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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Wednesday Afternoon Session,
October 28, 2009.

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

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

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

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

MR. POULOS: Greg Poulos from the Ohio

Consumers' Counsel.

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

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

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

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

CHAIRMAN SCHRIBER: Understood.

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

HEARING OFFICER: What was that last name?

Okay. Let's begin with Art.

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

As required by our electric security plan order, the companies initiated a collaborative process amongst the ESP parties, and a compact fluorescent light bulb, CFL, distribution program emerged from that collaborative.

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

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

Three key aspects of the modified approved program are especially pertinent here. First, despite recent opportunistic public comment by certain intervenors here, notably the Ohio Consumers' Counsel and the NRDC, the program of direct distribution of CFLs to all residential and some small business customers and with recovery of program costs distributed over all of those customers was the mechanism discussed both in the collaborative and subsequently among the interested parties and upon which concensus was reached as reflected in the September 16 letter. That fact cannot be disputed.

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

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

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

The relatively small but vocal negative reaction to media coverage about the CFL program was unanticipated, especially so given the favorable public reaction that similar direct distribution programs received elsewhere, notably Los Angeles which implemented the program in early 2009 involving direct delivery of 2.4 million CFLs to its residential customers.

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

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

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

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

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

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

Under such an alternative, however, it is essential the Commission recognize that the new costs in this program will be higher, driven up, for example, by the increased IT costs and overhead costs associated with a selective rather than a general distribution to customers and by the fact that mail delivery is more expensive than direct delivery. Moreover, distribution of CFLs under this voucher alternative would proceed over two years on a much more gradual pace than the direct delivery under the earlier program.

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

On a closing note the experience here with the CFL program gives the Commission an important opportunity to consider energy efficiency programs from a broader perspective. Some have referred to the energy savings aspects of SB 221 as the statute's jewel. As with other jewels, however, energy efficiency programs come with a cost. The companies chose the CFL distribution program as a mechanism that would deliver significant bang for the buck addressing the 2009 statutory energy usage reduction target of 0.3 percent.

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

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

If the current outcry over the mandatory nature of the energy savings requirements and their associated costs has given the Commission and other parties pause in this first year, preliminary program where every customer receives a direct benefit because every customer would receive a bulb, then we should all face up to the reality that under the statute's future requirements such concerns and controversy will become even more pronounced and strident when the necessary more costly programs will most likely involve proposals where, for example, one customer effectively subsidizes another's home insulation costs or other similar types of projects.

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

CHAIRMAN SCHRIBER: Thank you, Mr. Korkosz.

Mr. Poulos from Consumers' Counsel.

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

We appreciate the opportunity to be heard today, and I will use my time to address the following topics: First, the Office of the Consumers' Counsel's concern for the type of CFL lighting program that was proposed and is still -- or is -- right now is currently suspended and OCC's recommendation to the Commission on how to proceed from here.

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

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

Finally, another concern we had as this

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

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

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

Now, Duke, AEP, and Dayton Power & Light all had designed and implemented their programs at least six months earlier to meet the 2009 benchmarks. They also had a portfolio of programs where they introduced a number of different opportunities to get energy savings. Each of those three other collaboratives designed a CFL program months ago that incorporates nationally recognized and acclaimed programs that provide incentives to retailers to lower the incremental price of bulbs. In Duke's case they use one where there is a discount provided in your -- with your bill. In AEP they used more of a discount right at the retailer. And in both situations though you get a reduced price from the retail price you would see at a retail store. And then the retail store would work out the difference with the utility company.

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

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

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

We did not review this letter beforehand. There is no mention of Ohio Consumers' Counsel's support of this type of program, only consensus on the conditions. And OCC did agree not to oppose this proposal but that is it. And why we did that? There were four groups involved in the review of this program going in the final -- final process of it, and it was not the collaborative. It was just four groups. There was Ohio Consumers' Counsel, NRDC which will be coming up soon to talk, Public Utilities Commission staff, and the companies. And the NRDC and Ohio Consumers' Counsel were both of the position where we were adamantly opposed to this program, and we could not see it going forward. The other two wanted it to go forward and were adamant that it should go forward and needed to go forward.

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

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

In the end we weren't able to stop the

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

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

And as we currently stand here, the Consumers' Counsel is recommending that because FirstEnergy did not adequately promote the long-term benefits of energy efficiency prior to initiating the giveaway, the giveaway program, and their timing in doing this program is so late that the marketing lacking, the timing being so late, therefore, we recommend the $1.3 million in marketing and education should be disallowed.

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

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

Now, what do we do with 3.75 million bulbs that are in storage currently? OCC does not believe that just one idea will work to move those 3.75 million bulbs in a timely fashion to mitigate the storage costs. The FirstEnergy residential collaborative should be provided the opportunity to vote on a solution. And because there are so many bulbs already at hand we recommend trying to take a number of different courses including the one that was proposed by the companies that we did hear in the collaborative, but we received information just then and we have no back-up information to see how it would work so that would be something we would -- we would consider if we had more information. We also would consider reselling the bulbs back if that can be looked into. An opt-in program similar to what FirstEnergy Companies maybe even further as the collaborative would discuss where people could actually make the decision to decide if they want those bulbs and if they would use them.

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

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

CHAIRMAN SCHRIBER: We will wait for questions.

MR. POULOS: Thank you.

CHAIRMAN SCHRIBER: Mr. Randazzo.

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

The Chairman's earlier comment is -- struck me when I was looking at the order that set this. I do not believe that this is an oral argument. There is very little to argue about quite frankly. The history is quite clear. The application was filed. It was modified within the collaborative. It included provisions of cost recovery. It was approved by the Commission. The description of the program was quite clear. It involved direct delivery of compact fluorescent light bulbs as counsel for the companies has already noted.

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

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

I have prepared a written statement. I am not going to read the written statement; I will summarize it. We filed it as part of the record so that anybody that wishes to can have it to point to and either support or take shots at it as the process allows.

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

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

We have another utility in the state of Ohio that's already implemented a program, Duke Energy, as counsel for the Office of Consumers' Counsel has already mentioned, and they are currently recovering costs associated with that program including what are referred to as lost revenues.

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

We in the testimony -- or the prepared statement, I should say, I also describe the implications of commitments that have been made by the state of Ohio in conjunction with receiving stimulus dollars as part of the commitments that have been made by the state of Ohio. There are things in there that require the state of Ohio to actively and proactively deal with things like the aligning the interest of customers and utilities in favor of energy efficiency programs and speak to providing utilities with timely recovery of costs associated with implementing energy efficiency programs. So there is a well and extensive series of things that have happened historically including a commitment that the state of Ohio made in conjunction with receiving stimulus dollars that would bear not only on this subject but will touch on energy efficiency programs that are implemented throughout the course of Senate Bill 221.

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

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

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

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

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

There is another important aspect of moving forward. We need to get the rules finished and I know the Commission took some action today and I am anxious to see the order from today to see how that advances that process. The residential program that FirstEnergy got approved and leads us to this event today was not the only thing that FirstEnergy offered up for compliance purposes. There are a series of cases pending before the Commission presently in which FirstEnergy tried to move forward with other compliance alternatives, and I hope it's not a secret, it shouldn't be if it is, but most of the early compliance plans of all the utilities for 2009 involved relying significantly on commercial and industrial customers and the use of RECs because they are typically where the low hanging fruit is and the educational opportunities or the educational barriers are not as severe.

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

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

I think it's important that there be a stronger coordination between what is going on from compliance purposes and other things that are going on in the state of Ohio. For example, according to the Dispatch, Columbus Dispatch, article on Monday Ohio is distributing about $260 million in weatherization-related dollars coming from the stimulus funds.

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

Thanks for the opportunity and if you have any questions on the prepared statement itself after I leave here today, I would be happy to respond to them. Thank you very much.

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

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

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

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

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

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

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

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

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

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

We recommend that 1 million of these bulbs be reserved for customers who come into community action agencies' offices to inquire about heating assistance. For the remaining bulbs FirstEnergy should allow its customers to purchase up to 10 bulbs at cost, roughly $1.50 per bulb, at its offices and bill payment centers. FirstEnergy should also initiate discussions with retailers with the goal of getting these bulbs into stores and in its service territory.

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN SCHRIBER: Thank you.

Mr. Rinebolt.

MR. RINEBOLT: Mr. Chairman, Members of the Commission, always a pleasure to come before you. As a representative of Ohio Partners for Affordable Energy and the 60 nonprofit agencies that deliver energy efficiency every day, we are once again in the unique position. We actually do this. And so our perspective is informed by the fact that we will be in some 35,000 homes over the next two years delivering energy efficiency to low income Ohioans.

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

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

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

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

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

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

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

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

I can tell you when I weatherized my 1916 home back in 1999, I cut electricity use by a third and natural gas usage by a half. Now, since then my wife and I have had children, and since my children think the refrigerator is a television and open it up for an extended period of time, there have been a little take back, but the basic thesis of our position is clear, it's you make yourself efficient your bills will go down.

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

There's also a concept called shared

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

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

Now, let's turn specifically to the FirstEnergy light bulb program and this is an issue that's been touched on by several of the parties. Senate Bill 221 with the support again of the environmental community and others set benchmarks for energy efficiency which we supported. However, it implemented a benchmark beginning in 2009 which we opposed. We testified that there shouldn't be any benchmarks for three to five years, and we would suggest that the Commission consider that because frankly we know after 30 years in this business that it takes a long time to set up effective programs and, in fact, the kind of comprehensive energy efficiency programs which make a difference over the long haul. We agree with the company that there was really no way to meet these benchmarks other than CFL programs, and we think that that is driven by the yearly in effect 2009 benchmark so.

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

So let's move on to our recommendations. We believe as several parties have expressed that the bulbs should be available to customers upon request. We would suggest that the availability be triggered to the use of an online audit tool. FirstEnergy has implemented an online audit tool as well as other utilities in the state. Those online audit tools can be incredibly valuable to customers and guide them into doing the right thing. Tying a little premium in terms of some light bulbs to people who have already taken the initiative to undertake a self-audit through that process I think makes a whole lot of sense because those people will use the bulbs.

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

But in the final analysis we really need to focus on comprehensive energy efficiency programs where electric measures are combined with natural gas measures and do a whole house approach to energy efficiency that ultimately provides the greatest benefit to our customers. We use money from the Federal Government, from gas utilities, from electric utilities, from home improvements and home repair programs, from senior levies, from rural development, and a host of other sources to provide comprehensive weatherization services. That should be the goal here.

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

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

Thank you very much.

CHAIRMAN SCHRIBER: Okay. Thank you,

Dave.

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

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

MR. FINNIGAN: They are on their way.

MR. RANDAZZO: There are 3 million of them.

CHAIRMAN SCHRIBER: Okay. Thank you. I'm working on the assumption, yeah, that's going to cost money to provide me six bulbs and they are going to provide me with an audit and that's good but that's going to be costly to some extent but in the long run it's going to foreclose the need to have to build a power plant or to have to re -- repower an old power plant or build a new one, whatever the case may be.

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN SCHRIBER: What a surprise.

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

We also filed comments in opposition. It was our impression because the staff was supporting this program and FirstEnergy was supporting this program that it was going to get approved. So we did what we could to mitigate the damage to customers, and we did that by for, one, having the price of the light bulb which was originally set at 5.75 reduced to 3.50. The program was supposed to be a three-year program. We had it reduced to just the end of the year so they could meet compliance with this year and we also got them to agree to a rebate program.

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

And, you know, in hindsight being 20/20 we probably should have been a little clearer to the Commission on that point, and I could see where the Commission would think we were all onboard, but we were never onboard and all the parties that were involved in this process knew full well that OCC had very serious reservations about this program, knew about problems that had occurred in other jurisdictions, and had expressed those concerns to FirstEnergy throughout the process.

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

MS. MIGDEN-OSTRANDER: Oh, yeah.

CHAIRMAN SCHRIBER: We all learn, right?

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

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

MR. SULLIVAN: Well, I guess, you know, certainly straight fixed variable rates meet a definition of decoupling. They make a utility, you know, indifferent to energy efficiency. But the type of decoupling NRDC advocates for is revenue decoupling, and we -- we support revenue decoupling because we think it makes a utility indifferent to energy efficiency investments without creating the high fixed charges you talked about and preserving customer incentives to conserve.

CHAIRMAN SCHRIBER: Okay. Other questions? Commissioner Lemmie.

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

MR. RINEBOLT: Well, I guess I'll start. Thank you, Dylan. Thank you, Commissioner. The advantage that we see in the programs in both Vermont and in Oregon is that you have one centralized program manager. You can create exceptionally vibrant energy efficiency programs and then the practice in those states has been to target as Mr. Randazzo pointed out the biggest bang for the buck type of energy efficiency opportunities. So you combine a lower cost of administration because there is one administrator instead of in Ohio seven that we are dealing with right now. You eliminate -- you create a culture within that organization where it's going to do the best thing. It is an energy efficiency utility, but it's operated in the public interest, and it's designed to produce the most beneficial outcome for customers at the lowest possible price. So we really see that as a -- as a good model.

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

But we also support third-party administration where there -- where there is not a -- as we said in the ESP proceeding a motivated -- that might have not been the right adjective but a motivated utility partner. So in cases -- in cases where the utility doesn't seem to want to do the work it makes sense to have an organization whose purpose is energy efficiency do the work.

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

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

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

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

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

MR. RINEBOLT: Commissioner, I would suggest that under the current structure and legislation that we are dealing with it's ultimately the utility company's responsibility to achieve those benchmarks, and so while they gather input from the collaborative at the end of the day they have got to make the decision. People come to these collaboratives with different skill sets and different backgrounds. Unfortunately not many of the participants run low income or energy efficiency programs, but I think when you look at the collaborative process in Ohio, pretty much all the parties are the same in every collaborative except for the utility which is running their own collaborative and doesn't participate in the other utilities' collaborative. So I think over time we would evolve to a standardized set of programs as we have been able to do with the low income programs, but we are just not there yet. We are just starting efficiency in Ohio, and it's got to crawl before it can walk.

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

MS. MIGDEN-OSTRANDER: If I may add -- I'm sorry. If I may add, we are hoping that from this experience the take home message to FirstEnergy will be that it should listen more closely to the advice of the collaborative and try to achieve consensus. And part of the reason for recommending that it go back to the collaborative is because you are looking at how are you going to distribute all of these massive light bulbs, and it gets into the nitty-gritty of detail, some may go here, some may go there, and if the Commission wants to make that decision, it could, and -- but it would require folks submitting more detailed comments to you about, well, send, you know, so many hundred light bulbs here and so many there or that kind of thing. So that's certainly an option to you. But that was part of what our thinking was as well.

CHAIRMAN SCHRIBER: Sam.

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

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

The reality is the law as David has indicated, David Rinebolt has indicated, has imposed the obligation on utilities and as a practical matter, somebody that's exposed to both civil and criminal penalties that are quite aggressive is not going to turn over decision making authority on a very practical level to an independent administrator who is accountable to a group grope occasionally that goes under the name of a collaborative process.

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

There is nobody that can look at what has happened here and say that they did not have ample opportunity to voice their views however they were formed on what it is the Commission should do and we need, as the Chairman has suggested, if there is a concern about a proposal, you need to come forward. It doesn't do anybody any good to say that, well, I decided to go along or I decided not to pay attention or I decided that I was going to get something for this and, therefore, I was going to be quiet. It is incumbent on all of us but so what?

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

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

COMMISSIONER LEMMIE: Thank you.

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

CHAIRMAN SCHRIBER: Sure.

MR. KORKOSZ: FirstEnergy hasn't been recalcitrant or difficult in the collaborative process as would be the implication of some of the comments we've heard. FirstEnergy has -- as suggested by both Mr. Randazzo and Mr. Rinebolt, we are the ones with the obligation to meet 2009 benchmarks. Collaborative discussions could go on for a long time and, in fact, there were productive discussions coming out of the collaborative. Frankly we thought that the continued discussions amongst the parties that ultimately resulted in the September 16 letter and the what even Ms. Migden referred to as consensus at one point was -- was a continuation of that kind of process. But the utility's interest which was not necessarily that borne by other parties was that we had to meet 2009 benchmarks and so we wanted to go forward with that and that's why we had to move forward with a program that we thought would -- that would achieve that result.

CHAIRMAN SCHRIBER: Thank you.

COMMISSIONER LEMMIE: Thank you, Mr. Chairman.

COMMISSIONER CENTOLELLA: Mr. Chairman, I guess at this point I am concerned about what I have seen here today and what its implications are for the future of a collaborative process. You know, we've seen collaboratives work over the years in other utilities in other situations. But I -- you know, it is important if we are going to use a collaborative, that the parties be able to expeditiously come to an agreement about how to move forward and, you know, and we have something here which is now, you know, we have taken some months to get to this point, and it's clear we don't have agreement on how to move forward at this point.

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

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

MR. SULLIVAN: Well, I think, Chairman

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

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

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

MR. SULLIVAN: I guess I would disagree that the initial proposal was close to what NRDC, you know, proposed in its recommendations. I think our problems with the program as filed were that it included an incentive for the full cost of the bulb, basically free bulbs. I think that -- we thought that was a poor use of incentive dollars and we generally want energy efficiency programs to work through the market. And customers buy light bulbs. They don't wait for them to appear on their doorsteps and that is why we opposed the initial program.

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

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

MR. POULOS: Commissioner, I would agree with NRDC that we didn't -- we did not see it that way when it was first -- the application was first submitted in July. We had concerns with it as well. We were concerned about the direct sending or delivering of the light bulbs. We did have opposition to it.

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

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

MR. KORKOSZ: Certainly, Commissioner. Things happened between July when the application was filed and with the movement in time into September when the subsequent discussions that I have referred to resulting in the more refined detailed delivery program that ultimately resulted. The passage of time made it more incumbent upon a program that would get these CFLs into the hands of customers so that the energy savings could be realized in time to count for our 2009 benchmark compliance.

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

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

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

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

You know, I think it's very important that we actually look at, you know, getting installations and actually getting savings as opposed to talking about compliance. This is not simply an exercise in compliance as the Chairman indicated earlier; it's an exercise on how we save money, you know, vis-a-vis what would be more expensive options if we don't do this.

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

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

CHAIRMAN SCHRIBER: Sure.

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

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

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

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

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

COMMISSIONER CENTOLELLA: Understood.

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

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

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

So the question I think right now is what -- what do we do right now if there is an opportunity to fold in third-party administration that's independent on top of independent measurement, independent evaluation? We get so independent that nobody has any ability to get anything done. That -- you know, that discussion can be had at some point in time but I don't think that we are going to get very far right now here today.

CHAIRMAN SCHRIBER: Commissioner Roberto.

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

Now, pushing that aside as I have listened to arguments made today, particularly, Mr. Poulos, yours, you made a comment that the Office of Consumers' Counsel objected to 100-watt bulbs because they are problematic and they shouldn't have been selected, that the savings were not accurate, that the real cost of the light bulbs is a dollar and a half and I do not see those remarks, comments otherwise filed inside of this record. I could not have been aware of those concerns when this matter was brought to me.

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

As I do the math with the information that I had in front of me, it looks to me like these programs would have delivered energy efficiency to consumers in northern Ohio at a cost of about a penny and a half a kilowatt hour, and as Mr. Rinebolt had said, typically 4 cents a kilowatt hour is a pretty good deal. The folks in the northern Ohio are paying, and I am looking at the residential tariffs, on average somewhere about 7 cents for the generation part of the electricity. So this energy efficiency would have been substituted for that energy. In other words, we could have purchased a penny and a half of energy efficiency in return for not using the 7 cents of electricity for northern Ohio.

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

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

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

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

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

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

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

COMMISSIONER ROBERTO: Allegheny Power.

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

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

I will go back. You beat a dead horse, I'm afraid I am going to have to, and that is at that point in time we were running up against the clock and we needed to get a program underway. I would again suggest that as your remarks recognized that we thought we had a program upon which there was a consensus. There was no collaborative arrangement in Maryland. I would, however, note that the Maryland Commission in September, I believe it was September 26 of 2007, from the Bench when Allegheny -- APS proposed the program ruled from the Bench their -- their approval of and endorsement of that program and the full support of the Commission with Allegheny going forward to meet a goal -- not a compliance -- mandatory compliance benchmark but a goal set by the governor of the state of Maryland and it was as the Chairman mentioned only after the wall became littered that -- that a reexamination by the Maryland Commission and the subsequent events took place.

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

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

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

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

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

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

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

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

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

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

I don't believe I have any other questions.

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

COMMISSIONER FERGUS: I don't have a question, but I do want to chime in with what the Chairman and Cheryl said about my disappointment in the state of the record. I find most troubling that because we thought there was consensus and it was not challenged and none of these concerns were in the record, like Cheryl I read all the pleadings, and we thought it was approved, that was the sense I got from reading that letter, that the Commission went ahead and approved it and because we did that the company relied on that and expenses were made. And, now, we are paying to store light bulbs. But the worst part about it is is consumers are now very confused and angry about a program that, you know, maybe the distribution -- the way the light bulbs were distributed was not the best, but the program itself is a good program with benefits to consumers.

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

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

COMMISSIONER FERGUS: But your silence --

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

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

MS. MIGDEN-OSTRANDER: They called me.

CHAIRMAN SCHRIBER: Just kidding.

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

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

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

Anything else other than I can wrap it up?

COMMISSIONER CENTOLELLA: I want to say one thing, the purpose of a collaborative is to get alignment among all the stakeholders and the company about how to push energy efficiency forward in a positive way. You know, if this collaborative is going to be a successful process, you need to come to that alignment and get behind something, and if you can't do that, then you need to make clear to the Commission that you haven't done that, and the Commission will make a decision about how to move forward.

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

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

CHAIRMAN SCHRIBER: Sure.

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

CHAIRMAN SCHRIBER: Okay.

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

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

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

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

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

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

COMMISSIONER LEMMIE: Mr. Chairman, if I might, in all of the statements that were presented to us today there seem to at least be a rallying around an approach to get the current bulbs distributed and there really wasn't a lot of difference in how that was done, community engagement, customer access when they are involved with a community agency, or with the company. It seems to me that there might very well be an opportunity for the collaborative parties on this issue to sit down and come back very quickly with some recommendations that all of you can for the record endorse and over the longer term in evaluating how the collaborative works and what the role of the members are, if there are minority opinions, how those are addressed you might take up at a later point, but I think the most important thing is how do we get the light bulbs out and how do we -- as my fellow Commissioner Fergus said, how do we ensure that the public understands that this program is in their interest, it is cost effective, and it will make a difference in not only their quality of life because of the use of less coal-generated power but also in their cost of power? Thank you.

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

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

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

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CERTIFICATE

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

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Karen Sue Gibson, Registered Merit Reporter.

(KSG-5115)

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