

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Energy Efficiency and Peak:
Demand Reduction Program : Case No. 09-580-EL-EEC
Portfolio of Ohio Edison :
Company. :

- - -

In the Matter of the :
Energy Efficiency and Peak:
Demand Reduction Program : Case No. 09-581-EL-EEC
Portfolio of The Cleveland:
Electric Illuminating :
Company. :

- - -

In the Matter of the :
Energy Efficiency and Peak:
Demand Reduction Program : Case No. 09-582-EL-EEC
Portfolio of The Toledo :
Edison Company. :

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EXCERPT OF PROCEEDINGS

before Chairman Alan R. Schriber, Commissioner Ronda
Hartman Fergus, Commissioner Valerie A. Lemmie,
Commissioner Paul A. Centolella, and Commissioner
Cheryl Roberto, Public Utilities Commission of Ohio,
at the Public Utilities Commission of Ohio, 180 East
Broad Street, Room 11-E, Columbus, Ohio, called at
1:30 p.m. on Wednesday, October 28, 2009.

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8 Cleveland Electric Illuminating Company,
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On behalf of the Ohio Partners for
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On behalf of the Natural Resources
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On behalf of the Residential Consumers.

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1 Wednesday Afternoon Session,
2 October 28, 2009.

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5 CHAIRMAN SCHRIBER: Okay. Now, we got --
6 we've got before us Case Nos. 09-580 through
7 82-EL-EEC, and unfortunately it says oral arguments.
8 I'm hoping it's not an argument as much as as it is a
9 meeting of the minds perhaps or some explanations,
10 what have you.

11 What I would like to do is point out that
12 we would like you all to take the table here and the
13 microphones before you. And that would be
14 FirstEnergy, OCC, IEU, NRDC, and OPAE. You all want
15 to come forward?

16 Basically what we would like to hear is 8
17 minutes each, Sam, and then we would like to -- and
18 then the Commissioners will ask questions. And
19 basically the purpose of this is to provide us with a
20 better understanding of what has transpired and where
21 we are going on a going forward basis.

22 So in the order in which I introduced
23 everyone, first of all, would you all want to go down
24 beginning with, Art, name and who you represent.

25 MR. POULOS: Greg Poulos from the Ohio

1 Consumers' Counsel.

2 MR. KORKOSZ: Art Korkosz on behalf of
3 the FirstEnergy Companies.

4 MR. RANDAZZO: My name is Sam Randazzo,
5 and I am here on behalf of the Industrial Energy
6 Users of Ohio. And I am sure there is another Sam
7 here.

8 CHAIRMAN SCHRIBER: Must be, undoubtedly.
9 God help us, yeah.

10 MR. SULLIVAN: My name Dylan Sullivan,
11 and I am an energy advocate at the Natural Resources
12 Defense Council, but I am represented by our attorney
13 behind me, Henry Eckhart.

14 CHAIRMAN SCHRIBER: Understood.

15 MR. RINEBOLT: On behalf of Ohio Partners
16 for Affordable Energy and the 60 nonprofit agencies
17 we represent, Dave Rinebolt.

18 HEARING OFFICER: What was that last
19 name?

20 Okay. Let's begin with Art.

21 MR. KORKOSZ: May it please the Chairman,
22 Commissioners, I am Art Korkosz on behalf of Ohio
23 Edison Company, The Cleveland Electric Illuminating
24 Company, and The Toledo Edison Company.

25 As required by our electric security plan

1 order, the companies initiated a collaborative
2 process amongst the ESP parties, and a compact
3 fluorescent light bulb, CFL, distribution program
4 emerged from that collaborative.

5 The companies then applied on July 9 in
6 this case for approval of a program calling for the
7 direct distribution of two CFLs to each of their
8 residential customers and some small business
9 customers which when implemented would represent a
10 major contribution towards compliance with the 2009
11 energy savings obligation mandated by Senate Bill
12 221.

13 Following additional discussion with and
14 consensus among the staff, OCC, and NRDC, the
15 companies further refined that program as reflected
16 in the letter of September 16 which was filed in the
17 docket of this case. The Commission approved that
18 program as modified by the September 16 letter in its
19 finding and order of September 23.

20 Three key aspects of the modified
21 approved program are especially pertinent here.
22 First, despite recent opportunistic public comment by
23 certain intervenors here, notably the Ohio Consumers'
24 Counsel and the NRDC, the program of direct
25 distribution of CFLs to all residential and some

1 small business customers and with recovery of program
2 costs distributed over all of those customers was the
3 mechanism discussed both in the collaborative and
4 subsequently among the interested parties and upon
5 which consensus was reached as reflected in the
6 September 16 letter. That fact cannot be disputed.

7 Second, direct delivery of bulbs to all
8 customers was a highly cost effective program to
9 achieve energy savings, and certainly by the time of
10 the Commission's approval direct distribution of CFLs
11 to all customers, not a voluntary coupon or voucher
12 program, was the only mechanism that would permit the
13 companies to effectively address their 2009
14 compliance obligations.

15 I would note that another important
16 aspect of the consensus reached in that September 16
17 letter was that the post-2009 CFL programs would be
18 voucher based rather than direct bulb delivery.

19 Third, recovery of energy efficient --
20 energy efficiency program costs including those here
21 is provided for under the statute, was expressly
22 agreed to by the ESP parties, and was ordered by the
23 Commission as part of the companies' ESP case.

24 The relatively small but vocal negative
25 reaction to media coverage about the CFL program was

1 unanticipated, especially so given the favorable
2 public reaction that similar direct distribution
3 programs received elsewhere, notably Los Angeles
4 which implemented the program in early 2009 involving
5 direct delivery of 2.4 million CFLs to its
6 residential customers.

7 Also unanticipated was the criticism I
8 referred to earlier by the parties here who
9 participated in the final refinements of the CFL
10 program upon which there was consensus.

11 In response to the negative reaction on
12 October 7 the Commission requested the parties
13 postpone -- requested the companies postpone the
14 rollout of the program. This unanticipated reaction
15 also apparently has prompted the Commission's
16 additional consideration of the program and why we're
17 here today.

18 While the companies still adhere to the
19 view that the CFL direct delivery program which the
20 Commission approved was reasonable, consistent with
21 the directive of the ESP, that vetted through the
22 collaborative process, and the product of consensus
23 of interested parties we do recognize the Commission
24 may now have an interest in considering an
25 alternative approach.

1 The companies presented such an
2 alternative at the most recent meeting of the
3 collaborative held October 19, and I would note that
4 none of the other parties at that meeting at that
5 time offered any of their own alternative proposals
6 in response.

7 Under the companies' alternative the
8 inventory of already acquired CFLs would be
9 distributed through a voucher program available to
10 but not mandatory upon all customers, thus,
11 accommodating the wishes of customers who do not want
12 to receive the bulbs.

13 This voucher program would involve four
14 redemption -- redemption opportunities: First,
15 delivery of up to six CFLs to customers who request
16 them from the companies; second, at the time of a
17 customer's utility call center or website contact
18 regarding high usage issues; third, at the time of
19 sign up of a new residential customer's service; and,
20 finally, customer pickup or distribution arrangements
21 through select public assistance agency locations in
22 the utilities' service territory.

23 Under such an alternative, however, it is
24 essential the Commission recognize that the new costs
25 in this program will be higher, driven up, for

1 example, by the increased IT costs and overhead costs
2 associated with a selective rather than a general
3 distribution to customers and by the fact that mail
4 delivery is more expensive than direct delivery.
5 Moreover, distribution of CFLs under this voucher
6 alternative would proceed over two years on a much
7 more gradual pace than the direct delivery under the
8 earlier program.

9 The time required for implementation of
10 and customer response to such a new voucher program
11 will not allow for the impact of customer usage to
12 contribute to the 2009 compliance, thus, a Commission
13 amendment of the 2009 energy savings benchmarks would
14 be essential, and yesterday the companies requested
15 such an amendment in an application filed with the
16 Commission spelling out its details.

17 On a closing note the experience here
18 with the CFL program gives the Commission an
19 important opportunity to consider energy efficiency
20 programs from a broader perspective. Some have
21 referred to the energy savings aspects of SB 221 as
22 the statute's jewel. As with other jewels, however,
23 energy efficiency programs come with a cost. The
24 companies chose the CFL distribution program as a
25 mechanism that would deliver significant bang for the

1 buck addressing the 2009 statutory energy usage
2 reduction target of 0.3 percent.

3 As we move into future years, however,
4 the statute mandates a steeper slope of required
5 energy savings culminating in a target reduction of
6 22 percent in 2025. And under the most recently
7 proposed version of the Commission's rules, that
8 22 percent is over and above whatever additional
9 energy savings may be mandated as a result of federal
10 measures.

11 For an average residential customer that
12 magnitude of reduction in usage is essentially the
13 equivalent of no longer using the refrigerator and
14 the clothes dryer. The programs required to achieve
15 such future energy savings will have a significant
16 impact on customer behavior and will be increasingly
17 more costly.

18 If the current outcry over the mandatory
19 nature of the energy savings requirements and their
20 associated costs has given the Commission and other
21 parties pause in this first year, preliminary program
22 where every customer receives a direct benefit
23 because every customer would receive a bulb, then we
24 should all face up to the reality that under the
25 statute's future requirements such concerns and

1 controversy will become even more pronounced and
2 strident when the necessary more costly programs will
3 most likely involve proposals where, for example, one
4 customer effectively subsidizes another's home
5 insulation costs or other similar types of projects.

6 We cannot ignore the impacts on customer
7 behavior and on the customer's pocketbook arising
8 from the statutory policy Choice mandating energy
9 savings. Candid recognition of the statutes mandates
10 and its impact is incumbent upon the regulatory parts
11 as well as upon the Commission. Thank you.

12 CHAIRMAN SCHRIBER: Thank you,
13 Mr. Korkosz.

14 Mr. Poulos from Consumers' Counsel.

15 MR. POULOS: Thank you. Good afternoon,
16 Chairman, Commissioners. Again, my name is Greg
17 Poulos, and on behalf of the Office of the Consumers'
18 Counsel, the Consumers' Counsel Janine
19 Migden-Ostrander, we represent the residential
20 customers on behalf of FirstEnergy.

21 We appreciate the opportunity to be heard
22 today, and I will use my time to address the
23 following topics: First, the Office of the
24 Consumers' Counsel's concern for the type of CFL
25 lighting program that was proposed and is still -- or

1 is -- right now is currently suspended and OCC's
2 recommendation to the Commission on how to proceed
3 from here.

4 First, OCC did not and does not support
5 the type of CFL program proposed by FirstEnergy at
6 any point in this case. OCC's point of view on this
7 type of light bulb give away program is established
8 in our August 10 motion to intervene. In that motion
9 to intervene and comments we requested that this
10 program be sent back to the collaborative to redesign
11 the program along the lines of programs that had been
12 more widely accepted and more widely utilized by
13 other utilities across the country.

14 In addition, we raised concerns about the
15 financial aspects. In this particular -- in this
16 particular type of program the customers do not have
17 a choice of what type of bulb they are getting or how
18 much it will cost in the long run, and they think --
19 we think that they should have had a choice going
20 forward. This particularly becomes a problem with
21 the type of bulb that was being proposed by
22 FirstEnergy in this program which was a 100-watt
23 equivalent light bulb and most residential customers
24 do not use 100-watt equivalent -- or a 100-watt bulb.

25 Finally, another concern we had as this

1 process has gone on is that this program provides
2 immediate savings credit and reimbursement costs to
3 FirstEnergy, although actual savings by actual
4 customers use of the bulbs will not be considered.
5 For example, if they did not choose to use a 100-watt
6 bulb and they get it in the mail, it will probably
7 end up in the basement somewhere -- or may end up in
8 a basement somewhere and that still though would be
9 considered actual use for purposes of FirstEnergy.

10 In addition, if someone was on vacation,
11 for example, when the bulbs came and they never saw
12 it or never received it on their doorstep, that would
13 still be considered use. Those were some of the
14 concerns we expressed.

15 Now, all four electric companies in Ohio
16 are designing and implementing energy efficiency
17 programs to meet the statutory energy efficiency
18 benchmarks including those of 2009. OCC has
19 participating in all four of those collaboratives,
20 Duke, AEP, and Dayton Power & Light and, of course,
21 FirstEnergy Companies.

22 Now, Duke, AEP, and Dayton Power & Light
23 all had designed and implemented their programs at
24 least six months earlier to meet the 2009 benchmarks.
25 They also had a portfolio of programs where they

1 introduced a number of different opportunities to get
2 energy savings. Each of those three other
3 collaboratives designed a CFL program months ago that
4 incorporates nationally recognized and acclaimed
5 programs that provide incentives to retailers to
6 lower the incremental price of bulbs. In Duke's case
7 they use one where there is a discount provided in
8 your -- with your bill. In AEP they used more of a
9 discount right at the retailer. And in both
10 situations though you get a reduced price from the
11 retail price you would see at a retail store. And
12 then the retail store would work out the difference
13 with the utility company.

14 Now, FirstEnergy did propose this type of
15 discount or buy-down program in May of this last
16 year. And, in fact, the company justified it by
17 saying that it was important to have the consumer to
18 have some stake in the game or as they refer to it as
19 skin in the game to get a result that someone would
20 actually use the bulb. However, FirstEnergy changed
21 directions, and as we have learned since then, the
22 reason they changed directions was because the
23 process was too late in the game for them to do such
24 a program. They needed immediate -- an immediate
25 impact.

1 And FirstEnergy needed that and expected
2 that immediate results by the end of 2009 to meet the
3 statutory energy efficiency benchmarks. Poor
4 planning on FirstEnergy's part in getting this
5 process started should not have created a panic for
6 everyone else. The reality check is FirstEnergy was
7 recalcitrant in getting this process started.

8 We raised these concerns in meetings
9 inside and outside of the collaborative in August and
10 September. They were not heeded and there was no
11 recommendation by the collaborative to go forward
12 with this plan. And, thus, we could not prevent the
13 type of program from going forward. And, in fact,
14 there has been mention of a September 16, 2009,
15 letter that was sent from FirstEnergy to the Public
16 Utilities Commission staff saying please proceed with
17 the program and there is a consensus on the
18 conditions.

19 We did not review this letter beforehand.
20 There is no mention of Ohio Consumers' Counsel's
21 support of this type of program, only consensus on
22 the conditions. And OCC did agree not to oppose this
23 proposal but that is it. And why we did that? There
24 were four groups involved in the review of this
25 program going in the final -- final process of it,

1 and it was not the collaborative. It was just four
2 groups. There was Ohio Consumers' Counsel, NRDC
3 which will be coming up soon to talk, Public
4 Utilities Commission staff, and the companies. And
5 the NRDC and Ohio Consumers' Counsel were both of the
6 position where we were adamantly opposed to this
7 program, and we could not see it going forward. The
8 other two wanted it to go forward and were adamant
9 that it should go forward and needed to go forward.

10 At that point the Consumers' Counsel saw
11 that the writing was on the wall and that the program
12 was going to go forward. We felt we could not stop
13 this program. The decision was made by our office to
14 make -- to make the best out of a bad situation and
15 seize upon the opportunity to ensure this doesn't
16 happen again.

17 In fact, one of the conditions that we
18 did have a consensus on was that "for purposes of
19 future CFL programs expected implementation will
20 include use of coupons, buy downs, or customer
21 discounts." This statement puts everything into
22 perspective for the Ohio Consumers' Counsel, can
23 anyone state there was support for a program that all
24 agreed that would never happen again?

25 In the end we weren't able to stop the

1 program. We were able to only mitigate the cost of
2 residential customers to the best of our ability.
3 That includes reducing the price per bulb of the
4 actual cost of the bulb and distribution of it from
5 the \$5.75 to 3.50 and providing coupons for future
6 programs so the company would start a process like
7 the other utilities had in doing a more successful
8 type of program.

9 Now, where do we go from here as we
10 proceed? There is another similar situation
11 recently, 2009, in Maryland with Allegheny Power, and
12 they also had an approved CFL giveaway program that
13 received public outcry when the company tried to
14 implement the program. However, to its credit that
15 company took responsibility for the situation and
16 made the decision to eat the costs and deliver the
17 bulbs to those who wanted them. FirstEnergy has not
18 made that step at this point.

19 And as we currently stand here, the
20 Consumers' Counsel is recommending that because
21 FirstEnergy did not adequately promote the long-term
22 benefits of energy efficiency prior to initiating the
23 giveaway, the giveaway program, and their timing in
24 doing this program is so late that the marketing
25 lacking, the timing being so late, therefore, we

1 recommend the \$1.3 million in marketing and education
2 should be disallowed.

3 In addition, because the program was not
4 poorly -- was poorly designed and involved revenue
5 should not be included in the cost of consumers as
6 well which is approximately 27.5 million. Now, good
7 programs are created through a collaborative process,
8 parties working together. This was not a
9 collaborative process. This was FirstEnergy doing
10 what it wanted to do. That is why the Consumers'
11 Counsel recommends that a third-party administrator
12 be installed in this situation to help these programs
13 and only because FirstEnergy is not performing at the
14 level of the other utilities in designing and
15 implementing energy efficiency programs.

16 In the alternative we propose a statewide
17 collaborative. Going forward this would benefit all
18 parties and helpfully push those utilities that are
19 behind like FirstEnergy to learn from other companies
20 and make appropriate timely decisions.

21 Now, what do we do with 3.75 million
22 bulbs that are in storage currently? OCC does not
23 believe that just one idea will work to move those
24 3.75 million bulbs in a timely fashion to mitigate
25 the storage costs. The FirstEnergy residential

1 collaborative should be provided the opportunity to
2 vote on a solution. And because there are so many
3 bulbs already at hand we recommend trying to take a
4 number of different courses including the one that
5 was proposed by the companies that we did hear in the
6 collaborative, but we received information just then
7 and we have no back-up information to see how it
8 would work so that would be something we would -- we
9 would consider if we had more information. We also
10 would consider reselling the bulbs back if that can
11 be looked into. An opt-in program similar to what
12 FirstEnergy Companies maybe even further as the
13 collaborative would discuss where people could
14 actually make the decision to decide if they want
15 those bulbs and if they would use them.

16 Another idea that we are looking into is
17 having community groups actually distribute the bulbs
18 and this has been widely accepted throughout the
19 country in a number of different groups. There is a
20 number of different nonprofits that are doing this
21 type of thing, but when they deliver the bulbs, they
22 sit there and talk to people and educate them in how
23 the bulbs are going to be used and what the best use
24 is and whether they are interested in having the
25 bulbs.

1 And with that I will end unless there is
2 further questions.

3 CHAIRMAN SCHRIBER: We will wait for
4 questions.

5 MR. POULOS: Thank you.

6 CHAIRMAN SCHRIBER: Mr. Randazzo.

7 MR. RANDAZZO: If it please the
8 Commission, thanks for the opportunity. When we got
9 into this case, we were an Intervenor. It may seem a
10 little bit odd for a commercial/industrial group to
11 be here talking about a residential program, but I'll
12 connect the dots in a moment. We monitored this
13 case, and as the case turned, it became very clear
14 that it was focused on residential customers, so we
15 stood away quite frankly and let those folks that
16 were more directly involved in the residential sector
17 have their say in terms of the design of the program.

18 The Chairman's earlier comment is --
19 struck me when I was looking at the order that set
20 this. I do not believe that this is an oral
21 argument. There is very little to argue about quite
22 frankly. The history is quite clear. The
23 application was filed. It was modified within the
24 collaborative. It included provisions of cost
25 recovery. It was approved by the Commission. The

1 description of the program was quite clear. It
2 involved direct delivery of compact fluorescent light
3 bulbs as counsel for the companies has already noted.

4 The organization I represent is a
5 membership organization. We represent customers that
6 actually pay for everything that's going on here one
7 way or another. Commercial and industrial customers,
8 about 88 companies located throughout Ohio, consume
9 about 10 billion kilowatt hours a year for the
10 membership which is about 10 percent of the statewide
11 commercial and industrial consumption. So we are
12 vitally interested in this aspect of Senate Bill 221
13 and have been working as I think you know sometimes
14 painfully working very hard to try and work through
15 the process of implementing the portfolio
16 requirements in Senate Bill 221.

17 The -- I would like to touch on a couple
18 of things that I think are worth considering, and I
19 would like to close with a theme that counsel for the
20 utilities brought up and perhaps was joined by
21 counsel for the Office of Consumers' Counsel and that
22 is take this to a broader consideration.

23 I have prepared a written statement. I
24 am not going to read the written statement; I will
25 summarize it. We filed it as part of the record so

1 that anybody that wishes to can have it to point to
2 and either support or take shots at it as the process
3 allows.

4 First, I would like to deal with CFLs,
5 compact fluorescents. Some folks may have thought we
6 would be talking about the Canadian Football League;
7 we are actually talking about light bulbs. Compact
8 fluorescents have been a key component in almost
9 every rollout of energy efficiency programs not only
10 in the nation but worldwide.

11 Lighting is an obvious target for energy
12 efficiency programs, and it's no surprise that
13 compact fluorescents were included as part of
14 FirstEnergy's plan much the way they have been
15 included in everybody else's plan. Are they
16 supported? You don't need to look very far. You can
17 go to, for example, the Office of Consumers' Counsel
18 website which clearly recommends that customers use
19 CFLs as a strategy for producing the kind of savings
20 that was talked about in the application in this case
21 and -- and so on.

22 We have another utility in the state of
23 Ohio that's already implemented a program, Duke
24 Energy, as counsel for the Office of Consumers'
25 Counsel has already mentioned, and they are currently

1 recovering costs associated with that program
2 including what are referred to as lost revenues.

3 In my prepared statement I go through
4 some history of how the lost revenue provision got
5 included in the legislation with quotes provided from
6 stakeholders that were actively involved in that
7 process including Mr. Richard Stuebi from a recent
8 internet article as well as, again, as comments from
9 an article written by the Consumers' Counsel.

10 We in the testimony -- or the prepared
11 statement, I should say, I also describe the
12 implications of commitments that have been made by
13 the state of Ohio in conjunction with receiving
14 stimulus dollars as part of the commitments that have
15 been made by the state of Ohio. There are things in
16 there that require the state of Ohio to actively and
17 proactively deal with things like the aligning the
18 interest of customers and utilities in favor of
19 energy efficiency programs and speak to providing
20 utilities with timely recovery of costs associated
21 with implementing energy efficiency programs. So
22 there is a well and extensive series of things that
23 have happened historically including a commitment
24 that the state of Ohio made in conjunction with
25 receiving stimulus dollars that would bear not only

1 on this subject but will touch on energy efficiency
2 programs that are implemented throughout the course
3 of Senate Bill 221.

4 I conclude in my prepared statement by
5 offering some recommendations. I think the real
6 question that's presented here is not one that is
7 resolved by what happened, who agreed with what, what
8 issues were contested, what positions people would
9 have liked to have taken but didn't.

10 The question here is what do we do going
11 forward? And I think that the opportunity presented
12 by this situation which certainly has unfortunate
13 dimensions associated with it the opportunity to try
14 and learn as we go forward.

15 In my opinion the compact fluorescent
16 experience gained from this example is -- is a
17 symptom of a larger problem, and I think that we
18 would all be well served if we could use this as a
19 prod to get after the larger problem.

20 I recommend in my prepared statement that
21 the Commission use the authority in Senate Bill 221
22 given where we are, given the state of the economy,
23 and given what we have learned so far about the
24 potential for negative reactions to actually harden
25 against the opportunity to move forward with energy

1 efficiency programs.

2 Based upon that experience I think the
3 Commission should waive the portfolio obligations for
4 2009 or otherwise modify them. If you need to push
5 them into 2010, so be it but give us a fighting
6 chance to learn from this experience, get the rules
7 done, and move forward sensibly to try and achieve
8 compliance without making customers angry and
9 confused as the governor said in his letter to the
10 Chairman.

11 There is another important aspect of
12 moving forward. We need to get the rules finished
13 and I know the Commission took some action today and
14 I am anxious to see the order from today to see how
15 that advances that process. The residential program
16 that FirstEnergy got approved and leads us to this
17 event today was not the only thing that FirstEnergy
18 offered up for compliance purposes. There are a
19 series of cases pending before the Commission
20 presently in which FirstEnergy tried to move forward
21 with other compliance alternatives, and I hope it's
22 not a secret, it shouldn't be if it is, but most of
23 the early compliance plans of all the utilities for
24 2009 involved relying significantly on commercial and
25 industrial customers and the use of RECs because they

1 are typically where the low hanging fruit is and the
2 educational opportunities or the educational barriers
3 are not as severe.

4 Unfortunately in the case of FirstEnergy
5 things like getting the administrator agreements
6 approved has bogged that down significantly.
7 Administrators were a hierarchical structure that was
8 designed to use infinity relationships between
9 various associations including the Ohio Schools
10 Association, the County Commissioners Association,
11 our organization, the Ohio Manufacturers Association
12 to try and harvest the opportunities that exist on
13 commercial -- on the commercial and industrial side
14 of the meter. That has not gone forward. The
15 agreements have not been approved as contemplated by
16 the electric security plan which the Commission also
17 approved.

18 There are 3 to 4 hundred open cases at
19 the Commission dealing with RECs or energy efficiency
20 projects. We have got to break that log jam in order
21 for people to draw some understanding where the
22 Commission will recognize as appropriate compliance
23 for purposes of the legislation.

24 I think it's important that there be a
25 stronger coordination between what is going on from

1 compliance purposes and other things that are going
2 on in the state of Ohio. For example, according to
3 the Dispatch, Columbus Dispatch, article on Monday
4 Ohio is distributing about \$260 million in
5 weatherization-related dollars coming from the
6 stimulus funds.

7 Isn't there an opportunity to leverage
8 that to achieve appliance with the portfolio
9 requirements without raising customers' rates? If we
10 can get funding from the Federal Government to do
11 things like that and count it against the compliance
12 requirements associated with the portfolio, isn't
13 that a better way to go than raising customers'
14 rates? Leveraged portfolio-related work that has
15 been done in other states, Pennsylvania recently
16 approved compliance plans for utilities, some of
17 which are operating in the state of Ohio, some of
18 which are in this room, and we may be able to achieve
19 some economies of scale and scope by looking at where
20 we can get compliance in the state of Ohio and
21 through things that are already being done other
22 places.

23 Thanks for the opportunity and if you
24 have any questions on the prepared statement itself
25 after I leave here today, I would be happy to respond

1 to them. Thank you very much.

2 HEARING OFFICER: Thanks, Sam. That
3 brings us to Mr. Sullivan.

4 MR. SULLIVAN: Good afternoon, Chairman
5 Schriber and Commissioners. Thank you for the
6 opportunity to speak here today. My name is Dylan
7 Sullivan, and I am an energy advocate at the Midwest
8 Office of the Natural Resources Defense Council.

9 Unlike Mr. Randazzo I am going to be
10 speaking from my prepared statement, and it will be
11 filed. Utilities around the country have implemented
12 programs to help customers use energy more
13 efficiently since at least the 1970s, enough time for
14 best practices to emerge.

15 Generally utilities assess the potential
16 to cost effectively increase energy efficiency within
17 their service territory, look at the barriers to
18 implementing cost effective investments, and design
19 programs to attack these barriers. As we can clearly
20 see from the implementation of SB 221 in the southern
21 part of Ohio, running a cost effective compact
22 fluorescent light bulb program that meets consumers'
23 needs and designing portfolio programs to meet the
24 energy savings requirements of the law is quite
25 possible.

1 It is unfortunate that FirstEnergy has
2 consistently ignored the recommendations of
3 stakeholders who have relevant experience and
4 interest in making energy savings opportunities
5 available and affordable to customers. However, the
6 question for today is how to fix the current problem
7 and how to ensure that this does not happen again.

8 First, how to fix this problem, we should
9 address the cost and choice concerns that customers
10 expressed while ensuring that these bulbs have
11 long-term impact on energy use in the market for
12 efficient lighting.

13 Since two-thirds of the cost of the
14 program were intended to compensate the company for
15 its lost revenues and only one-third of the costs
16 were related to purchasing and distributing the
17 bulbs, NRDC recommends focusing on these lost
18 revenues. The lost revenue recovery authorized in
19 the Case No. 08-0888-EL-ORD rules could have resulted
20 here in a high charge to consumers as is often the
21 case with lost revenue recovery mechanisms. The
22 company will say that it is entitled to lost revenue
23 recovery under the terms of the ESP stipulation. But
24 on page 21 of the stipulation it defines as
25 reasonable only costs incurred to support programs

1 recommended by a collaborative process and approved
2 by the Commission.

3 NRDC and the Office of the Ohio
4 Consumers' Counsel actively opposed this program
5 designs in many forums, in front of the
6 collaborative, in conversations with the company,
7 other collaborative members, and Commission staff,
8 and in regulatory comments. NRDC and OCC only
9 reluctantly agreed to drop their opposition in
10 exchange for assurances the company would not run a
11 similar program in the future.

12 It's clear then that the program was not
13 recommended by a collaborative process. The
14 Commission can use its discretion to exempt this
15 program from lost revenue recovery. This one change
16 cuts the cost of the program by two-thirds.

17 Then there is the matter of the
18 3.75 million light bulbs. Because of the companies'
19 chosen program design we have a lot of bulbs and will
20 likely need more than one program and a bit of time
21 to get these bulbs into the hands of customers who
22 want them.

23 We recommend that 1 million of these
24 bulbs be reserved for customers who come into
25 community action agencies' offices to inquire about

1 heating assistance. For the remaining bulbs
2 FirstEnergy should allow its customers to purchase up
3 to 10 bulbs at cost, roughly \$1.50 per bulb, at its
4 offices and bill payment centers. FirstEnergy should
5 also initiate discussions with retailers with the
6 goal of getting these bulbs into stores and in its
7 service territory.

8 NRDC recommends returning this program to
9 the collaborative where a representative of consumer
10 advocates, low income advocates, environmental
11 advocates, and the company can decide on the right
12 mix of distribution strategies for these bulbs.

13 Of course, modifying the program will
14 lengthen the implementation period and delay energy
15 savings FirstEnergy was counting on in 2009. We
16 recommend granting the company a partial waiver in
17 2009 for the amount of energy savings this program
18 would have contributed and shifting this increment of
19 noncompliance to 2010 and 2011. That way the company
20 gets a break and consumers benefit from the
21 cumulative amount of energy efficiency they are due.

22 This completes the discussion of how to
23 deal with the current situation. In my remaining
24 time I would like to talk about how we can prevent
25 this from happening again in the future.

1 My recommendations now will address
2 program administration and costs. First, it is clear
3 that the company doesn't share the commitment of
4 other Ohio utilities to deliver good energy
5 efficiency programs. If FirstEnergy isn't
6 comfortable designing and implementing the energy
7 efficiency programs, there is a way to ensure that
8 customers get the benefits of energy efficiency with
9 limited involvement from the company, third-party
10 administration. This model where a stakeholder
11 advised independent entity delivers energy efficiency
12 programs is used successfully in Vermont and Oregon.
13 FirstEnergy could issue an RFP for a third-party
14 administrator to implement its residential programs
15 and power to go after all cost effective savings
16 opportunities.

17 Second, we strongly recommend replacing
18 lost revenue recovery with decoupling. Decoupling
19 would result in modest, regular true-up in rates to
20 ensure that a utility recovers no more and no less
21 that its fixed costs of service as determined in its
22 last rate case regardless of fluctuations in sales.
23 A key benefit of decoupling is that it's symmetrical;
24 if fixed cost recovery is higher than assumed,
25 customers get a refund; if fixed cost recovery is

1 lower than assumed, the utility is made whole.

2 Instead of decoupling the Commission
3 approved the lost revenue recovery for FirstEnergy
4 under which the company can collect six years of the
5 distribution revenue it would have received had
6 energy efficiency programs not taken place. We
7 opposed this in the ESP proceeding because we have
8 seen cases in Minnesota and New Jersey where the
9 cumulative and asymmetric nature of lost revenue
10 recovery has resulted in unreasonably high customer
11 charges for energy efficiency programs. The customer
12 charges for lost revenue recovery will only get
13 higher in the future as savings targets rise and the
14 lost revenues accumulate.

15 FirstEnergy should decouple. The
16 company's commercial and industrial customers pay
17 non-volumetric distribution charges so the company
18 should already be indifferent in these sectors.
19 Therefore, revenue decoupling need only be applied to
20 the residential sector.

21 NRDC just conducted a thorough review of
22 the revenue decoupling mechanisms currently operating
23 in the US. The majority of mechanisms produced
24 adjustments that are less than 2 percent of base
25 rates and there is no discernible pattern of refunds

1 or surcharges.

2 I believe that many in the room in the
3 past have been skeptical of decoupling, but we can't
4 look at it in a vacuum. We must compare it to other
5 mechanisms that purport to do the same thing. If
6 FirstEnergy had decoupling, this \$14 of lost revenue
7 recovery would likely be much less, and it would be
8 related to what is actually happening to the
9 company's recovery of fixed costs from the
10 residential sector.

11 In summary I would like to reiterate that
12 what happened with the CFL program did not have to
13 happen and should not happen again. We need an
14 administrator who will get energy efficiency right
15 and a utility with aligned incentives to keep the
16 bill impacts of energy efficiency reasonable.

17 Thank you for your time and your
18 examination of these comments.

19 CHAIRMAN SCHRIBER: Thank you.

20 Mr. Rinebolt.

21 MR. RINEBOLT: Mr. Chairman, Members of
22 the Commission, always a pleasure to come before you.
23 As a representative of Ohio Partners for Affordable
24 Energy and the 60 nonprofit agencies that deliver
25 energy efficiency every day, we are once again in the

1 unique position. We actually do this. And so our
2 perspective is informed by the fact that we will be
3 in some 35,000 homes over the next two years
4 delivering energy efficiency to low income Ohioans.

5 I would point out Mr. Randazzo suggested
6 that we leverage the federal stimulus funding which
7 our network has been able to access. And, in fact,
8 we are already doing that. A program we run for
9 FirstEnergy leverages \$2 for every dollar FirstEnergy
10 puts in and that number will be increasing this year
11 as our cost per unit increases under the stimulus
12 bill. So our network has been doing this work for 30
13 years.

14 Across -- across the country we have
15 weatherized 6.25 million homes. As I indicated, we
16 will be weatherizing about 35,000 homes over the next
17 20 months which does give us some insight into how to
18 run effective programs. I have been funding,
19 designing, and implementing these programs since 1983
20 when I was about 10 years old. So I know quite a bit
21 about this as well.

22 For the purposes of our audience I want
23 to explain briefly why we want energy efficiency
24 programs and why as one of the earlier speakers
25 mentioned, it's the jewel of Senate Bill 221.

1 Efficiency costs about \$400 a kilowatt. By
2 comparison a brand new power plant costs about \$4,000
3 a kilowatt. If you have the choice, which do you
4 want to buy? I would suggest the one that costs 400.
5 It also produces a lot more jobs which are something
6 we need in Ohio. A brand new state of the art power
7 plant is going to cost upwards of \$1.6 billion. You
8 can weatherize a lot of houses for that. And, in
9 fact, that power plant would create 90 jobs while
10 just in the past six months we have created or
11 retained 2,400 jobs in this state weatherizing low
12 income households. So that gives you a sense of the
13 magnitude of the difference in job creation between
14 the two options.

15 Now, in Ohio customers have not embraced
16 energy efficiency. The market penetration of compact
17 fluorescent lights is among the lowest in the
18 country. Our market penetration of Energy Star
19 appliances is also among the lowest in the country.
20 Were it not for appliance efficiency standards which
21 affect the efficiency of every appliance that's sold
22 in this country we couldn't see a significant
23 reduction in energy use in Ohio.

24 Fortunately because of those programs we
25 have. If you have a refrigerator that's older than

1 1997, you could toss it out, buy a new one, and it
2 will pay for itself in energy savings in about three
3 years. So that's what the standards have done for
4 us.

5 Now, the reason that we want to have
6 utilities operate these demand-side management
7 programs is because they reduce barriers to customers
8 getting involved in efficiency. And they also reduce
9 costs to customers over the short and long term.
10 First, energy efficiency lowers the demand and that
11 in turn reduces the cost of electricity. The
12 reduction in wholesale prices that FirstEnergy
13 received in its recent auction was clearly a
14 reflection of the reductions in demand for
15 electricity. Unfortunately most of that demand
16 reduction has occurred because of our economy. DSM
17 also has the demonstrated ability to increase
18 customers' efficiency and reduce their bills directly
19 because they are using less electricity.

20 I can tell you when I weatherized my 1916
21 home back in 1999, I cut electricity use by a third
22 and natural gas usage by a half. Now, since then my
23 wife and I have had children, and since my children
24 think the refrigerator is a television and open it up
25 for an extended period of time, there have been a

1 little take back, but the basic thesis of our
2 position is clear, it's you make yourself efficient
3 your bills will go down.

4 Now, in traditional regulation DSM
5 programs are collected -- can be collected through
6 base rates as several of the programs we operate
7 utilities are. But under modern regulation the trend
8 has been to set up specific riders to recapture the
9 dollars associated with demand-side management
10 programs. DSM cost recovery has traditionally had --
11 you really only have two options. You can capitalize
12 the expenditures over the useful life of that product
13 that's invested in or you can expense those measures,
14 and when you expense them, there have been four
15 mechanisms used in other states to -- to essentially
16 compensate and incentivize utilities for operating
17 these programs. They get interest on the
18 expenditures because the dollars have been spent and
19 there is a lag when they are collected. They get
20 lost distribution revenues because as Mr. Sullivan
21 pointed out, they are -- their distribution costs are
22 relatively fixed. I would rather they came in for a
23 rate case and recovered them there but that's my
24 preference.

25 There's also a concept called shared

1 savings where the utility company gets part of the
2 savings. We generally don't support such kinds of
3 incentives. And then there is an even more greater
4 incentive that allows -- which several parties at the
5 tables here have proposed that -- and supported that
6 pays utilities extra when they do energy efficiency
7 programs and particularly if they meet certain
8 targets.

9 Again, we believe because Senate Bill 221
10 Ohio law mandates that utilities do this type of --
11 make these types of investment there shouldn't be any
12 incentives and there shouldn't be any shared savings.
13 The suggestion that we do rate decoupling as a way to
14 protect utilities we believe is wrong. It undermines
15 and discounts the value of energy efficiency to
16 customers. It makes it a longer payback period, and
17 it will ultimately reduce investments.

18 Now, let's turn specifically to the
19 FirstEnergy light bulb program and this is an issue
20 that's been touched on by several of the parties.
21 Senate Bill 221 with the support again of the
22 environmental community and others set benchmarks for
23 energy efficiency which we supported. However, it
24 implemented a benchmark beginning in 2009 which we
25 opposed. We testified that there shouldn't be any

1 benchmarks for three to five years, and we would
2 suggest that the Commission consider that because
3 frankly we know after 30 years in this business that
4 it takes a long time to set up effective programs
5 and, in fact, the kind of comprehensive energy
6 efficiency programs which make a difference over the
7 long haul. We agree with the company that there was
8 really no way to meet these benchmarks other than CFL
9 programs, and we think that that is driven by the
10 yearly in effect 2009 benchmark so.

11 And I would point out as an aside CFL
12 programs account for 64 percent utility of DSM
13 programs nationwide, and we should be doing a better
14 job in designing programs. Several of the folks have
15 talked about how to utilize the bulbs that are
16 already sitting in warehouses, so I won't go through
17 those. There obviously are better practices than
18 irritating consumers by delivering light bulbs to
19 them.

20 So let's move on to our recommendations.
21 We believe as several parties have expressed that the
22 bulbs should be available to customers upon request.
23 We would suggest that the availability be triggered
24 to the use of an online audit tool. FirstEnergy has
25 implemented an online audit tool as well as other

1 utilities in the state. Those online audit tools can
2 be incredibly valuable to customers and guide them
3 into doing the right thing. Tying a little premium
4 in terms of some light bulbs to people who have
5 already taken the initiative to undertake a
6 self-audit through that process I think makes a whole
7 lot of sense because those people will use the bulbs.

8 We appreciate Mr. Sullivan's suggestion
9 that some of those bulbs be made available to the
10 community action agencies and other nonprofits that
11 provide emergency home energy assistance services to
12 customers. We will provide assistance to over
13 \$400,000 households this year. We will see about 250
14 to 275 thousand of those households come into our
15 agencies for help in paying their unaffordable
16 utility bills, and we have done these programs for
17 other utilities including AEP. We are happy to do
18 them -- work out one with FirstEnergy.

19 But in the final analysis we really need
20 to focus on comprehensive energy efficiency programs
21 where electric measures are combined with natural gas
22 measures and do a whole house approach to energy
23 efficiency that ultimately provides the greatest
24 benefit to our customers. We use money from the
25 Federal Government, from gas utilities, from electric

1 utilities, from home improvements and home repair
2 programs, from senior levies, from rural development,
3 and a host of other sources to provide comprehensive
4 weatherization services. That should be the goal
5 here.

6 Ultimately our recommendation would be to
7 create a publicly-owned energy efficiency utility as
8 they have done in Vermont and Oregon. They do make
9 the kind of investments that are in the public
10 interest and provide the biggest bang for the buck.
11 We should never exclude any customer class from an
12 energy efficiency program. We believe that it's
13 important -- just as important that residential
14 customers become efficient as it is for industrial
15 customers to become efficient.

16 We also would suggest that this state set
17 a goal of weatherizing every house in the state over
18 the next 20 years. We believe that would ultimately
19 be the least cost strategy and would capture the
20 highest level of energy efficiency so don't think
21 small. Let's think about the future. Let's improve
22 our housing stock and let's improve the bank accounts
23 of customers in Ohio.

24 Thank you very much.

25 CHAIRMAN SCHRIBER: Okay. Thank you,

1 Dave.

2 Now, it's our turn. Let me lead with a
3 observation and then a couple of questions. There
4 has been a lot of discussion about lost revenues.
5 And I think we're talking specifically about lost
6 distribution revenues. So let me kind of go through
7 something and tell me if I am wrong, correct me. I
8 know I can count on Sam to do that but maybe the
9 others also and maybe I'm right.

10 But when we are talking about lost
11 revenues, let me give you an example. Duke has a
12 program. I filled out and -- I filled out two sides
13 of a form, how many rooms in the house, how big is
14 the house, so on and so forth. Sent it back in. I
15 get six free light bulbs. Now, John in the back, I
16 forgot to put in the promotional code. Is there
17 something I could do about that to get my light
18 bulbs? Am I -- am I out of luck?

19 MR. FINNIGAN: They are on their way.

20 MR. RANDAZZO: There are 3 million of
21 them.

22 CHAIRMAN SCHRIBER: Okay. Thank you.
23 I'm working on the assumption, yeah, that's going to
24 cost money to provide me six bulbs and they are going
25 to provide me with an audit and that's good but

1 that's going to be costly to some extent but in the
2 long run it's going to foreclose the need to have to
3 build a power plant or to have to re -- repower an
4 old power plant or build a new one, whatever the case
5 may be.

6 So in the long run children,
7 grandchildren are going to save money because while I
8 may be covering those lost distribution costs now,
9 not energy costs but lost distribution costs. Now,
10 in the long run that's the dividends, that we don't
11 have to fork over increased dollars for new power
12 plants. I think that's been the biggest hurdle that
13 we have dealt with in trying to describe any of
14 those -- these programs is what is this lost revenue
15 and it's not something that's easily captured by
16 people who don't deal with this stuff every day as we
17 do.

18 My question to FirstEnergy, and your
19 microphones have little buttons there and they turn
20 green -- and by the way let me welcome Janine from
21 Consumers' Counsel, made it for us today, and I know
22 she had an obligation ahead of here and she's here.

23 But at any rate, Mr. Korkosz, why was
24 FirstEnergy so late to the table on this? Why
25 October instead of earlier in the year or previously

1 when you knew this was coming?

2 MR. KORKOSZ: Mr. Chairman, I'll suggest
3 that we weren't late to the table. I would suggest
4 that in comparison to the other utilities in the
5 state we had a different process, and it's one that
6 arose out of our ESP procedure which called delib --
7 expressly as agreed to and signed on by all the
8 participants represented here for an energy
9 efficiency collaborative to be developed to develop
10 the programs, I think Mr. Sullivan referred to this,
11 and to recommend programs out of that collaborative
12 to be submitted for approval to the Commission.

13 I submit that that's precisely what
14 happened. And there's a timeline that those -- the
15 ESP was approved by the Commission in March,
16 approximate on my dates, but in March. The
17 collaborative was initiated and had its first meeting
18 I believe in May. These programs -- the CFL was
19 amongst the first of the programs submitted to the
20 residential and low income subcommittee of that
21 collaborative. A formal application was submitted in
22 July for the CFL program. Ultimately it was acted
23 upon by the Commission in September. And upon the
24 Commission's approval we attempted to go forward at
25 that time.

1 The Commission is well familiar with the
2 history of what happened then, but the approval of
3 those programs was not a part intrinsically of our
4 ESP, and we were simply on a different time frame
5 than the other utilities.

6 CHAIRMAN SCHRIBER: Okay. You mentioned
7 as have others the collaborative process and, yeah,
8 we have all seen the September 16 letter. If I don't
9 ask the question, somebody will, the -- Mr. Poulos,
10 you said that after the collaborative have met -- had
11 met, that although you were adamantly opposed you
12 said the writing was on the wall and it was going to
13 go through in any event.

14 In my 11 years' experience I have never
15 heard an Intervenor say, gee, you know, the writing
16 is on the wall so we are not going to do anything
17 which is basically what you said, if I am not
18 mistaken. You said quote-unquote the writing is on
19 the wall and you adamantly opposed the program. Now,
20 Janine, from time to time and fairly so you have
21 accused me of sometimes subverting the whole
22 stipulation process because of things I might say or
23 do. I admit that. But isn't this another example of
24 why would we in the future or anybody agree to
25 stipulations or agreements when a party comes forward

1 after you know what hits the wall and says, oh, we
2 really didn't agree with that?

3 And then after this letter -- clearly you
4 saw the letter, it was docketed, and then we heard
5 nothing. We heard absolutely nothing from any of the
6 parties to dispute what was said in this letter until
7 after it hit the wall, so it's an observation.

8 I am not sure what your response would
9 be, if any. You can respond to it or not.

10 MS. MIGDEN-OSTRANDER: Well, of course, I
11 have a response.

12 CHAIRMAN SCHRIBER: What a surprise.

13 MS. MIGDEN-OSTRANDER: I wouldn't want to
14 disappoint you, Mr. Chairman. The truth of the
15 matter is that we felt that we were in a situation
16 where there was a program that we had opposed that we
17 thought was not good. We had vocalized that
18 opposition in the meetings with FirstEnergy in the
19 collaborative process. FirstEnergy made the decision
20 to go ahead anyway and -- and they filed it even
21 though there was opposition in the collaborative.
22 Now, we have not experienced that with other
23 collaboratives, but we have with FirstEnergy.

24 We also filed comments in opposition. It
25 was our impression because the staff was supporting

1 this program and FirstEnergy was supporting this
2 program that it was going to get approved. So we did
3 what we could to mitigate the damage to customers,
4 and we did that by for, one, having the price of the
5 light bulb which was originally set at 5.75 reduced
6 to 3.50. The program was supposed to be a three-year
7 program. We had it reduced to just the end of the
8 year so they could meet compliance with this year and
9 we also got them to agree to a rebate program.

10 At no time did we say we supported the
11 program. For having agreed to those changes we
12 withdraw our active opposition. There was no
13 stipulation in this case. There was no document that
14 OCC signed at any time. Now, you know, I think that,
15 you know, the question of should we have raised an
16 issue when FirstEnergy filed a document that said
17 that there was consensus? Our interpretation of that
18 consensus was that there was a consensus with respect
19 to the changes that we would -- we would accept them
20 with great reluctance, but it was never a consensus
21 that this was a good program.

22 And, you know, in hindsight being 20/20
23 we probably should have been a little clearer to the
24 Commission on that point, and I could see where the
25 Commission would think we were all onboard, but we

1 were never onboard and all the parties that were
2 involved in this process knew full well that OCC had
3 very serious reservations about this program, knew
4 about problems that had occurred in other
5 jurisdictions, and had expressed those concerns to
6 FirstEnergy throughout the process.

7 CHAIRMAN SCHRIBER: And I assume you
8 would express those to us in the future.

9 MS. MIGDEN-OSTRANDER: Oh, yeah.

10 CHAIRMAN SCHRIBER: We all learn, right?

11 MS. MIGDEN-OSTRANDER: Yes, be happy to.

12 CHAIRMAN SCHRIBER: Okay. Thank you.
13 Mr. Sullivan, you mentioned decoupling. We happen to
14 think decoupling is pretty good. We have done it
15 with our natural gas distribution companies. The
16 only problem you end with a fixed charge which is
17 usually significantly greater than the current fixed
18 charge, and if you think these light bulb programs
19 would raise the roof, wait until you do this. It's
20 happened; we know. But we still believe it's
21 something that could be -- well, you can phase it in,
22 sure, but go ahead.

23 MR. SULLIVAN: Well, I guess, you know,
24 certainly straight fixed variable rates meet a
25 definition of decoupling. They make a utility, you

1 know, indifferent to energy efficiency. But the type
2 of decoupling NRDC advocates for is revenue
3 decoupling, and we -- we support revenue decoupling
4 because we think it makes a utility indifferent to
5 energy efficiency investments without creating the
6 high fixed charges you talked about and preserving
7 customer incentives to conserve.

8 CHAIRMAN SCHRIBER: Okay. Other
9 questions? Commissioner Lemmie.

10 COMMISSIONER LEMMIE: Good afternoon. I
11 did want to follow up with the two of you,
12 Mr. Sullivan and -- who asked -- who in explaining
13 what you liked about programs in other jurisdictions
14 both referenced Vermont and Oregon. And I would
15 appreciate if, both Dave and Dylan, you wouldn't mind
16 giving us a summary quickly of the elements that you
17 find most appealing about those programs.

18 MR. RINEBOLT: Well, I guess I'll start.
19 Thank you, Dylan. Thank you, Commissioner. The
20 advantage that we see in the programs in both Vermont
21 and in Oregon is that you have one centralized
22 program manager. You can create exceptionally
23 vibrant energy efficiency programs and then the
24 practice in those states has been to target as
25 Mr. Randazzo pointed out the biggest bang for the

1 buck type of energy efficiency opportunities. So you
2 combine a lower cost of administration because there
3 is one administrator instead of in Ohio seven that we
4 are dealing with right now. You eliminate -- you
5 create a culture within that organization where it's
6 going to do the best thing. It is an energy
7 efficiency utility, but it's operated in the public
8 interest, and it's designed to produce the most
9 beneficial outcome for customers at the lowest
10 possible price. So we really see that as a -- as a
11 good model.

12 MR. SULLIVAN: I -- thank you, Chairman
13 and Commissioner. I agree with a lot of what -- what
14 Dave said. And we actually -- NRDC, we don't have a
15 generalized preference for third-party
16 administrators. We think it makes sense in very
17 specific situations. In Vermont one of the reasons
18 it makes sense is, you know, I think it's a state of
19 low population but I think there are 32 utilities in
20 the state so it would make it very difficult for each
21 utility to implement its own energy efficiency
22 programs.

23 But we also support third-party
24 administration where there -- where there is not a --
25 as we said in the ESP proceeding a motivated -- that

1 might have not been the right adjective but a
2 motivated utility partner. So in cases -- in cases
3 where the utility doesn't seem to want to do the work
4 it makes sense to have an organization whose purpose
5 is energy efficiency do the work.

6 MR. RINEBOLT: And, Commissioner, if I
7 may add one other thing, one of the things that we
8 have been able to do through this collaborative
9 process is that we now are using the same natural gas
10 program design with Dominion, Columbia, and Vectren.
11 We are using the same program design with FirstEnergy
12 and will soon sign with Dayton Power & Light. And we
13 are discussing with AEP through their collaborative
14 adopting again the same award winning program design
15 we already run.

16 COMMISSIONER LEMMIE: Mr. Chairman, I
17 have just one more quick question, if you will allow
18 me to proceed. Several of you referenced that the
19 best approach would include going back to the
20 collaborative process. Yet at the same time you've
21 said that the -- either the utility doesn't seem to
22 be an interested party or they have ignored the input
23 from the collaborative partners. So which way is it?

24 MR. SULLIVAN: Well, I think in my
25 comments I alluded to -- and if not, I didn't -- that

1 I think the choice, you know, for the program design
2 going forward should be -- should be made -- the
3 choice should be made basically by a, you know, vote
4 of the parties involved.

5 And the way the collaborative works now
6 is -- well, that's not the way it works. And, you
7 know, I think for this process to work the company
8 needs to be willing to listen and so far in my
9 opinion that hasn't happened.

10 MR. RINEBOLT: Commissioner, I would
11 suggest that under the current structure and
12 legislation that we are dealing with it's ultimately
13 the utility company's responsibility to achieve those
14 benchmarks, and so while they gather input from the
15 collaborative at the end of the day they have got to
16 make the decision. People come to these
17 collaboratives with different skill sets and
18 different backgrounds. Unfortunately not many of the
19 participants run low income or energy efficiency
20 programs, but I think when you look at the
21 collaborative process in Ohio, pretty much all the
22 parties are the same in every collaborative except
23 for the utility which is running their own
24 collaborative and doesn't participate in the other
25 utilities' collaborative. So I think over time we

1 would evolve to a standardized set of programs as we
2 have been able to do with the low income programs,
3 but we are just not there yet. We are just starting
4 efficiency in Ohio, and it's got to crawl before it
5 can walk.

6 MR. POULOS: Commissioner, we also -- the
7 Consumers' Counsel also recommended it go back to the
8 collaborative as well, and I specifically said that I
9 think there should be a vote or at least a
10 recommendation from the collaborative about what
11 program should go forward. I believe I noted that
12 this program was never recommended by the
13 collaborative. It was taken to the collaborative but
14 there is no recommendation from the collaborative and
15 I think that's at least a minimum step that would be
16 needed for recommendation in this situation.

17 MS. MIGDEN-OSTRANDER: If I may add --
18 I'm sorry. If I may add, we are hoping that from
19 this experience the take home message to FirstEnergy
20 will be that it should listen more closely to the
21 advice of the collaborative and try to achieve
22 consensus. And part of the reason for recommending
23 that it go back to the collaborative is because you
24 are looking at how are you going to distribute all of
25 these massive light bulbs, and it gets into the

1 nitty-gritty of detail, some may go here, some may go
2 there, and if the Commission wants to make that
3 decision, it could, and -- but it would require folks
4 submitting more detailed comments to you about, well,
5 send, you know, so many hundred light bulbs here and
6 so many there or that kind of thing. So that's
7 certainly an option to you. But that was part of
8 what our thinking was as well.

9 CHAIRMAN SCHRIBER: Sam.

10 MR. RANDAZZO: Yeah. If I could go back
11 to the discussion during the legislative process.
12 There was some of us who were strong -- strongly
13 opposed to the notion that mandates ought to be
14 imposed on the utilities and to subject utilities to
15 penalties both criminal and civil because of these
16 kinds of issues.

17 The renewables were raising all kinds of
18 money. People were becoming more sensitive to energy
19 efficiency. There was a lot of stuff that was going
20 on. Aggregation opportunities exist. There were a
21 lot of different channels that really could have done
22 some of the things where people had a better
23 opportunity to control their own destiny.

24 The reality is the law as David has
25 indicated, David Rinebolt has indicated, has imposed

1 the obligation on utilities and as a practical
2 matter, somebody that's exposed to both civil and
3 criminal penalties that are quite aggressive is not
4 going to turn over decision making authority on a
5 very practical level to an independent administrator
6 who is accountable to a group grope occasionally that
7 goes under the name of a collaborative process.

8 The other practical problem that happens
9 and it's happened -- it's not unique to any
10 stakeholder that's involved in this process right
11 now, we have seen it over the last four decades, or
12 at least I have, and that is to the extent you
13 require consensus you establish paralysis and you
14 equip an individual member of a voluntary
15 organization with an absolute ability to veto the
16 ability of any good idea to get before the
17 Commission.

18 There is nobody that can look at what has
19 happened here and say that they did not have ample
20 opportunity to voice their views however they were
21 formed on what it is the Commission should do and we
22 need, as the Chairman has suggested, if there is a
23 concern about a proposal, you need to come forward.
24 It doesn't do anybody any good to say that, well, I
25 decided to go along or I decided not to pay attention

1 or I decided that I was going to get something for
2 this and, therefore, I was going to be quiet. It is
3 incumbent on all of us but so what?

4 The question is we have got 3.7 -- or 3.5
5 million compact fluorescents sitting in a warehouse
6 somewhere in northeast Ohio that is not doing anybody
7 any good while we are sitting here arguing
8 theoretically over what it is we ought to be doing.

9 It seems to me we need to get the energy
10 efficiency moving and try to get those other things
11 done that will enable the opportunity to pick the low
12 hanging fruit up as quickly as possible. And I hate
13 to be a nag about this but I will because I am a
14 professional at it, getting those administrator
15 agreements approved in the case of FirstEnergy ought
16 to be one of the top two or three things that the
17 Commission should be addressing. Thank you.

18 COMMISSIONER LEMMIE: Thank you.

19 MR. KORKOSZ: Mr. Chairman, if I might
20 have a couple of words on that subject.

21 CHAIRMAN SCHRIBER: Sure.

22 MR. KORKOSZ: FirstEnergy hasn't been
23 recalcitrant or difficult in the collaborative
24 process as would be the implication of some of the
25 comments we've heard. FirstEnergy has -- as

1 suggested by both Mr. Randazzo and Mr. Rinebolt, we
2 are the ones with the obligation to meet 2009
3 benchmarks. Collaborative discussions could go on
4 for a long time and, in fact, there were productive
5 discussions coming out of the collaborative. Frankly
6 we thought that the continued discussions amongst the
7 parties that ultimately resulted in the September 16
8 letter and the what even Ms. Migden referred to as
9 consensus at one point was -- was a continuation of
10 that kind of process. But the utility's interest
11 which was not necessarily that borne by other parties
12 was that we had to meet 2009 benchmarks and so we
13 wanted to go forward with that and that's why we had
14 to move forward with a program that we thought
15 would -- that would achieve that result.

16 CHAIRMAN SCHRIBER: Thank you.

17 COMMISSIONER LEMMIE: Thank you,
18 Mr. Chairman.

19 COMMISSIONER CENTOLELLA: Mr. Chairman, I
20 guess at this point I am concerned about what I have
21 seen here today and what its implications are for the
22 future of a collaborative process. You know, we've
23 seen collaboratives work over the years in other
24 utilities in other situations. But I -- you know, it
25 is important if we are going to use a collaborative,

1 that the parties be able to expeditiously come to an
2 agreement about how to move forward and, you know,
3 and we have something here which is now, you know, we
4 have taken some months to get to this point, and it's
5 clear we don't have agreement on how to move forward
6 at this point.

7 So I guess I would like to spend just a
8 moment understanding, you know, how we got to this
9 point. Initially, you know, FirstEnergy proposed a
10 program that was for CFLs that was as I see it quite
11 different from the program that was ultimately agreed
12 to, included, you know, substantial use of retailers,
13 you know, included, you know, mail delivery only for
14 new customers and, you know, really was a program
15 that seems in many ways much more aligned with what
16 were ultimately the comments of OCC and NRDC, you
17 know, once the filings were made.

18 I guess I don't understand how we got to
19 a point where there was opposition rather than there
20 was early agreement on something that was much closer
21 to what the company had initially proposed, and I
22 would really like to hear, you know, input from the
23 parties who were part of that discussion as to how we
24 got to this point.

25 MR. SULLIVAN: Well, I think, Chairman

1 and Commissioner, I think that I would disagree that
2 the program as modified includes substantial use of
3 retailers.

4 COMMISSIONER CENTOLELLA: No, I am not
5 talking as modified. I am talking initially
6 proposed. As I read the description that was part of
7 the company's initial application it referred to, you
8 know, use of a retail -- of retailers and, you know,
9 there was -- there was much less use of this direct
10 mail kind of activity that I think that was limited
11 to only new accounts and, you know, we evolved into
12 something quite different when the initial proposal
13 seems like it was much closer to the position
14 ultimately taken by OCC and NRDC, you know, later on
15 in the process.

16 And I guess I am at a loss as to how we
17 were not able -- the parties were not able to come to
18 a more rapid agreement on something that seems like
19 the company's initial proposal was actually closer to
20 the positions of OCC and NRDC than what we ended up
21 with.

22 MR. SULLIVAN: I guess I would disagree
23 that the initial proposal was close to what NRDC, you
24 know, proposed in its recommendations. I think our
25 problems with the program as filed were that it

1 included an incentive for the full cost of the bulb,
2 basically free bulbs. I think that -- we thought
3 that was a poor use of incentive dollars and we
4 generally want energy efficiency programs to work
5 through the market. And customers buy light bulbs.
6 They don't wait for them to appear on their doorsteps
7 and that is why we opposed the initial program.

8 COMMISSIONER CENTOLELLA: But as I look
9 at the initial program design, you know, this was
10 going to be distributed through selective retailers.
11 There was, you know, as I -- as I looked at it, I
12 thought, you know, we were looking at something where
13 the company's initial idea was something like a
14 2-for-1 deal or something. You know, you buy one,
15 you get one free. That's the implications I draw
16 from that initial description is that there was a lot
17 more flexibility, you know, than what we ultimately
18 got in the modified program.

19 And I'm just a little lost as to how
20 there was not a productive discussion of that between
21 when -- you know, when this was filed in July or even
22 earlier and, you know, what ultimately got modified.

23 MR. POULOS: Commissioner, I would agree
24 with NRDC that we didn't -- we did not see it that
25 way when it was first -- the application was first

1 submitted in July. We had concerns with it as well.
2 We were concerned about the direct sending or
3 delivering of the light bulbs. We did have
4 opposition to it.

5 What I was referring to in my statement
6 before was earlier than the application, during the
7 collaborative process in approximately May time
8 frame, the company did have a different approach that
9 was more in line with the other ones and that was the
10 approach we did like. We wanted to see more numbers,
11 some of the figures behind it, but that was the
12 concept we liked. But once the application came out
13 the application was something that we opposed and
14 asked that it be sent back to the collaborative.

15 COMMISSIONER CENTOLELLA: Let me get
16 Mr. Korkosz's response here. I mean, how did we
17 get -- or it seems like initially the parties were
18 closer together to something we are now in a position
19 where the parties don't seem to be together?

20 MR. KORKOSZ: Certainly, Commissioner.
21 Things happened between July when the application was
22 filed and with the movement in time into September
23 when the subsequent discussions that I have referred
24 to resulting in the more refined detailed delivery
25 program that ultimately resulted. The passage of

1 time made it more incumbent upon a program that would
2 get these CFLs into the hands of customers so that
3 the energy savings could be realized in time to count
4 for our 2009 benchmark compliance.

5 The longer period of saturation and
6 penetration, if you will, that results from
7 customer -- voluntary customer discretionary actions
8 in choosing to purchase a bulb or have the
9 negotiations with retailers and the like, that time
10 got chewed up, and we didn't have that by the time we
11 got to September.

12 We mention one other thing, you've
13 obviously read the application quite closely. You
14 will note that the initial -- and there's been a
15 reference to it here, that the initial anticipated
16 cost, that is, our cost per bulb was at \$5.75. And
17 the refined proposal of September 16 put that cost
18 closer to \$3.50. Largely the reason for that -- for
19 that difference is not negotiating amongst the
20 parties but rather the company's activities in
21 seeking a request for proposal amongst manufacturers
22 and getting the manufacturers to bid down and come in
23 with a more favorable pricing of this product such
24 that we could then as the company go to the parties
25 with whom we were still speaking and say, okay,

1 you've had a concern that this \$5.75 price is too
2 high.

3 We can accommodate that because we now
4 have better information. We have a commitment from
5 manufacturers, and we can come in with a better
6 program. But, again, I think the key point that I've
7 made before and certainly Mr. Rinebolt and
8 Mr. Randazzo have recognized it here is that with the
9 passage of time we had a 2009 benchmark to have to
10 meet, and we needed to come up with a program that
11 from our standpoint would allow us to come into
12 compliance.

13 COMMISSIONER CENTOLELLA: I guess let me
14 say one thing, I think, you know, that ultimately,
15 you know, this is about getting cost effective energy
16 efficiency out in the field and, you know, actually
17 having bulbs installed in people's homes, not just
18 delivered to the doorstep but installed in people's
19 homes and doing energy savings and, I mean, you know,
20 we've seen programs in other states, you know, where
21 only about 65 percent of bulbs that are distributed
22 actually make themselves installed.

23 You know, I think it's very important
24 that we actually look at, you know, getting
25 installations and actually getting savings as opposed

1 to talking about compliance. This is not simply an
2 exercise in compliance as the Chairman indicated
3 earlier; it's an exercise on how we save money, you
4 know, vis-a-vis what would be more expensive options
5 if we don't do this.

6 And so I would encourage parties to think
7 not so much about compliance but to think about how
8 we, in fact, achieve savings.

9 COMMISSIONER CENTOLELLA: Mr. Chairman,
10 if I can --

11 CHAIRMAN SCHRIBER: Sure.

12 COMMISSIONER CENTOLELLA: -- explore one
13 other area. We have had a number of parties, you
14 know -- in fact, I think, you know, Mr. Rinebolt,
15 Mr. Sullivan, you know, OCC recommend third-party
16 administration. You know -- you know, Sam, you
17 indicated some at least value to affinity based
18 third-party administration.

19 Mr. Korkosz, I would like to know what
20 the company's view is as to whether or not
21 third-party administration may make sense in a -- you
22 know, in the residential sector given the, you know,
23 it could be structured presumably with appropriate
24 incentives for the administrator to actually achieve
25 the kinds of savings that the benchmarks lay out.

1 What's your -- what's your view of that?

2 MR. KORKOSZ: Well, I have a two-fold
3 response to that, Mr. Centolella. First of all,
4 we -- we are operating under the guidelines and the
5 directives of our ESP which structured a
6 collaborative process to deal with these and
7 certainly that is an interesting idea that might be
8 taken up by the -- through the collaborative or
9 recommended out if it made sense. I am not sure that
10 I have -- I am in a position to give an up or down
11 vote on the position of the company to that, but I
12 think if that is something that gets proposed and
13 discussed to the collaborative, that certainly it's a
14 worthy topic of discussion in that forum and that's
15 consistent with the framework that we have -- we have
16 to work with.

17 I would not to sound but I possibly will
18 in beating a dead horse that, again, that while we
19 share your Honors' interest in the long-term energy
20 savings impacts and actual effects, that nonetheless
21 we -- we necessarily are concerned -- concerned by
22 the time constraints and having to meet the
23 benchmarks and that we necessarily need to keep an
24 idea on that focus from -- from our perspective.

25 COMMISSIONER CENTOLELLA: Understood.

1 MR. RANDAZZO: If I may, I just want to
2 make sure there is no confusion. The comments I have
3 made about the administrators should not be
4 interpreted as favoring an independent third-party
5 administrator. The administrator's role is really
6 that as a conduit to try and leverage the
7 relationships and capabilities that exist closer to
8 the ground and bring those capabilities forward.

9 The structure of the administrator
10 process again is embedded and the ESP that was
11 approved by this Commission is that those
12 administrators bring forward projects. What
13 ultimately happens with those projects is a function
14 of what the Commission decides as those projects are
15 brought forward so it's still -- it's still not
16 third-party administration.

17 I want to say one thing, however, about
18 third-party administration. We are in November,
19 close to being in November, of 2009. We can't be in
20 the world of what if with compliance obligations that
21 are -- at least now so and I know, Commissioners, you
22 know that as well as anybody from your real world
23 experience.

24 So the question I think right now is
25 what -- what do we do right now if there is an

1 opportunity to fold in third-party administration
2 that's independent on top of independent measurement,
3 independent evaluation? We get so independent that
4 nobody has any ability to get anything done. That --
5 you know, that discussion can be had at some point in
6 time but I don't think that we are going to get very
7 far right now here today.

8 CHAIRMAN SCHRIBER: Commissioner Roberto.

9 COMMISSIONER ROBERTO: Thank you,
10 Mr. Chair. I don't want to beat a dead horse on what
11 this record looks like but I do need vis -- I need to
12 revisit this record. The way -- the way I do my job
13 is I read every piece of paper there is in this
14 docket. And I do my best to understand it. And in
15 this case I have read everything and I have read it
16 multiple times. When -- and we have talked about
17 this. When I see a letter in a file that says
18 consensus has been reached, it's been docketed, it's
19 been mailed to the parties, and I don't hear anything
20 back, as I have heard already acknowledged, the
21 Commission should be able to presume that there
22 actually is a consensus around that.

23 Now, pushing that aside as I have
24 listened to arguments made today, particularly,
25 Mr. Poulos, yours, you made a comment that the Office

1 of Consumers' Counsel objected to 100-watt bulbs
2 because they are problematic and they shouldn't have
3 been selected, that the savings were not accurate,
4 that the real cost of the light bulbs is a dollar and
5 a half and I do not see those remarks, comments
6 otherwise filed inside of this record. I could not
7 have been aware of those concerns when this matter
8 was brought to me.

9 If that was the position of the
10 Consumers' Counsel and the Consumers' Counsel wants
11 us to be aware of those concerns, I need to know. It
12 has to be in the record. There is nothing in here
13 that would indicate to me that there is a concern
14 about the savings calculations or the cost of those
15 bulbs.

16 As I do the math with the information
17 that I had in front of me, it looks to me like these
18 programs would have delivered energy efficiency to
19 consumers in northern Ohio at a cost of about a penny
20 and a half a kilowatt hour, and as Mr. Rinebolt had
21 said, typically 4 cents a kilowatt hour is a pretty
22 good deal. The folks in the northern Ohio are
23 paying, and I am looking at the residential tariffs,
24 on average somewhere about 7 cents for the generation
25 part of the electricity. So this energy efficiency

1 would have been substituted for that energy. In
2 other words, we could have purchased a penny and a
3 half of energy efficiency in return for not using the
4 7 cents of electricity for northern Ohio.

5 And this is the absolute worst way that a
6 really good idea was introduced to our consumers in
7 northern Ohio, and I am very disappointed with the
8 state of the record and the state of the information
9 that has come out here. Now, if the Consumers'
10 Counsel would like to point to the record and let me
11 know where I missed the buck and a half that the
12 bulbs should have cost or the problems with the
13 100-watt bulbs or the concerns with the savings, I am
14 happy to look at it, but I have read this record over
15 numerous times, and I did not see it.

16 Now, from FirstEnergy's standpoint, you
17 know, your application stated that you have had --
18 that you were basing these programs on programs --
19 the design of this on programs that were successfully
20 implemented in other states, other utilities. In
21 your opening you commented about Los Angeles in 2009.
22 I am curious about what other programs -- what other
23 utilities and what other states you are pointing to
24 because after this became public in northern Ohio, we
25 all became aware of the December, '07, program that

1 Allegheny Power had in Maryland. And in that
2 instance consumers there complained that they were
3 misled by the campaign because the bulbs were not, in
4 fact, free. They were concerned that there was mail
5 fraud because they were being sent something they
6 didn't ask for. They were concerned about the safety
7 of the light bulbs because of the mercury in them.
8 They -- there were calls from legislators for
9 investigation. There was a suspension of the program.

10 I mean, this is sounding like deja vu,
11 and I have to ask what happened with FirstEnergy's
12 design of this program, that something that happened
13 more than two years ago was not taken into account in
14 the program design, and as we are sitting here
15 hearing from all of you, I believe I also heard the
16 Consumers' Counsel mention that they were aware of
17 problems like this that had occurred.

18 And I have to ask why was the Commission
19 not made aware of these problems and why were
20 measures to mitigate the delivery of this program not
21 taken into account? And I will ask, you know,
22 Mr. Korkosz or Ms. Migden-Ostrander, if anybody wants
23 to respond to the fact that apparently folks in the
24 collaborative were aware of this kind of information.
25 What was done about it?

1 MR. KORKOSZ: Let me try, your Honor.
2 The program that we thought was most comparable was
3 the Los Angeles program that I alluded to in my
4 initial remarks, 2.4 million bulbs, two each to each
5 of the Los Angeles 1.2 million residential customers
6 were door-to-door delivered just as was the primary
7 mechanism of distribution planned for our program.
8 And that program received considerable public
9 acceptance. The mayor of Los Angeles and other
10 officials spoke well and endorsed the program and the
11 like.

12 In contrast there is some distinctions to
13 be drawn to the APS, I believe Potomac Edison Company
14 in Maryland experience -- not Potomac Electric,
15 Potomac Edison.

16 COMMISSIONER ROBERTO: Allegheny Power.

17 MR. KORKOSZ: It was Allegheny Power.
18 They are part of that system in 2007. That was
19 entirely a mail -- planned mail delivery of bulbs
20 given the somewhat rural nature of the service
21 territory there. And unfortunately as a result of
22 probably the effect of the calendar, large pallets of
23 bulbs to be mailed started arriving at rural western
24 Maryland post offices just around the peak of the
25 holiday season and that provided some considerable

1 consternation amongst that group of governmental
2 officials.

3 The other public reaction to media
4 coverage of the program to which you alluded
5 certainly did occur. I would suggest as I would
6 characterize the experience here that there was a
7 vocal but I would suggest a minority, a small but
8 vocal response that -- that occurred as a result of
9 un -- dissatisfaction with that distribution
10 mechanism and that program. We believed that the Los
11 Angeles experience more recent in time in
12 circumstances of service territory; Los Angeles more
13 like Cleveland than compared to the rural Maryland
14 postal delivery experience was -- was a better -- a
15 better analogy upon which to draw.

16 I will go back. You beat a dead horse,
17 I'm afraid I am going to have to, and that is at that
18 point in time we were running up against the clock
19 and we needed to get a program underway. I would
20 again suggest that as your remarks recognized that we
21 thought we had a program upon which there was a
22 consensus. There was no collaborative arrangement in
23 Maryland. I would, however, note that the Maryland
24 Commission in September, I believe it was September
25 26 of 2007, from the Bench when Allegheny -- APS

1 proposed the program ruled from the Bench their --
2 their approval of and endorsement of that program and
3 the full support of the Commission with Allegheny
4 going forward to meet a goal -- not a compliance --
5 mandatory compliance benchmark but a goal set by the
6 governor of the state of Maryland and it was as the
7 Chairman mentioned only after the wall became
8 littered that -- that a reexamination by the Maryland
9 Commission and the subsequent events took place.

10 COMMISSIONER ROBERTO: Thank you. I have
11 some follow-up questions, particularly related to the
12 lost revenue information in the application. The
13 stipulation, the ESP stipulation, has every party
14 sitting here except NRDC who did make note in the ESP
15 that they were unhappy but were signing anyway that
16 there would be a lost revenue recovery for programs
17 that came out of this but that those programs -- the
18 lost revenue recovery should be linked to the
19 distribution case that was recently approved.

20 And I many puzzled and as an initial
21 matter, I want to just note that when I read the
22 entry that we signed, we didn't approve lost
23 distribution revenue. I mean, we clearly
24 recovered -- signed off on program costs but there is
25 no question among anybody sitting here that you all

1 know the difference between lost revenue recovery and
2 program costs.

3 In fact, the ESP stipulation has them
4 addressed on separate pages. One is on 25 and one's
5 on 28. They are separate items and this Commission
6 spoke to one; it didn't speak to the other. But none
7 the less I would like to go back to that application
8 and ask the parties here if you all are in agreement
9 through the ESP stipulation that lost revenue
10 recovery is appropriate, but it should be aligned
11 with the D case.

12 As best as I can tell, the 3.5 cents a
13 kilowatt hour is what was put in the file and not
14 objected to, yet that number does not match the D
15 tariffs that I am seeing in the three distribution
16 companies that are in northern Ohio now. In fact,
17 two of them pay less than -- significantly less than
18 that per kilowatt hour for the volumetric
19 distribution costs. And I am puzzled as to why that
20 was not objected to in the record and why it was
21 proposed by FirstEnergy. Or have I misread tariffs?
22 I am looking at 2.9 cent tariff in Toledo Edison, I
23 believe, and Ohio Edison it was 3 point something and
24 there was only one tariff that it was actually 3.55,
25 yet 3.5 is what this application called for.

1 MR. KORKOSZ: That is correct, your
2 Honor, in attachment D identifying that -- that
3 component in lost distribution revenue. And that is
4 what we believed we were asking for in this -- in
5 this application.

6 COMMISSIONER ROBERTO: And how does that
7 relate to the current tariffed distribution
8 volumetric charges in each of those three companies?
9 I mean, I guess I am starting with the implicit --
10 implicit assumption that you can only recover lost
11 revenue when you actually lost revenue. So that if
12 your tariff, in fact, only permitted you to collect
13 2.9 cents per kilowatt hour, then you wouldn't be
14 able to collect 3.5 in lost revenue.

15 MR. KORKOSZ: As I understand the
16 formulation of the 3.5 cents was not only the
17 delivery charge of the tariffs but included a --
18 other components of what went in to the distribution
19 tariffs which included a customer charge and other
20 components. It was not simply the kWh delivery
21 charge that goes into this 3.5.

22 COMMISSIONER ROBERTO: The customer would
23 still be paying the customer charge. The only thing
24 they would not be paying would be the volumetric
25 charge.

1 MR. KORKOSZ: But -- that is true but
2 that's -- I am speaking from the derivation of the
3 3.5 cents that appears in attachment D that was the
4 basis for that lost -- lost revenue number.

5 COMMISSIONER ROBERTO: Well, I'm afraid I
6 am not following that, but I probably don't need to
7 since it's not part of this order anyway, and I am
8 sure we will revisit it at some point in the future
9 since it's part of the ESP stipulation.

10 I don't believe I have any other
11 questions.

12 CHAIRMAN SCHRIBER: Yeah. I want to get
13 Ronda in here since she has a meeting coming up.

14 COMMISSIONER FERGUS: I don't have a
15 question, but I do want to chime in with what the
16 Chairman and Cheryl said about my disappointment in
17 the state of the record. I find most troubling that
18 because we thought there was consensus and it was not
19 challenged and none of these concerns were in the
20 record, like Cheryl I read all the pleadings, and we
21 thought it was approved, that was the sense I got
22 from reading that letter, that the Commission went
23 ahead and approved it and because we did that the
24 company relied on that and expenses were made. And,
25 now, we are paying to store light bulbs. But the

1 worst part about it is is consumers are now very
2 confused and angry about a program that, you know,
3 maybe the distribution -- the way the light bulbs
4 were distributed was not the best, but the program
5 itself is a good program with benefits to consumers.

6 And, now, we've got them confused. They
7 think it's a bad program. They think they are paying
8 this, you know, unbelievable amount for light bulbs
9 and I don't know how we are going to turn that
10 around. And so my -- I think whatever we end up
11 doing with this, if we send it back to the
12 collaborative or whatever, I'm concerned about more
13 than just how we distribute the light bulbs or what
14 we do with them, but I think some effort needs to be
15 put into how do we turn around that public image
16 through education because when the consumer advocate
17 comes out and starts, you know, blasting the program
18 and it wasn't good and that's not what -- you know,
19 that's not what we recommended, then I think we get a
20 really bad taste in consumers' mouths and they think
21 that what we did was, you know, very contrary to
22 public interest and that's what I am most
23 disheartened about is the bad taste that was left in
24 consumers' mouths because we went ahead and did
25 something thinking there was agreement.

1 MS. MIGDEN-OSTRANDER: I would like to
2 respond to that. The Consumers' Counsel did not come
3 out blasting the program. The Consumer's Counsel got
4 inquiries from the reporter who was working on the
5 program and asked us what we thought about the
6 program and we gave the reporter the same opinion
7 that we had shared with your staff, with the
8 collaborative, and with everybody else that the
9 program was not the optimal program to be done. And
10 what we did was when we saw -- when we thought the
11 program was going to be approved, we did everything
12 we could to defend consumers, to minimize and
13 mitigate what we saw as a bad program and that's when
14 we negotiated and made some changes to the program.
15 But we never endorsed the program. We never signed a
16 document saying we were onboard with the program. We
17 never signed a stipulation on the program.

18 COMMISSIONER FERGUS: But your silence --

19 MS. MIGDEN-OSTRANDER: It was not our
20 attempt to go out blasting the program, but when we
21 got calls from the reporters asking us about it and
22 what was going on, we responded to the best of our
23 ability.

24 CHAIRMAN SCHRIBER: Did you call the
25 reporters, or did they call you?

1 MS. MIGDEN-OSTRANDER: They called me.

2 CHAIRMAN SCHRIBER: Just kidding.

3 MS. MIGDEN-OSTRANDER: They called me. I
4 will answer that.

5 COMMISSIONER FERGUS: Your silence in the
6 record, by that I don't understand how that happened
7 frankly because just this week and regularly you make
8 filings all the time in dockets that we have. You
9 made one this week in a case we decided today saying
10 just want to make sure you know that while we are not
11 opposing it we do have this concern and we are
12 reserving our right to do that. And that's how --
13 that's the only way the Commission knows that because
14 otherwise we have to assume based on what we are
15 reading in the record that that's the state of the
16 record so anyway.

17 CHAIRMAN SCHRIBER: Okay. We have beaten
18 a lot of dead horses, so much so we are going to have
19 dog food for a long time, glue.

20 Anything else other than I can wrap it
21 up?

22 COMMISSIONER CENTOLELLA: I want to say
23 one thing, the purpose of a collaborative is to get
24 alignment among all the stakeholders and the company
25 about how to push energy efficiency forward in a

1 positive way. You know, if this collaborative is
2 going to be a successful process, you need to come to
3 that alignment and get behind something, and if you
4 can't do that, then you need to make clear to the
5 Commission that you haven't done that, and the
6 Commission will make a decision about how to move
7 forward.

8 CHAIRMAN SCHRIBER: That's what I was --
9 go ahead, Sam.

10 MR. RANDAZZO: Yeah, I was going to say I
11 hope the experience here is contrasted with the
12 experience that we have on the commercial and
13 industrial collaborative process where there has been
14 consensus and proposals have been supported, but I
15 will come back again not to beat a dead horse which
16 is already dead we need the Commission's help in
17 being able to move forward in things where there is
18 consensus and so, you know, and those agreements have
19 been pending for several months so we need your help
20 too. It's not just a question of what we can do as
21 individuals.

22 CHAIRMAN SCHRIBER: Sure.

23 MS. MIGDEN-OSTRANDER: And I would like
24 to add that the collaborative process has been
25 working very well with AEP, DP&L, Duke. Those we

1 would like to see followed with FirstEnergy.

2 CHAIRMAN SCHRIBER: Okay.

3 MR. RANDAZZO: And that is a matter of
4 opinion.

5 CHAIRMAN SCHRIBER: Well, no. My
6 position has been after a few years of this that I
7 have never been a real strong advocate of
8 collaboratives because ultimately you get to the
9 point FirstEnergy wants to buy new trucks and there
10 is going to be a collaborative as to whether they
11 should be Chevrolets or Fords. We can't get there.
12 So -- so the problem with collaboratives that I have
13 always envisioned is that you just -- you have so
14 much trouble getting there, it takes forever.

15 My question is -- well, I don't know if
16 it's a question or a statement. I think on a going
17 forward basis -- I think we are done now with our
18 retrospective here. I think on a going forward basis
19 we have to decide how we are going to get -- how we
20 are going to get this thing done, so it's got to be
21 either through a rational, quick collaborative basis
22 process where at the end of the day people aren't
23 throwing everyone else under the bus or the company
24 has to say we are going to do this, we are going to
25 the Commission, as Commissioner Centolella said,

1 Commission, what do you think and we do it.

2 You know, one other question, Art, is
3 does the company -- I know you presented a position
4 and an idea. Is there anything else that the company
5 has up its sleeve to be blunt or any other ideas that
6 it may attempt to implement that we haven't heard
7 about or that you may not even want to tell us about
8 right now? But is there any thought going into how
9 to get around this?

10 MR. KORKOSZ: Well, we are certainly open
11 to new -- new approaches, and we are trying to come
12 up with them. What we have presented to the
13 collaborative and what I recounted earlier I think
14 reflects our thinking at the moment but that doesn't
15 foreclose our openness to other approaches that --
16 that make sense.

17 CHAIRMAN SCHRIBER: Thank you. That's
18 what we need to know, I think.

19 COMMISSIONER LEMMIE: Mr. Chairman, if I
20 might, in all of the statements that were presented
21 to us today there seem to at least be a rallying
22 around an approach to get the current bulbs
23 distributed and there really wasn't a lot of
24 difference in how that was done, community
25 engagement, customer access when they are involved

1 with a community agency, or with the company. It
2 seems to me that there might very well be an
3 opportunity for the collaborative parties on this
4 issue to sit down and come back very quickly with
5 some recommendations that all of you can for the
6 record endorse and over the longer term in evaluating
7 how the collaborative works and what the role of the
8 members are, if there are minority opinions, how
9 those are addressed you might take up at a later
10 point, but I think the most important thing is how do
11 we get the light bulbs out and how do we -- as my
12 fellow Commissioner Fergus said, how do we ensure
13 that the public understands that this program is in
14 their interest, it is cost effective, and it will
15 make a difference in not only their quality of life
16 because of the use of less coal-generated power but
17 also in their cost of power? Thank you.

18 CHAIRMAN SCHRIBER: Thank you. Okay?
19 You all, thanks for coming forward. This has been
20 very informative for us. I am not saying we
21 understand a lot more. On the other hand, we have
22 put all the stuff behind us and, now, we can look
23 forward and I think if we achieved anything of great
24 significance today, it's that. So thank you. And
25 anything else?

1 Paul -- paul has volunteered to get rid
2 of the dead horse for us, and we're adjourned. Thank
3 you.

4 (Thereupon, the hearing was concluded at
5 3:26 p.m.)

6 - - -

7 CERTIFICATE

8 I do hereby certify that the foregoing is
9 a true and correct excerpt of the proceedings taken
10 by me in this matter on Wednesday, October 28, 2009,
11 and carefully compared with my original stenographic
12 notes.

13
14 _____
15 Karen Sue Gibson, Registered
16 Merit Reporter.

17 (KSG-5115)

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