BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanism.	)	Case No. 09-1947-EL-POR Case No. 09-1948-EL-POR Case No. 09-1949-EL-POR
In the Matter of the Application of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Initial Benchmark Reports.	)	Case No. 09-1942-EL-EEC Case No. 09-1943-EL-EEC Case No. 09-1944-EL-EEC
In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company.	)	Case No. 09-580-EL-EEC Case No. 09-581-EL-EEC Case No. 09-582-EL-EEC

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), coming now to consider the above-entitled matter, having reviewed the exhibits introduced into evidence in this matter, and being otherwise fully advised, hereby issues its opinion and order in this case.

APPEARANCES:

Kathy J. Kolich, Ebony L. Yeboah-Amankwah, and Arthur E. Korkosz, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, and Calfee, Halter & Griswold, LLP, by James F. Lang, 1400 KeyBank Center, 800 Superior Avenue, Cleveland, Ohio 44114 on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

Mike DeWine, Ohio Attorney General, by Thomas G. Lindgren and Stephen A. Reilly, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Jeffrey L. Small, Terry L. Etter, and Christopher J. Allwein, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

Robert Kelter, 35 East Wacker Drive, Suite 1600, Chicago, Illinois 60601, on behalf of the Environmental Law and Policy Center.

Will Reisinger and Trent Dougherty, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212-3449, on behalf of Ohio Environmental Council.

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228, on behalf of Industrial Energy Users-Ohio.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of the Ohio Manufacturers' Association.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, and Richard L. Sites, General Counsel and Senior Director of Health Policy, 155 East Broad Street, 15th Floor, Columbus, Ohio 43215-3620, on behalf of the Ohio Hospital Association.

Schottenstein, Zox & Dunn Co., LPA, by Gregory H. Dunn, and Christopher L. Miller, 250 West Street, Columbus, Ohio 43215 on behalf of the Association of Independent Colleges and Universities of Ohio.

Bricker & Eckler, LLP, by Glenn S. Krassen, 1375 East Ninth Street, Suite 1500, Cleveland, Ohio 44114, and Matthew W. Warnock, 100 South Third Street, Columbus, Ohio 43215, on behalf of Ohio Schools Council.

David C. Rinebolt and Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839-1793, on behalf of Ohio Partners for Affordable Energy.

Craig I. Smith, 2824 Coventry Road, Cleveland, Ohio 44120, on behalf of Material Sciences Corporation.

Brickfield, Burchette, Ritts & Stone, P.C., by Michael K. Lavanga and Garrett A. Stone, 1025 Thomas Jefferson Street, N.W., 8th Floor, West Tower, Washington, D.C. 20007, on behalf of Nucor Steel Marion, Inc.

Tucker, Ellis & West, LLP, by Nicholas C. York, 1225 Huntington Center, 41 South High Street, Columbus, Ohio 43215-6197, on behalf of Council of Smaller Enterprises.

Henry W. Eckhart, 50 West Broad Street, Suite 2117, Columbus, Ohio 43215, on behalf of the Natural Resources Defense Council.

Boehm, Kurtz & Lowry, by David F. Boehm, Michael L. Kurtz, and Kurt J. Boehm, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

Theodore S. Robinson, Staff Attorney and Counsel, Citizen Power, Inc., 2121 Murray Avenue, Pittsburgh, Pennsylvania 15217, on behalf of Citizen Power, Inc.

The Legal Aid Society of Cleveland, by Joseph P. Meissner, and Matthew Vincel, 1223 West 6th Street, Cleveland, Ohio 44113, on behalf of The Neighborhood Environmental Coalition, The Empowerment Center of Greater Cleveland, United Clevelanders Against Poverty, Cleveland Housing Network, and The Consumers for Fair Utility Rates.

Robert J. Triozzi, Director of Law, City of Cleveland, Cleveland City Hall, 601 Lakeside Avenue, Room 106, Cleveland, Ohio 44114-1077, on behalf of the city of Cleveland.

OPINION:

I. <u>HISTORY OF PROCEEDINGS:</u>

A. Case Nos. 09-580, 581 and 582-EL-EEC

On July 9, 2009, The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company (collectively, the Companies or FirstEnergy) filed an application for approval of two energy savings and peak demand reduction programs, the High Efficiency Light Bulb Program (CFL Program) and the Online Home Energy Education Tool Program, as part of their compliance with the 2009 energy efficiency and peak demand reduction benchmarks established in Section 4928.66, Revised Code.

On September 23, 2009, the Commission approved the application, as modified on September 16, 2009. On October 8, 2009, the Ohio Consumers' Counsel (OCC) filed an application for rehearing. Subsequently, on November 4, 2009, the Commission granted rehearing and directed FirstEnergy to provide additional details regarding a revised CFL

Program. FirstEnergy included this revised CFL Program in its December 15, 2009 application filed in Case Nos. 09-1947-EL-POR, et al.

B. Case Nos. 09-1947, 1948, and 1949-EL-POR and 09-1942, 1943, and 1944-EL-EEC.

On December 15, 2010, as amended on December 16, 2010, the Companies filed an application for approval of their respective energy efficiency and peak demand reduction (EE/PDR) program portfolios, the associated cost-recovery mechanisms (demand side management and energy efficiency riders (Riders DSE)), and each company's initial benchmark reports.

Intervention in these proceedings was granted to: Industrial Energy Users-Ohio; Natural Resources Defense Council (NRDC); OCC; the Ohio Energy Group; the Ohio Environmental Council; Ohio Partners for Affordable Energy (OPAE); the Neighborhood Environmental Coalition, the Empowerment Center of Greater Cleveland, United Clevelanders Against Poverty, Cleveland Housing Network, and the Consumers for Fair Utility Rates (collectively, Citizens Coalition); Citizens Power Inc.; Sierra Club; the Association of Independent Colleges and Universities of Ohio; Ohio Hospital Association (OHA); the Environmental Law and Policy Center (ELPC); EnerNOC, Inc.; Nucor Steel Marion, Inc. (Nucor Steel); Ohio Schools Council (OSC); the City of Cleveland; Council of Smaller Enterprises (COSE); and Material Sciences Corporation (MSC). The motion to intervene filed by Ohio Manufacturers' Association, as well as the motion *pro hac vice* on behalf of Rebecca Riley filed by NRDC, inadvertently have not yet been ruled upon. The Commission finds that both of these motions are reasonable and should be granted.

The hearing in this proceeding commenced on March 2, 2010 and continued through March 8, 2010. FirstEnergy presented four witnesses in support of its applications and two rebuttal witnesses. Intervenors presented four witnesses, and Staff presented one witness.

II. APPLICABLE LAW

Section 4928.66(A)(1), Revised Code, provides, in pertinent part:

> (a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in

this state. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, one per cent from 2014 to 2018, and two per cent each year thereafter, achieving a cumulative, annual energy savings in excess of twenty-two per cent by the end of 2025.

(b) Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018. In 2018, the standing committees in the house of representatives and the senate primarily dealing with energy issues shall make recommendations to the general assembly regarding future peak demand reduction targets.

Further, in accordance with Section 4928.66, Revised Code, the Commission adopted rules in Chapter 4901:1-39, Ohio Administrative Code (O.A.C.), Energy Efficiency and Demand Reduction Benchmarks, which became effective December 10, 2009.

III. THE COMPANIES' APPLICATION

A. Initial Benchmarks

In the application, the Companies provided their initial benchmark reports as required by Rule 4901:1-39-05, O.A.C. These reports were supported at hearing by the testimony of Katherine Kettlewell on behalf of the Companies (Co. Ex. 2). No party objected to the initial benchmark reports. Therefore, based upon the evidence at the hearing, the Commission finds that the initial benchmark reports should be approved.

B. Revised 2009 Benchmarks

On October 27, 2009, FirstEnergy filed an application, pursuant to Section 4928.66(A)(2)(b), Revised Code, to amend its 2009 energy efficiency benchmarks, requesting that its 2009 benchmark be set to zero. On January 7, 2010, the Commission approved the application contingent upon FirstEnergy meeting amended benchmarks, with the level of the revised benchmarks to be determined in the instant proceeding. *In the*

Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Amend Their Energy Efficiency Benchmarks, Case No. 09-1004-EL-EEC et al., Finding and Order (January 7, 2010) at 4.

Based upon the record of this proceeding, the Commission finds that it is unnecessary to further revise the specific statutory benchmarks for 2010, 2011 and 2012, provided that FirstEnergy meets the cumulative energy efficiency savings for the three years implicit in Section 4928.66(A)(1)(a), Revised Code. This will ensure that the public receives the full benefit of the energy efficiency savings mandated by the statute while providing the Companies with the necessary flexibility within its program portfolio plan to achieve such savings.

C. Program Portfolio Plans

The Companies initially request Commission approval to continue, restart, or expand several previously implemented energy efficiency and demand reduction programs (Co. Ex. 10 at 4). These programs include Community Connections, which provides weatherization measures, energy efficient solutions and client education to low-cost customers at no cost to those customers, and an efficiency products catalog, which provides advice concerning energy efficiency products to residential and small enterprise customers with limited energy savings opportunities and equipment needs. The Companies intend to expand both of these programs. (*Id.* at 4-5.)

In addition, the Companies will continue their interruptible rate tariffs, which provide peak load reduction opportunities for commercial and industrial customers participating in the economic load response (ELR) and optional load response (OLR) programs through Riders ELR and OLR. In the application, the Companies originally planned to institute a revised interruptible load program in 2011 by allowing customers to bid their interruptible load in response to a company request for proposals (RFP). (*Id.* at 5.) The Companies also propose reimplementing and expanding a direct load control thermostat program, which offers residential customers a programmable thermostat with two-way communications providing customers the opportunity to achieve energy savings while also allowing the Companies to curtail summer air conditioning load during peak periods. This program was originally authorized in 2006 and was suspended in 2009. Upon approval, the Companies propose reactivating the preexisting base of customers with new participants added with new technology. (*Id.*)

Moreover, the Companies request approval of an appliance turn-in program, which will offer residential customers an incentive and free pick-up and disposal service for second refrigerators, freezers, and room air conditioners, and an efficient new homes program, which will provide rebates to local builders for achieving energy efficiency targets in new residential construction (*id.* at 5-6). For existing residential structures, the

Companies request approval of a comprehensive residential retrofit program, providing comprehensive home energy audits. The Companies also seek to implement a high efficiency lighting program, providing direct distribution of CFLs to residential customers and small businesses at no cost, in addition to working with manufacturers to develop coupons and other promotional materials. The Companies further propose an additional CFL program targeted at low-income customers. For small enterprise customers, the Companies request approval of a commercial and industrial (C&I) audit and equipment rebate program, providing heavily discounted pricing on the purchase and installation of high efficiency lighting and on other products in the future for any nonresidential customer, as well as a new construction program providing incentives for achieving energy efficiency targets in new commercial construction. (*Id.* at 6.)

For large enterprise customers, the Companies seek approval of a C&I equipment rebate program, providing rebates for high efficiency electric equipment and building shell-related measures; a C&I equipment (industrial motors) program, encouraging customers to upgrade existing motors and to install variable speed drives; and a technical assessment umbrella program, providing incentives for implementation of energy saving measures identified in a comprehensive facility energy audit. Finally, the Companies request approval of a government lighting program, which will convert municipal lights to high pressure sodium lights and convert traffic signals and pedestrian/cycling signals to LED technology. (*Id.* at 7.)

The Companies additionally request a waiver in the event the customer sectors outlined in the Companies' proposals conflict with the Commission's forthcoming order approving a portfolio plan template in Case No. 09-714-EL-UNC. The Companies explain that while the Commission's proposed template calls for the reporting of data using seven customer classifications, these seven classifications do not directly correlate to the organization of the Companies' tariffs and billing systems. If the template as ultimately approved by the Commission mandates the use of classifications that differ from the customer sectors found in the Companies' plans, the Companies might be required to implement costly systematic changes to their accounting and billing systems. (*Id.* at 7-8.)

The Companies also seek permission to recover all program development and implementation costs, applicable carrying costs, reasonable administrative costs, and shared savings and variable distribution revenue noncollections resulting from the implementation of the EE/PDR programs through the demand side management and energy efficiency rider (Rider DSE), approved by the Commission in the Companies' ESP case. See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, Finding and Order at 13 (March 25, 2009). The Companies propose modifying Rider DSE by implementing a new DSE2 charge in Rider DSE, through which the EE/PDR program costs would be recovered. In addition, the Companies seek recovery of variable distribution revenue non-collections through Rider DSE, as none of these expenses are accounted for in the Companies' current tariffs. (*Id.* at 8-9.)

IV. OBJECTIONS OF THE PARTIES

A. Compliance with Statutory Benchmarks and the Commission's Rules

ELPC argues that the EE/PDR plans should be rejected because, in the absence of special treatment by the Commission, the plans as proposed fail to meet the 2010 energy efficiency (EE) benchmarks (ELPC Brief at 9). ELPC notes that no other Ohio utility requested preferential treatment in order to satisfy its 2010 benchmark (*id.* at 10).

ELPC also argues that the Companies failed to comply with Rule 4901:1-39-04(C), O.A.C., because EE/PDR plans do not identify measures considered but not found to be cost-effective or achievable that show promise for future development (ELPC Reply at 6-7). ELPC notes that, according to the Companies, of the 110 technologies that were pre-screened, only 93 were ultimately included in the EE/PDR programs (*id.* at 7). ELPC notes that Companies' witnesses Fitzpatrick and Paganie testified during the hearing that solid-state lighting (SSL) and customer educational materials for consumer electronics were two measures that showed promise, but these programs are not included in the Companies' plans (*id.*, citing Tr. Vol. 2 at 245-247 and Tr. Vol. 1 at 115). Since the Companies did not identify which of the 17 measures show promise for future deployment, ELPC argues that the Companies' portfolio does not comply with Rule 4901:1-39-04(C), O.A.C., and therefore the Commission should require the Companies to include such measures and potential actions when filing revised portfolio plans (*id.* at 7-8).

OEC questions the Companies' long-term market potential study, arguing that the study underestimates the potential energy efficiency gains in the Companies' service territories (OEC Brief at 13). According to OEC, the study's conclusion that the Companies will fall short of their long-term efficiency targets conflicts with another study (the American Council for an Energy-Efficient Economy (ACEEE) Ohio report) relied upon by the Companies for some of their projections (*id.* at 13-14). OEC also claims that the Companies' shared savings proposal contradicts their claims of low energy efficiency market potential (*id.* at 14-15).

The Companies argue that the plans are designed to achieve the statutory benchmarks during the plan period, are cost-effective on a total portfolio basis, and include all components required by the Commission's rules (Co. Reply at 3). The Companies maintain that it would be unjust and unreasonable to penalize them for submitting plans that are properly designed but fail to achieve the 2010 benchmarks using prorated savings simply because Commission approval, and thus program implementation, has been delayed (*id.* at 7). In a similar vein, the Companies suggest that rejection of the plans, followed by redesign and a new review proceeding, would place at risk compliance with both the 2010 and 2011 benchmarks (*id.* at 6). The Companies also argue that their market potential study is valid. The Companies assert that OEC's criticisms of the market potential study are misplaced, as no contradiction exists between the market potential study and the ACEEE Ohio report, since both studies conclude that utility programs represent an achievable potential of 12 percent in EE savings. (*Id.* at 9.)

With respect to ELPC's claim that the Companies' portfolio plan should have identified measures which show promise for future deployment pursuant to Rule 4901:1-39-03(C), O.A.C., we agree that it would have been consistent with sound utility practice for such measures to be identified in the plan and direct the Companies to do so in future portfolio plan filings.

Nonetheless, the Commission agrees with ELPC that, as proposed, the Companies' program portfolio plans were not designed to achieve the statutory benchmarks for 2010. Subsequent to the filing of the Companies' application, a joint motion for approval of "fast track" programs was filed on March 22, 2010 by the Companies, OHA, COSE, OMA, OPAE, OSC, and Nucor Steel. The motion sought expedited approval of the following programs: the appliance turn-in (as modified in the motion); residential CFL (including Low Income); and C&I lighting and equipment (industrial motors) programs. The record is clear that the Companies' program portfolio plans were only designed to achieve the statutory benchmarks if the Companies were granted extraordinary relief by the Commission in the form of Commission approval of the fast track proposal or the reversal of our previous decision regarding the use of annualized savings (Co. Ex 1 at 13; Tr. I at 110). The Commission believes that approval of the fast track proposal, which included the revised CFL program, without determining cost recovery issues, would have been inappropriate. With respect to the question of annualizing savings, the Commission will decline to reverse our previous decision, as discussed below. Therefore, since the Commission has declined to provide the extraordinary relief sought by the Companies, the program portfolio plans cannot be characterized as designed to achieve the statutory benchmarks for 2010.

However, the Commission agrees with the Companies that rejection of the plans, followed by redesign and further proceedings in this case, would place at risk compliance with the 2011 and 2012 benchmarks. Instead, the evidence in the record demonstrates that approval of the Companies' program portfolio plans, as modified herein, should allow the Companies to meet their benchmarks for 2011 and 2012. (Co. Ex 4 at Exhibit FE-GLP-2).

B. C&I Lighting Program

As submitted, the Companies' plans include lighting programs for the small and large C&I enterprise sectors, as well as the government sector, even though the Companies' analysis shows that the total resource cost (TRC) benefits from these programs are less than 1. Staff, ELPC, NRDC, and OCEA object to the Companies' analysis, noting that commercial lighting programs are generally found to be cost-effective when reviewing the EE programs of other utilities (Staff Ex. 1 at 2-3; NRDC Ex. 1 at 16; ELPC Ex. 1 at 19-20; OCEA Brief at 41). These parties contend that the labor estimates used in the Companies' analysis of the C&I lighting programs were inaccurate, and Staff witness Scheck also questions the assumed participation rate for large commercial customers for the occupancy sensor lighting program (Staff Brief at 3; Staff Ex. 1 at 3; ELPC Brief at 27; ELPC Ex. 1; OCEA Brief at 41). As a result, these parties recommend that the Commission require the Companies to remodel their small and large C&I enterprise and governmental sector lighting analysis, in order to demonstrate that the lighting programs are cost effective.

The Companies respond that their EE plans are cost-effective on a portfolio basis, and note that all witnesses who offered an opinion about the C&I lighting program agreed that the program was beneficial and should be included in the EE plans (Companies' Brief at 13). The Companies further contend that their calculation for C&I lighting is reasonable and argue that the general statements made by OCEA and Staff criticizing the C&I lighting TRC calculation should be rejected because they are not supported by any specific facts or evidence (Companies Reply at 14-16). In addition, the Companies suggest that the TRC for the C&I lighting program is rendered irrelevant upon consideration of the non-energy benefits, such as lower maintenance costs, emissions reduction, and overall economic benefits (*id.* at 16-17).

The Commission finds that FirstEnergy's C&I lighting program should be approved; however, the Commission agrees with the recommendations by Staff and intervenors that FirstEnergy be required to remodel their small and large C&I enterprise and governmental sector lighting analysis. Accordingly, the Commission will direct FirstEnergy to remodel its analysis, in consultation with Staff, and to present the remodeled analysis to FirstEnergy collaborative. The collaborative may make any recommendations to the Commission to revise the C&I lighting program which are appropriate based upon the revised analysis.

C. C&I Interruptible Load and PDR

In the application, the Companies propose counting peak demand reduction (PDR) savings from Riders ELR and OLR toward the PDR benchmarks (Companies Ex. 10 at 5). While agreeing with this proposal, Nucor also states that no further Commission approval is necessary with regard to these riders, as the Commission approved the riders in the ESP case (Nucor Brief at 8). In particular, Nucor argues that the TRC test should not be applied to interruptible rates such as Riders ELR and OLR since the Commission has already determined that these rates are just and reasonable (*id.* at 11-13). If the Commission finds that a TRC test should be applied to these riders, Nucor contends that the test performed by the Companies is flawed, as it incorrectly assumes a one-year life span for interruptible rates, short-term avoided capacity costs, and no avoided reserve margin or avoided energy cost benefit (*id.* at 14-17). Nucor argues that long-run avoided capacity cost based on the cost of the least-expensive new capacity should be used to determine the demand reduction benefits of interruptible rates (*id.*).

OPAE agues that the DSE1 rider should be modified to reflect the contributions of all customer classes to meet PDR requirements (OPAE Reply at 3). OPAE contends that the DSE1 rider currently shifts costs onto small customers (*id.*). OPAE opposes Nucor's proposal to make the ELR and OLR programs permanent, maintaining instead that continuation of the interruptible load programs should be based on cost-effectiveness (*id.*). OPAE also disagrees with Nucor's contention that short-run capacity costs do not value the demand response appropriately and instead that the long-run costs of avoided capacity should be used to calculate PDR savings (*id.* at 5). OPAE argues that since the Companies do not own any generation, there is no long-run cost avoided by PDR savings (*id.*). Finally, OPAE opposes the Companies' plan to set Rider DSE2 based on projected costs and lost revenue with an annual true up, and suggests instead that the prospective riders be set based on both projections and on actual expenditures in the prior period (*id.*). If the Companies spend less than projected, OPAE argues that the difference between the actual and projected expenditures should be deducted from the next year's rider (*id.* at 3-4).

MSC requests that the Commission refrain from ruling on the RFP process until the Companies provide sufficient clarification on when, if ever, the RFP process will go into effect (MSC Brief at 2).

Staff recommends that the Companies be required to provide greater clarity on their plans for meeting their PDR benchmarks after May 31, 2011 (Staff Brief at 4). Staff notes that several parties in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service*, Case No. 09-906-EL-SSO (*MRO Case*) objected to the Companies' proposal in *the MRO Case* to replace the current interruptible riders with a RFP process (*id.*).

The Companies explain that the C&I interruptible demand reduction program (IDR program) currently obtains the capability to reduce peak demand through rider ELR (Companies' Brief at 11). While noting that rider ELR expires on May 31, 2011, the Companies state that provisions for continuing to rely upon interruptible capability as a PDR program have been made in both the MRO Case and *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO Opinion and Order (August 25, 2010) (*2010 ESP Case*). With regard to Nucor's contentions regarding the TRC test performed on the IDR programs, the Companies assert that these programs provide substantial non-energy benefits in the form of economic development and increase reliability and are valuable components of a comprehensive portfolio (*id.* at 14). For these reasons, and because the Companies' plans are cost-effective on a portfolio basis, the Companies' argue that the IDR programs are consistent with the Commission's rules regarding cost-effectiveness and should be approved (*id.*).

The Commission notes that, pursuant to our approval of the combined stipulation, as modified, in the *2010 ESP Case*, FirstEnergy will continue Riders ELR and OLR through May 31, 2014 (*2010 ESP Case* at 9, 26). Moreover, pursuant to the combined stipulation, the demand response capabilities of customers taking services under Riders ELR and OLR will count towards the Companies' compliance with the peak demand reduction benchmarks, and these 2009 demand response capabilities will be considered incremental to interruptible load that existed on the Companies' system in 2008 (*id.* at 13).

D. Reliance on Historical Mercantile Programs

ELPC argues that the Companies' proposals should be rejected because they rely too much on historical mercantile programs (ELPC Brief at 11). ELPC notes that self-directed mercantile projects will comprise 48.6 percent of OE's 2010 EE savings, while also accounting for 50.1 percent of CEI's 2010 EE savings and 52.9 percent of TE's 2010 EE savings (*id.*, citing OEC Ex. 1). ELPC contends that the Companies' reliance upon mercantile programs may impact the Companies' incentive to launch other efficiency programs (*id.* at 12). OEC also objects to the Companies' reliance upon historical mercantile programs, arguing that Section 4928.66(A)(2)(c), Revised Code, which governs mercantile exemptions, was not intended to act as a primary means of compliance with energy efficiency standards, but instead was focused on helping mercantile customers who were unlikely to find new cost-effective savings because of previous investments in energy efficiency technology (OEC Brief at 8-9). In addition, OEC maintains that the high cost of the historic mercantile programs is also inappropriate, as the Companies propose spending nearly as much on these programs on a per kWh basis as they would be required to spend to achieve new efficiency standards (*id.* at 9-10). OEC also argues that the EE/PDR programs include reductions for programs that do not qualify as historic mercantile programs (*id.* at 11-12). Finally, OEC recommends that the Commission require third-party administration for all EE/PDR programs, including the mercantile self-direct program, as the Companies have not demonstrated that they are currently able to administer these programs (*id.* at 21).

IEU-Ohio counters that the Companies' utilization of historic mercantile programs is lawful and reasonable (IEU-Ohio Reply at 2). Maintaining that ELPC and OEC selectively interpret Section 4928.66, Revised Code, IEU-Ohio contends that the plain language of the statute requires the Commission to count all mercantile customer self-directed EE/PDR programs towards a utility's EE/PDR benchmarks (*id.* at 4-5).

OEC responds that the fundamental purpose of the energy efficiency provisions of Senate Bill 221 was the creation of new energy efficiency in Ohio, rather than the cataloging —at the ratepayer's expense— of the savings efforts of mercantile customers in the three years prior to the bill's passage (OEC Reply at 9-10). While conceding that the law permits historical mercantile savings to count towards a utility's EE benchmarks, OEC contends that nothing in the statute prevents the Commission, after determining that a utility has made a clear effort to avoid new savings, from limiting that utility's reliance on historic savings (*id.* at 10). OEC also suggests limiting historic mercantile recovery to only those costs directly attributable to verification of savings and the filing of an application with the Commission (*id.* at 10-11).

In response to ELPC and OEC, the Companies contend that their reliance upon historic mercantile programs is reasonable given the cost-effectiveness of these programs, while also noting that reliance on historic mercantile programs will diminish significantly in 2011 and 2012, comprising less than 10 percent of the Companies' EE/PDR results for those years (Companies Reply at 11-12). The Companies also argue that no evidence supports OEC's claim that some of the mercantile program applications pending before the Commission are not valid (*id.* at 12).

Section 4928.66(R)(2)(C), Revised Code, states that compliance with the EE/PDR benchmarks shall be measured by including the effects of mercantile-sited EE/PDR programs. While this Commission agrees that historical programs were never intended to be the primary means of compliance with statutory benchmarks, the record in this case demonstrates that the Companies' reliance on historic mercantile programs declines dramatically over time (OEC Ex 1 at 5); as such, we find the Companies' proposed reliance level to be reasonable for this transition period of program initiation. Moreover, the Commission also agrees that the purpose of S.B. 221 was the creation of new energy efficiency in Ohio. Recognition of historical mercantile programs in no manner diminishes this objective as the Companies are under a continuing obligation to find and deploy all cost-effective energy efficiency. As we have ruled previously, the energy efficiency benchmarks represent the minimum energy efficiency savings required by Section

4928.66(A)(1)(a), Revised Code. As the substitution of cost-effective energy efficiency for retail electric service is, by definition, more cost-effective for consumers, the rules adopted in Chapter 4901:1-39, O.A.C., are designed to require electric utilities to deploy cost-effective energy efficiency measures. *In Re: Adoption of Rules for Alternative and Renewable Energy,* Case No. #08-888-EL-ORD, Entry on Rehearing (June 17, 2009) at 13-14 and Opinion and Order (April 15, 2009) at 6. Therefore, the Commission finds that the Companies' use of qualifying historic mercantile programs is consistent with the statute and should be approved. Determinations regarding any pending mercantile customer program applications will be made in the dockets where such applications have been filed.

E. Shared Savings

OEC, OCEA, OMA, OHA, and Nucor oppose the Companies' shared savings proposal (OEC Brief at 15-21; OCEA Brief at 32-39; OMA/OHA Joint Brief at 1-3; Nucor Brief at 34-37). OEC, OMA, OHA and Nucor argue that the proposed 15 percent sharing level was essentially arbitrarily determined from the sharing savings mechanisms proposed by other utilities, and also contend that there is no sound basis to believe that a 15 percent sharing mechanism is necessary to incent the Companies to lower the overall cost of compliance to ratepayers (OEC Brief at 15; OMA/OHA Joint Brief at 2; Nucor Brief at 35-36). Nucor points out that there is no statutory requirement that a utility be allowed to recover shared savings (Nucor Brief at 35). OCEA notes that the Companies did not include any estimates of what costs customers would incur under the shared savings proposal (OCEA Reply at 20). OEC contends that the shared savings proposal will force customers to pay the Companies for cataloging old efficiency created by the historic mercantile programs (OEC Brief at 19-20). OCEA argues that the Companies should be eligible to receive shared savings only when they meet the statutory benchmarks with EE programs delivered to customers after excluding energy savings from transmission and distribution (T&D) investments and mercantile self-direct programs (OCEA Brief at 39). In response to the Companies' argument that under state law EE savings from T&D investments can be counted towards the achievement of a utility's benchmarks, OCEA contends that achieving the benchmarks is not the same as getting a bonus because of projects undertaken for reliability, system upgrades, and growth (OCEA Reply at 18). Citing the testimony of NRDC witness Sullivan, OCEA urges the Commission to ensure that "banked" savings from a previous year's overcompliance are not used to trigger a shared savings incentive in a subsequent year while also making sure that the effects of "banked" savings are excluded from the net benefits used to calculate the shared savings incentive (OCEA Brief at 39, citing NRDC Ex. 1 at 8).

The Companies contend that their shared savings proposal is reasonable, as it is based upon a review of other utilities' proposed shared savings plans as well as an internal review of what percentage would likely incent the Companies to surpass their benchmarks (Companies' Brief at 22-23). The Companies also note that Black & Veatch determined that the shared savings proposal was reasonable, and point out that no intervenor witness proposed an alternative to the suggested 15 percent shared savings level (*id.* at 23). The Companies state that savings from mercantile customer and T&D projects are not expected to be used in the calculations of shared savings earned by the Companies, although the Companies believe that results from these types of projects are appropriately included when calculating whether the Companies exceeded the statutory benchmarks (*id.* at 23-24). The Companies additionally state that they have no intention of double counting "banked" savings (Companies Reply at 25). The Companies argue that the evidentiary record supports their proposed 15 percent shared savings component (*id.*). Pointing to the testimony of Staff witness Scheck, the Companies claim that the analysis as to whether making the effort at exceeding the benchmarks is worthwhile must be done at the shareholder level, rendering the question of whether the utility owns generation irrelevant (*id.* at 25-26). Thus, the Companies assert that they are situated similarly to the other Ohio utilities who have made 15 percent shared savings proposals (*id.* at 26).

The Commission believes that incentive mechanisms, including shared savings, are an effective means of aligning the utilities' and consumers' interests in implementing energy efficiency programs. However, the Commission finds the criticisms of the Companies' shared savings proposal raised by Staff and the intervenors warrant further review. Although the Companies contend that their proposed 15 percent shared savings mechanism is similar to those proposed by other electric utilities in this state, the Commission notes key distinctions that must be explored further, including but not limited to ownership of generation and the combination of an incentive with other program cost recovery mechanisms. See *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan*, Case No. 09-1089-EL-POR, et al., Opinion and Order, (May 26, 2010), at 11-13; *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, et al., Opinion and Order (December 17, 2008); and *In the Matter of the Report of Duke Energy Ohio, Inc. Concerning its Energy Efficiency and Peak-Demand Reduction Programs and Portfolio Planning*, Case No. 09-1999-EL-POR, Opinion and Order (December 15, 2010). Therefore, the Commission will defer ruling on the proposed shared savings mechanism until further proceedings regarding the Companies' portfolio programs; in the meantime, Commission directs Staff to prepare a proposal for an incentive mechanism which addresses the issues raised by the Commission and to distribute such proposed incentive mechanism to a range of stakeholders.

F. Allocation of Program Costs for Large C&I customers under Rates GP, GSU, and GT

OEG opposes the Companies' proposed allocation of EE/PDR programs costs for large C&I customers (OEG Brief at 1). OEG disagrees with the Companies' contention that combining rates GP, GSU, and GT into one sector complies with the agreement in the ESP

Case that allocation of costs would be on a rate schedule basis (OEG Reply at 2). According to OEG, under the Companies' proposal, the EE/PDR program costs for large C&I customers would be grouped together and allocated to rates GP, GSU, and GT on the basis of energy (kwh) usage, rather than being directly assigned to each rate class, as the Companies propose to do for rate RS and GS (OEG Brief at 1-2). OEG contends that the Companies' allocation proposal incorrectly assumes that large business customers will use the EE/PDR program in proportion to their energy usage and argues that the very large industrial customers served under rate GT may be over-assigned cost responsibility, when compared to the benefits gained, while costs may be under-allocated to medium-sized businesses under rate GP (*id.* at 2). To solve this problem, OEG proposes that EE/PDR costs should be directly assigned to rates GP, GSU, and GT, rather than allocated on the basis of energy usage (*id.* at 3).

Nucor also raised concerns that the Companies' proposed rate design for the GT class would result in customers in this class paying for program portfolio costs in excess of the actual benefits received by these customers (Nucor Reply at 3).

The Commission is not persuaded that the evidence in this proceeding demonstrates that the Companies' proposed allocation of EE/PDR program costs disproportionately impacts large C&I customers or that Companies' proposed allocation of EE/PDR program costs for large C&I customers is improper or inconsistent with the stipulation in the ESP case. Therefore, we decline to modify the proposed allocation of EE/PDR program costs as proposed by OEG.

G. Revised CFL Program

OCEA argues that the Companies failed to adequately document certain costs associated with the CFL program, and as a result, the Companies should not be allowed to recover approximately $1,539,000 in CFL program costs (OCEA Brief at 21-30).[1] Specifically, OCEA challenges $285,000 in costs for CFL bulbs and $225,000 on management services and $630,000 in personnel costs for the original CFL roll-out (*id.* at 21-25). OCEA also contends that the original CFL program was improperly marketed and questions $279,115 in premarket/preadvertising costs the Companies seek to recover from ratepayers (*id.* at 26-27). OCEA argues that the Companies failed to provide any information about the advertisements purchased with these funds (*id.*). Finally, OCEA maintains that the Companies should not be allowed to recover storage expenses resulting from the delay in launching the CFL program (*id.* at 28). According to OCEA, the CFL program could have been launched in December 2009, but instead of implementing the program at that time the Companies chose to incorporate it into the EE/PDR plans,

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1 OCEA's Reply Brief argues that $1,432,000 is the amount the companies should not be allowed to recover because they have failed to demonstrate that the expenditures were prudently incurred (OCEA Reply Brief at 3-16).

thereby insuring that additional storage costs would be incurred (*id.*). OCC witness Sawmiller argues that sunk costs relating to the initial program, as well as ongoing warehousing costs, should not be recovered from residential and small business customers (OCC Ex. 1 at 13-16).

In response to OCEA's arguments regarding cost recovery for the CFL program, the Companies contend that because the costs of the original CFL program were incurred pursuant to a valid Commission order, those costs are deemed reasonable and recoverable from customers even though the Commission later granted rehearing of that order (Companies' Brief at 20). In addition, the Companies argue that the few line items of costs challenged by OCC witness Sawmiller were reasonable at the time the costs were incurred, and that company witness Toth provided extensive detail justifying the challenged costs in his rebuttal testimony (*id.* at 20-21). While acknowledging that an incorrect invoice, prepared prior to purchase of the CFL bulbs, indicates a lower cost for the CFL bulbs, the Companies point out that Toth accounted for the entire cost of the CFL bulbs in his rebuttal testimony (Companies' Reply at 29).

With regard to the management service costs, the Companies contend that Toth explained in his rebuttal testimony the extensive array of services provided by the fifteen CFL vendor management employees, including repeatedly revising the distribution plans, supervising the warehousing and reorganization and storage of the CFL bulbs and developing and implementing the operational planning of all logistics for the program (*id.* at 30). The Companies assert that, as discussed in Toth's rebuttal testimony, the personnel costs were incurred as a result of approximately 100 CFL vender employees staging the CFL bulbs for distribution, reconfiguring the planned deliveries after the program was suspended, and finally un-staging the CFL bulbs and preparing them for storage (*id.* at 31-32). The Companies state that they were able to negotiate what was originally $800,000 in invoices for advertising for the original CFL program down to approximately $280,000 and contend that, since these costs were incurred in reliance upon the Commission's approval of the original program, it would be unjust and unreasonable to disallow recovery of any of these expenses (*id.* at 32-33). Finally, the Companies argue that the Commission should permit recovery of warehousing costs resulting from the storage of the CFL bulbs after the original program was suspended, as the Companies maintain that, contrary to OCEA's contentions, the CFL program could not be launched until approved by the Commission (*id.* at 33-34).

Contending that the Companies failed to adequately educate customers on the benefits of CFLs before initiating the original CFL, OCEA also suggests that the Companies should be ordered to provide three to four weeks of premarketing before beginning distribution of the CFL bulbs, and that draft copies of all marketing materials be provided to collaborative members for review and comment prior to use (OCEA Brief at

31-32). OCEA argues that the Companies' request for collection of lost revenues should be made contingent on compliance with these terms (*id.* at 32).

The Citizens Coalition offers several suggestions for distribution of the CFL bulbs, including distributing coupons with customer bills that could be turned in exchange for bulbs (Citizens Coalition Brief at 7-8). ELPC suggests that the CFL program provide for the proper disposal of nonfunctioning CFL bulbs, in order to prevent environmental and human health safety risks from the mercury found in the bulbs (ELPC Brief at 27).

The Commission finds that the revised CFL program should be approved. None of the parties to this proceeding oppose the implementation of the revised CFL program, and the Commission believes that the revised CFL program is an integral part of a comprehensive energy efficiency portfolio. The Commission notes, however, that the Companies' collection of lost distribution revenues is subject to potential reductions based upon a statistically valid measurement of the actual impact of the revised CFL program upon energy savings for purposes of compliance with the EE/PDR benchmark. Further, the Commission notes that participation in the revised CFL program is voluntary and that no customers will be required to install CFLs under the revised CFL program.

Further, the Commission finds that FirstEnergy should be permitted to recover all costs related to the original CFL program. It is clear from the record of this proceeding that after FirstEnergy proposed the original CFL program, the proposed CFL program was discussed in FirstEnergy's collaborative and that changes to the proposed original CFL program were made as a result of those discussions. No party raised any objections to the original CFL program with the Commission prior to our approval of the program. Commission approval of the original CFL program was premised on the representation in the Companies' filing of September 16, 2009, that consensus had been achieved in the collaborative supporting the program and the absence of any objections to the program by other parties. FirstEnergy acted in good faith to implement a valid Commission order approving the program. We are not persuaded that there is any basis in the record of this proceeding to deny FirstEnergy the recovery of any portion of the costs related to the decision *not* to implement the original CFL program and to develop a revised CFL program in its place.

H. Collaborative Performance

OCEA contends that the Companies' collaborative efforts were inadequate and unreasonable, and, as a result, an independent facilitator should be retained (OCEA Brief at 7). OCEA faults the Companies for providing collaborative members with inadequate time to review information, for withholding information, and for ignoring recommendations and requests for more information from stakeholders (*id.* at 9-20). OCEA also criticizes the Companies for unilaterally denying ELPC's request to join the collaborative (*id.* at 14-16). In response to the Companies' argument that the ESP stipulation only permits signatories and administrators to be part of the collaborative, OCEA cites to the testimony of OCC witness Sawmiller, who observed that the stipulation language relied upon by the Companies only addresses the initial composition of the collaborative (*id.* at 15, citing OCC Ex. 12 at 17). ELPC makes similar arguments and requests that the Commission order the Companies to open the collaborative to all interested parties (ELPC Brief at 13-14). The Citizens Coalition also questions the effectiveness of the collaborative and suggests strengthening the collaborative by establishing an independent chairperson, creating bylaws, and providing operating funds for travel allowance to allow for in-person meetings (Citizens Coalition Brief at 9-11). In addition, the Citizens Coalition urges all parties to facilitate active and comprehensive public involvement when implementing energy efficiency programs (*id.* at 4-5).

OCEA also argues that the Companies should be ordered to pursue a joint home performance program with the Dominion East Ohio Gas Company as part of the collaborative process, as a joint program would avoid duplication of efforts by the two utilities and provide a cost-effective means of providing whole-house gas and electric weatherization (OCEA Brief at 40). OPAE agrees with the need for coordinating electric and gas weatherization programs, and advocates that all available EE and weatherization programs should be combined into a coherent whole, with utilities credited for savings that are not directly paid for through rates (OPAE Reply at 6).

In response, the Companies contend that the collaborative process is effective and that any problems with the collaborative do not provide a sufficient basis for rejection of the plans (Companies Reply at 17). The Companies contend that they acted appropriately in excluding ELPC from the collaborative, as the ESP stipulation limits participation to signatory parties and third-party administrators. Since ELPC is neither a signatory party nor a third-party administrator, nor is it a member of a signatory party, the Companies argue that, pursuant to the stipulation, ELPC was not permitted to participate in the collaborative (*id.* at 18-19). While conceding that the collaborative process was perhaps not perfect, the Companies maintain that details of the plans were shared with the collaborative as decisions became finalized (id. at 19-20). The Companies also argue that OCEA's criticisms of the collaborative fail to take into account the conditions under which the plans had to be developed, with a specific design process required by the ESP stipulation, OCC's belated but vehement opposition to the original CFL program, the fact that the Commission's rules became effective only five days before the plans were filed, as well as the fact that the technical resource manual and templates have not yet been approved by the Commission (*id.* at 20-21).

The Commission finds that the evidence presented in this proceeding does not justify the retention of an independent facilitator for the collaborative or an independent third-party administrator for the Companies' EE/PDR programs. However, the

Commission does expect the collaborative process to improve over time, and we will direct Staff to continue to monitor the collaborative and to make any appropriate recommendations to improve the collaborative process in conjunction with FirstEnergy's next program portfolio plan filing or such other time as Staff deems appropriate.

With respect to ELPC's participation in the collaborative, the Commission disagrees that the ESP limited the participants of the collaborative. While the initial collaborative membership was identified by the ESP, it did not provide that this membership was exclusive. Further, the Commission finds that ELPC has demonstrated the commitment and expertise necessary for participation in the collaborative. The Commission directs the Companies to include ELPC in the collaborative membership. All future decisions regarding participation in the collaborative should be made by the Companies in consultation with Staff, and, in the event that the Companies and Staff are unable to agree upon a decision, the dispute should be brought before the Commission for prompt resolution in an appropriate proceeding.

The Commission has encouraged the formation of utility-stakeholder collaboratives because we believe that collaborative investigations may provide valuable insights into new and emerging issues. The collaborative provides an opportunity for technical staff and experts from different stakeholders to establish common vocabulary, identify key issues needing further exploration, gather lessons learned and new ideas from programs in Ohio and other states, discuss the implications of independent research, exchange data and seek to resolve factual questions. The Commission notes, however, that we do not see the primary goal of a collaborative to be a negotiated settlement of the issues in any given proceeding, and we do not believe that proceedings in Commission cases should be unduly delayed until a collaborative reaches a consensus. Where there are genuine disputes of policy, facts or the law, the Commission is prepared to hear and resolve such issues.

I. 2012 Lost Revenue Recovery

OCEA and OEC argue that the Commission should reject the Companies' proposal to collect revenues lost from EE programs (OCEA Brief at 42; OEC Reply at 8). OCEA opposes lost revenue recovery in general because the lost revenues accumulate each year, revenue may be restored to the Companies that might not have actually been lost, and it gives the Companies an incentive to increase sales (*id.*). OCEA also contends that the Companies' proposal to recover lost revenues in 2012 is contrary to the stipulation signed by the Companies in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO (*id.*). According to OCEA, the stipulation allows the Companies to collect lost revenues from programs implemented in 2009, 2010, and 2011 for six years from the stipulation's effective date, but is silent with regard to recovery of 2012 lost revenues (*id.*). In place of the lost revenue recovery mechanism, OCEA proposes that revenue decoupling be implemented in 2012 (*id.* at 43). OEC supports this recommendation, but OPAE opposes it (OEC Reply at 12; OPAE Reply at 6).

The Commission finds that the issue of lost revenue recovery by the Companies during 2012 has been rendered moot by our approval of the combined stipulation, as modified, in the *2010 ESP Case*. The combined stipulation in that proceeding provides that, during the term of the ESP, the Companies shall be entitled to receive lost distribution revenue for all energy efficiency and peak demand reduction programs approved by the Commission, except for historic mercantile self-directed projects. *2010 ESP Case*, Opinion and Order (August 25, 2010) at 14.

J. Annualized vs. Pro Rata Savings

ELPC opposes the Companies' request for annualized accounting of its EE/PDR programs (ELPC Reply at 5-6). The Companies state that the plans as submitted rely upon pro rata savings, rather than annualized savings, even though the use of annualized savings would reduce program costs by approximately $51 million (Companies' Brief at 7-8).

The Commission has already rejected the use of annualized savings in *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-2, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill 221*, Case No. 08-888-EL-ORD, Entry on Rehearing (June 17, 2009) at 9. FirstEnergy has pointed to no evidence in the record of this proceeding that this decision was incorrect or impractical. Accordingly, the Commission finds that the Companies' request for annualized accounting should be denied.

K. Waiver of Customer Classification Information

In the application, the Companies request a waiver to the extent the customer sectors utilized in the plans conflict with the Commission's forthcoming order approving a portfolio plan template in Case No. 09-714-EL-UNC (Companies Ex. 10 at 7). The Companies explain that the seven customer classifications included in the proposed template do not directly correlate to the organization of the Companies' tariffs and billing systems, and that systemic and costly changes to the Companies' accounting and billing programs could be required in order to comply with the template if it is approved as currently proposed (*id.* at 7-8). OCEA objects to the waiver request, contending that the Companies failed to provide evidence supporting their claim that they cannot provide the proposed data for the seven customer classes, and pointing out that company witness

Fitzpatrick stated that reporting the data based on the seven customer classifications contained in the proposed template is reasonable (OCEA Brief at 44-45, citing Tr. II at 210-211).

The Commission finds that the Companies' request for a waiver should be approved. However, this approval is for the period covered by this portfolio plan only, and the Companies should take the necessary steps to implement the portfolio plan template in its next portfolio plan.

L. Treatment of Small Commercial Customers

COSE urges the Commission to require the Companies to include the CFL program, the online efficient products program, the online audit program, and the energy efficient products program in the small enterprise programs within the EE/PDR programs (COSE Brief at 3). OPAE supports COSE's proposal (OPAE Reply at 4).

The Commission finds that COSE's recommendation is reasonable and appears to be consistent with FirstEnergy's intent in its application (Co. Ex. 7 at 17-18). Therefore, the Commission will modify the application to clarify that rate schedule GS (Small Enterprise) customers are also eligible for the CFL program, the online efficient products program, the online audit program, and the energy efficient products program.

V. COMMISSION DECISION

Based upon the testimony and evidence in the record of this proceeding, the Commission finds that the Companies' EE/PDR program portfolio plans should be approved, subject to the modifications discussed above and with the limited exception of the following programs: the street lighting program; the transmission and distribution programs for which the Companies separately sought approval in Case Nos. 09-951-EL-EEC, et al.; and the shared savings mechanism. Further, although the Commission will approve the residential energy efficient products program as it relates to water heaters for customers who do not have access to natural gas, the Commission will not approve the residential energy efficient products program as it relates to water heaters for all other customers.

The Commission finds that the evidence in the record of this proceeding does not support approval of the street lighting program and the residential energy efficient products program as it relates to water heaters for customers who have access to natural gas as well as the shared savings mechanism discussed above. Therefore, further proceedings are necessary regarding the street lighting programs, the residential energy efficient products program as it relates to water heaters, and shared savings; and the Commission will direct the attorney examiner to schedule an additional hearing regarding these programs should the Companies wish to pursue them. With respect to the transmission and distribution programs, the Commission will address FirstEnergy's proposed programs in Case Nos. 09-951-EL-EEC, et al.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

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

(2) On December 15, 2009, FirstEnergy filed an application for approval of the Companies' initial benchmark reports and for approval of the Companies' energy efficiency and peak demand reduction program portfolio plans for 2010 through 2012.

(3) The hearing in these proceedings commenced on March 2, 2010, and continued through March 8, 2010.

(4) The Companies' initial benchmark reports are supported by the record and should be approved.

(5) The Companies' energy efficiency and peak demand reduction program portfolio plans are reasonable and should be approved as modified by this Opinion and Order.

(6) The Companies should file revised tariffs, consistent with the modifications delineated in this Opinion and Order, for Commission review and approval.

It is, therefore,

ORDERED, That FirstEnergy's application for approval of its initial benchmark reports be approved. It is, further,

ORDERED, That FirstEnergy's application for approval of its energy efficiency and peak demand reduction program portfolio plans for 2010 through 2012 be approved as modified herein and with the limited exception of the following programs: the street lighting program; the residential energy efficient products program as it relates to water heaters for customers who have access to natural gas; the transmission and distribution programs; and the shared savings mechanism. It is, further, ORDERED, That the attorney examiner schedule an additional hearing regarding the street lighting program, the residential energy efficient products program as it relates to water heaters for customers who have access to natural gas, and the shared savings mechanism.

ORDERED, That the Companies' request for a waiver of the portfolio plan template in Case No. 09-714-EL-UNC is reasonable and should be approved. It is, further,

ORDERED, That the Companies comply with the directives set forth in this Opinion and Order. It is, further,

ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

(see concurring)

Todd A. Snitchler, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

GAP/sc

Entered in the Journal
MAR 23 2011

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanism.	)	Case No. 09-1947-EL-POR Case No. 09-1948-EL-POR Case No. 09-1949-EL-POR
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Initial Benchmark Reports.	)	Case No. 09-1942-EL-EEC Case No. 09-1943-EL-EEC Case No. 09-1944-EL-EEC
In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 09-580-EL-EEC Case No. 09-581-EL-EEC Case No. 09-582-EL-EEC

CONCURRING OPINION OF CHAIRMAN TODD A. SNITCHLER

Although I concur in the result in the Opinion and Order issued today, I write separately to express my deep concern with the collection of lost distribution revenues by the Companies.

I recognize that the Commission has already approved the collection of lost distribution revenues resulting from the implementation of energy efficiency and peak demand reduction programs through our adoption of the stipulations providing for both the current electric security plan and the electric security plan which will take effect May 31, 2011. See, *In re FirstEnergy*, Case No. 08-935-EL-SSO, Second Opinion and Order (march 25, 2009) at 13; and *In re FirstEnergy*, 10-388-EL-SSO, Opinion and Order (August 25, 2010) at 14. These stipulations represent a careful balancing of the interests of both the Companies and other stakeholders in these proceedings, and it is not my intent to undermine these stipulations.

However, I believe that the collection of lost distribution revenues resulting from energy efficiency savings and peak demand reduction mandated by Section 4928.66, Revised Code, beyond the time period of these electric security plans, presents a significant risk of undermining public support for the energy efficiency mandates, especially in light of the greater energy efficiency savings mandated by law in the future. We need to look no further than the unfortunate circumstances surrounding the failed original CFL program discussed in the Opinion and Order to see the risks of undermining public support for energy efficiency measures. Therefore, the Commission, the Companies, and other stakeholders must use this time prior to the expiration of the approved electric security plans on May 31, 2014, to develop rate designs which promote both energy efficiency and rate stability without relying upon the collection of lost distribution revenues.

The Commission has initiated a docket to examine the issue of better aligning electric utility rate designs with state policy regarding energy efficiency and peak demand reduction. *In the Matter of Aligning Electric Distribution Utility Rate Structure With Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation,* Case No. 10-3126-EL-UNC, Entry (December 29, 2010). I strongly encourage the Companies, the other electric utilities in this state, and all other stakeholders to provide the Commission, in both that docket and in future rate proceedings, with proposals for innovative rate designs that promote both energy efficiency as well as the state policies enumerated in Section 4928.02, Revised Code. I will be most reluctant to approve any future proposals which include the collection of lost distribution revenues resulting from the statutory mandates for energy efficiency savings and peak demand reduction.

Todd A. Snitchler

Entered in the Journal

MAR 23 2011

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanism.	)	Case No. 09-1947-EL-POR Case No. 09-1948-EL-POR Case No. 09-1949-EL-POR
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Initial Benchmark Reports.	)	Case No. 09-1942-EL-EEC Case No. 09-1943-EL-EEC Case No. 09-1944-EL-EEC
In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 09-580-EL-EEC Case No. 09-581-EL-EEC Case No. 09-582-EL-EEC

CONCURRING OPINION OF COMMISSIONER CHERYL L. ROBERTO

I am writing separately today to express my full agreement with the concurring opinion written by Chairman Snitchler in this case.

Cheryl L. Roberto

Cheryl L. Roberto

Entered in the Journal

MAR 23 2011

Reneé J. Jenkins

Reneé J. Jenkins
Secretary