	\$0.396
Behavioral	125,788	\$6,862,132	\$0.055	125,788	\$6,862,132	\$0.055	125,788	\$6,862,132	\$0.055	125,788	\$6,862,132	\$0.055
New Homes	0	\$0		0	\$0		0	\$0		\$0.000	\$0	
Smart Thermostat	4,927	\$4,133,633	\$0.839	4,927	\$4,133,633	\$0.839	4,927	\$4,133,633	\$0.839			
Appliances	21,664	\$4,426,589	\$0.204	21,664	\$4,426,589	\$0.204	21,664	\$4,426,589	\$0.204	21,664	\$4,426,589	\$0.204
Consumer Education	19,198	\$1,246,039	\$0.065	19,198	\$1,246,039	\$0.065	19,198	\$1,246,039	\$0.065	19,198	\$1,246,039	\$0.065
Lighting	117,221	\$15,893,043	\$0.136	117,221	\$15,893,043	\$0.136	117,221	\$15,893,043	\$0.136	117,221	\$15,893,043	\$0.136
HVAC	28,871	\$11,874,052	\$0.411	28,871	\$11,874,052	\$0.411						
Customer Action Program	13,681	\$1,420,306	\$0.104	13,681	\$1,420,306	\$0.104	13,681	\$1,420,306	\$0.104	13,681	\$1,420,306	\$0.104
Direct Load Control	0	\$1,794,905		0	\$1,794,905		0	\$1,794,905		0	\$1,794,905	
Community Connections	18,528	\$19,592,529	\$1.057	18,528	\$19,592,529	\$1.057	18,528	\$19,592,529	\$1.057	18,528	\$19,592,529	\$1.057
LI - New Homes	143	\$494,996	\$3.462	143	\$494,996	\$3.462	143	\$494,996	\$3.462	143	\$494,996	\$3.462
HVAC - SCI	18,419	\$3,749,978	\$0.204	18,419	\$3,749,978	\$0.204	18,419	\$3,749,978	\$0.204	18,419	\$3,749,978	\$0.204
Lighting - SCI	195,788	\$20,099,109	\$0.103	195,788	\$20,099,109	\$0.103	195,788	\$20,099,109	\$0.103	195,788	\$20,099,109	\$0.103
Food Service	11,209	\$1,364,061	\$0.122	11,209	\$1,364,061	\$0.122	11,209	\$1,364,061	\$0.122	11,209	\$1,364,061	\$0.122
Appliance Turn In - SCI	1,544	\$385,012	\$0.249	1,544	\$385,012	\$0.249	1,544	\$385,012	\$0.249	1,544	\$385,012	\$0.249
Appliances - SCI	3,214	\$615,350	\$0.191	3,214	\$615,350	\$0.191	3,214	\$615,350	\$0.191	3,214	\$615,350	\$0.191
Consumer Electronics - SCI	631	\$420,828	\$0.667	631	\$420,828	\$0.667						
Agricultural	707	\$889,455	\$1.258	707	\$889,455	\$1.258	707	\$889,455	\$1.258	707	\$889,455	\$1.258
Data Centers - SCI	7,276	\$2,839,238	\$0.390	7,276	\$2,839,238	\$0.390	7,276	\$2,839,238	\$0.390			
Custom - SCI	142,886	\$15,857,178	\$0.111	142,886	\$15,857,178	\$0.111	142,886	\$15,857,178	\$0.111	142,886	\$15,857,178	\$0.111
Retro - Commissioning - SCI	36,549	\$4,931,915	\$0.135	36,549	\$4,931,915	\$0.135	36,549	\$4,931,915	\$0.135	36,549	\$4,931,915	\$0.135
Custom Buildings - SCI	56,855	\$7,177,182	\$0.126	56,855	\$7,177,182	\$0.126	56,855	\$7,177,182	\$0.126	56,855	\$7,177,182	\$0.126
Audits & Education - SCI	100,555	\$42,809,091	\$0.426									
Customer Action Program	4,927	\$1,827,431	\$0.371	4,927	\$1,827,431	\$0.371						
HVAC - LCI	13,961	\$3,438,317	\$0.246	13,961	\$3,438,317	\$0.246	13,961	\$3,438,317	\$0.246			
Lighting - LCI	49,880	\$6,299,631	\$0.126	49,880	\$6,299,631	\$0.126	49,880	\$6,299,631	\$0.126	49,880	\$6,299,631	\$0.126
Data Centers - LCI	12,151	\$3,553,018	\$0.292				12,151	\$3,553,018	\$0.292			
Custom - LCI	233,208	\$28,906,314	\$0.124	233,208	\$28,906,314	\$0.124	233,208	\$28,906,314	\$0.124	233,208	\$28,906,314	\$0.124
Retro - Commissioning - LCI	8,861	\$1,741,051	\$0.196	8,861	\$1,741,051	\$0.196	8,861	\$1,741,051	\$0.196	8,861	\$1,741,051	\$0.196
Custom Buildings - LCI	50,454	\$7,303,283	\$0.145	50,454	\$7,303,283	\$0.145	50,454	\$7,303,283	\$0.145	50,454	\$7,303,283	\$0.145
Audits & Education - LCI	3,104	\$4,610,776	\$1.485	3,104	\$4,610,776	\$1.485						
Demand Response - LCI	0	\$46,800		0	\$46,800		0	\$46,800		0	\$46,800	
Customer Action Program - LCI	9,671	\$1,052,594	\$0.109	9,671	\$1,052,594	\$0.109	9,671	\$1,052,594	\$0.109	9,671	\$1,052,594	\$0.109
Government Tariff	1,909	\$876,825	\$0.459	1,909	\$876,825	\$0.459	1,909	\$876,825	\$0.459	1,909	\$876,825	\$0.459
Mercantile	172,100	\$1,464,607	\$0.009	172,100	\$1,464,607	\$0.009	172,100	\$1,464,607	\$0.009	172,100	\$1,464,607	\$0.009
T&D Upgrades	22,670	\$45,000	\$0.002	22,670	\$45,000	\$0.002	22,670	\$45,000	\$0.002	22,670	\$45,000	\$0.002
Smart Grid	0	\$0		0	\$0		0	\$0		0	\$0	
ESID	0	\$0		0	\$0		0	\$0		0	\$0	
TOTAL	1,781,829	\$286,449,195	\$0.161	1,669,123	\$240,087,086	\$0.144	1,643,741	\$224,907,017	\$0.137	1,580,122	\$200,929,895	\$0.127

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