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 Authority to Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan	**)**	**Case No. 12-1230**

INITIAL BRIEF
by the
SIERRA CLUB

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I. INTRODUCTION

On April 13, 2012, the Ohio Edison Company, Cleveland Electric Illuminating Company and the Toledo Edison Company (collectively "FirstEnergy" or "Companies") filed a proposed Electric Security Plan ("ESP") application and stipulation. The application was characterized as an "extension" of the ESP already in place.[1] But the proposed application and stipulation present several new issues and propose several changes to the language of the Companies' current ESP. These issues warrant careful consideration by the Commission. Less than two months later, an evidentiary hearing was held beginning June 4, 2012, and ending on June 8, 2012. This schedule provided a minimal amount of time to explore the new issues and language changes.[2]

Sierra Club's brief focuses on FirstEnergy's lack of meaningful participation in PJM's 2015/2016 base residual auction ("2015/2016 BRA"), and makes recommendations for future BRAs. Sierra Club's brief also discusses various aspects of cost recovery from FirstEnergy's customers. Specifically, the Sierra Club requests that the Commission 1) contrast the

[1] See Case No. 10-388-EL-SSO.
[2] The docket reflects that over 1,000 people submitted comments protesting the expedited schedule, including three members of the Ohio State Legislature. And even with the expedited schedule, many FirstEnergy customers expressed their interest in receiving the full value of their energy efficiency investments.

Companies' actual efforts with regard to 2015/2016 BRA with the Companies' potential bid had it included future energy efficiency efforts, 2) note the impact of these inadequate efforts on FirstEnergy customers, 3) deny recovery of costs as discussed below, and 4) take steps to encourage the participation of FirstEnergy in future auctions that reflect its full potential. Further, Sierra Club recommends that the Commission reject the Companies' requests for a continuation of lost revenues as a recovery mechanism for its energy efficiency programs. By taking these steps, the Commission will allow customers to realize the full economic benefit of energy efficiency programs, mitigate future capacity price impacts, and forward Ohio's policies encouraging energy efficiency programs as a way to generate savings for customers and offset expensive and unnecessary future generation costs.

II. APPLICABLE LAW

A. Ohio Revised Code §4928.143 Allows Electric Distribution Utilities to Include in an Electric Security Plan Provisions for Energy Efficiency Programs.

Ohio Revised Code §4928.143 allows the Companies to "include provisions under which the electric distribution utility may implement […] energy efficiency programs."[3] The Electric Distribution Utilities ("EDUs") may then "allocate program costs across all classes of customers of the utility."[4]

[3] R.C. 4928.143(B)(2)(i).
[4] Id.

B. The Commission Entry in PUCO Case No. 12-814-EL-UNC Predicted a Potential "Significant Increase in Capacity Prices"[5] if Energy Efficiency Resources were not Utilized by the Companies in Accordance with Ohio Law.

The Commission realizes the importance of utilizing all "reasonable and cost-effective steps,"[6] including energy efficiency efforts, in an effort to reduce the potential increase in capacity prices. In an Entry dated February 29, 2012, the Commission required FirstEnergy to submit a report "detailing *potential* energy efficiency and peak demand reduction offers into the May 2012 PJM BRA auction for the 2015/2016 year."[7] The Commission listed several statutes[8] to be considered by FirstEnergy as a basis for such a request:

- **R.C. 4905.22: "**Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable."

- **R. C. 4905.70:** "The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs."

- **R.C. 4928.02:** "It is the policy of this state to do the following throughout this state:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and *reasonably priced* retail electric service; […]

(I) Ensure retail electric service consumers protection against unreasonable sales practices, *market deficiencies, and market power*;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates; […]

(M) Encourage the education of small business owners in this state regarding the use of, and *encourage the use of, energy efficiency programs* and alternative energy resources in their businesses;

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[5] *In the Matter of the Commission's Review of the Participation of the Cleveland Electric Illumination Company, the Ohio Edison Company, and the Toledo Edison Company in the May 2012 PJM Reliability Pricing Model Auction*, Case No. 12-814-EL-UNC, Commission Entry at ¶3 (February 29th, 2012).
[6] PUCO Case No. 12-814-EL-UNC, Entry at ¶4.
[7] (Emphasis Added) Id. at ¶8.
[8] Id. at ¶4.

> (N) Facilitate the state's effectiveness in the global economy. In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure [….] (Emphasis Added).

All of these statutes are relevant to bidding energy efficiency savings into the PJM capacity auction because, as evident by the Commission's Entry, energy efficiency savings bid into the auction can assist in the mitigation of price increases. Bidding in additional capacity also serves to offset market deficiencies and, by reducing costs for business owners, increases the state's effectiveness in the global economy.

These effects on prices and customers were acknowledged in the testimony of Sierra Club Witness Chris Neme:

> Customers will pay much more for capacity than they would otherwise need to pay because they will have to acquire generating capacity that will be redundant with the capacity savings produced by First Energy's efficiency programs and, more importantly, because the failure to bid efficiency resources into the market on a "price-taking basis" will cause the market clearing price for capacity – i.e. the price that will be paid to all capacity that clears the market – to be significantly higher than it otherwise would have been.[9]

In addition, the Commission listed Ohio Revised Code §4928.66 and described the statutory requirements for EDUs to achieve steadily increasing energy efficiency and peak demand reduction benchmarks,[10] concluding that: "By definition, cost-effective energy efficiency and peak demand reduction programs will reduce total costs to consumers."[11] The obvious point of this paragraph was to demonstrate that FirstEnergy has an obligation to create future, increased savings amounts in order to meet its energy efficiency and peak demand reduction benchmarks. FirstEnergy Witness Ridmann acknowledged that future savings were

[9] Sierra Club Exhibit 5, Direct Testimony of Chris Neme at 12, lines 22-26, page 13, lines 1-2.
[10] PUCO Case No. 12-814-EL-UNC, Entry at ¶5.
[11] Id.

potentially eligible to be included in a bid into the 2015/2016 BRA.[12] These future savings could have been a part of FirstEnergy's bid.

Ohio law, as demonstrated above, obligates utilities to make efforts to ensure adequate facilities and reasonably priced electric service. Ohio law also provides the Commission with the authority to ensure that utilities use their best efforts to achieve these goals. FirstEnergy's efforts with regard to the 2015/2016 BRA were not aligned with these obligations. As discussed below, the omission from the 2015/2016 BRA bid of potential energy efficiency and peak demand resources, which FirstEnergy is statutory obligated to create, will cost its customers potentially hundreds of millions of dollars.

III. ARGUMENT:

A. 2015/2016 PJM Base Residual Auction

The May 7, 2012 Base Residual Auction for the ATSI zone delivery year 2015/2016 resulted in the highest capacity price of all the zones in the PJM footprint.[13] Without Commission action, FirstEnergy will pass this record high capacity price on to its customers. A significant portion of these capacity costs, possibly in the hundreds of millions of dollars, was wholly avoidable. As FirstEnergy acknowledges, the Companies could have lowered the clearing price and secured additional revenue to its customers by bidding energy efficiency and demand response resources into the 2015/2016 BRA. But FirstEnergy—despite having notice well in advance of the deadlines and requirements to participate in the May 7, 2012 auction, having experience with previous PJM capacity auctions, and being well aware of the benefits it could provide to its customers by participating in the BRA—admits that it did no planning, no

[12] Cross Examination of William R. Ridmann, Hearing Transcript Volume I, page 328, lines 24-25, page 329, lines 1-3.
[13] AEPR Exhibit 1.

analysis, and made no efforts to participate in the 2015/2016 BRA until after the PUCO and Signatory Parties asked them to consider bidding. It was FirstEnergy's decision not to plan for the 2015/2016 BRA, until eventually submitting only a token bid. The Companies' *post hoc* list of excuses does not justify FirstEnergy's inaction and, even if the Companies' excuses did represent significant and real risk, they should have been brought to the Commission in the form of a request for mitigation and not simply cited after the fact.

1. Despite Ample Notice of the Auction and its Likely Consequences for its Customers, FirstEnergy Failed to Take Any Steps to Prepare for the 2015/2016 BRA

There is no doubt that FirstEnergy knew of the 2015/2016 BRA in time to create a responsible plan for bidding its energy efficiency and demand response resources into the auction. Mr. Ridmann admits that FirstEnergy was aware of the PJM base residual auctions well before even applying to join PJM from MISO—a move that became final on June 1, 2011, nearly one full year before the 2015/2016 BRA.[14] Mr. Ridmann himself, FirstEnergy's *Vice President* of Rates and Regulatory Affairs, claims to have known "for a while" that the auctions occur in May each year and that there are "procedures and processes that you need to meet leading up to [the auction]."[15] Beyond knowing that the BRA's exist and take place in May of each year, FirstEnergy has participated in previous auctions and has personnel that monitor the auctions.[16] The 2015/2016 BRA did not sneak up on FirstEnergy out of the blue, it was a significant event that was on the Companies' radar, including senior levels of management.

[14] Cross Examination of William R. Ridmann, Hearing Transcript Volume I, p.316, lines 17-24 and p.318, lines 15-19.
[15] Id. at p.318, lines 4-11.
[16] Id. at pp.316-318.

FirstEnergy also knew, or should have known, that the 2015/2016 BRA was at a significant risk of clearing at a much higher price than previous auctions in the ATSI zone due to the large number of retiring coal plants in the zone. FirstEnergy's expert witness, Robert Stoddard, testified that because of a disparate amount of retirements and transmission constraints, his models predicted ATSI to clear at nearly $537/MW-day prior to PJM's revision of the CETL/CETO in April of 2012.[17] Compared to previous ATSI zone capacity clearing prices of $108/MW-day for 2011/2012 and $20/MW-day for 2012/2013,[18] the $537/MW-day would have amounted to a 450% to 2,700% capacity price increase over previous years. The potential for reaching the $537/MW-day cap was not a secret; Mr. Stoddard explained that his results were "consistent with the statements made by other analysts at the time."[19] Nor were the drivers of plant retirements in the ATSI zone a surprise or inconsistent with the drivers in the rest of the PJM territory.[20] The ATSI zone has a higher magnitude of plant retirements because the zone had a "higher density of these older subcritical coal units" that became uneconomic "to operate and/or retrofit."[21] FirstEnergy knew of the drivers and of the concentrated retirements within ATSI firsthand, as FirstEnergy Solutions, a subsidiary of FirstEnergy Services Corp., announced retirement of several coal-fired units in January of 2012.[22] This again shows FirstEnergy had ample notice of the factors driving up the capacity auction clearing price and the disparate impact it would have on the ATSI zone customers served by FirstEnergy.

FirstEnergy also knew of the benefits that customers would receive from bidding into the 2015/2016 BRA and tried to exploit those benefits to justify an expedited ruling on this ESP. In

[17] Cross Examination of Robert Stoddard, Hearing Transcript Volume IV, pp.134-135.
[18] Id. at p.26, lines 12-16.
[19] Id. at pp.134-135.
[20] Id. at pp.28-29.
[21] Id.
[22] Id. at p.8, line 24.

his direct testimony, Mr. Ridmann explained how bidding should have "a mitigating effect on the capacity auction prices," and requested that the Commission issue a ruling by May 2, 2012 to ensure that FirstEnergy could participate in the May 7 auction.[23] In his supplemental testimony, Mr. Ridmann further explained that the benefits to customers are "twofold" and include both a mitigating effect on the auction clearing price (lower capacity prices) and returned revenues from resources that clear the market.[24] FirstEnergy clearly knew the benefits of bidding into the 2015/2016 BRA and leveraged these benefits against the Commission's concern of high capacity prices resulting from the retirement of 20% of capacity in ATSI zone (including several FirstEnergy Solutions units) as enticement for expediting a decision on their highly contested ESP.

And yet despite knowing about the requirements for the auction well in advance, having notice that the auction was going to be impacted by large scale retirements in ATSI, and being aware of the benefits that customers would receive from bidding energy efficiency and demand response resources into the 2015/2016 BRA, FirstEnergy did nothing. FirstEnergy did nothing until "it became apparent that the Signatory Parties were interested in the Companies' ability to offer energy efficiency resources into the 2015/2016 PJM BRA[.]"[25] Until this "interest" from Signatory Parties—which occurred sometime between February 29, 2012, when FirstEnergy informed the Commission that it did not intend to bid resources into the 2015/2016 BRA and the April 13, 2012 application in this proceeding—FirstEnergy simply planned not to bid its customers' energy efficiency and demand response resources into the 2015/2016 BRA.

[23] Company Exhibit 3, Direct Testimony of William R. Ridmann, pp.19-20.
[24] Company Exhibit 4, Supplemental Testimony of William R. Ridmann, p.3, lines 12-23.
[25] Id. at p.2, lines 10-12.

The result of FirstEnergy's decision to not prepare for the 2015/2016 BRA in the months leading up to the auction was that the Companies eventually submitted only a token bid of limited energy efficiency resources. Sometime in the six days between April 1st and the PJM Measurement and Verification (M&V) deadline of April 7, 2012, FirstEnergy hastily drafted its M&V plan.[26] In the M&V plan, FirstEnergy sought verification of 65 megawatts of energy efficiency only from existing programs and only from lighting programs.[27] At the May 7, 2012 BRA for 2015/2016, FirstEnergy cleared a mere 36 megawatts of energy efficiency.[28] As discussed in detail below, FirstEnergy's viable energy efficiency resources, those minimally required solely by Senate Bill 221, amount to roughly 339 megawatts. The 36 megawatts that FirstEnergy cleared in the 2015/2016 BRA thus represent only 10% of the resources that the Companies were able to bid.

2. FirstEnergy's Failure Cannot be Exculpated by *Post Hoc* Excuses

FirstEnergy's failure occurred in the months and years prior to March of 2012, when the Companies simply ignored the benefit to their customers from participating fully in the auction, taking no steps to prepare a bid and neglecting to assess benefits and risks. As Mr. Ridmann testified, FirstEnergy did not even *consider* bidding into the BRA until the Commission issued its Entry in Case No. 12-814.[29] And even then, FirstEnergy's position was that it would not consider bidding resources unless the Commission guaranteed that the Companies would be held harmless.[30] More succinctly, FirstEnergy's strategy for the BRA was to ignore it because "there is no profit to be made in this activity by the [C]ompanies, and we're not willing to make any –

[26] Cross Examination of William R. Ridmann, Hearing Transcript Volume I, p.307, lines 3-4.
[27] Sierra Club Exhibit 5, Direct Testimony of Chris Neme, p.12, lines 6-9.
[28] Cross Examination of William R. Ridmann, Hearing Transcript Volume I, p.305, lines 15-24 ("subject to check").
[29] Id. at p.288, lines 7-13.
[30] Id.

take any risks associated with bidding [energy efficiency.]"[31] Thus, even if bidding could save customers hundreds of millions of dollars through lower capacity prices and produce millions of dollars in revenue from cleared resources, as testified by Sierra Club witness Neme and detailed below, FirstEnergy was going to sit out of the auction because the Companies themselves saw no profit to be made.

Only after the Commission and Signatory Parties approached the Companies did FirstEnergy raise the issue of risk and wanting to be held harmless by the Commission for participating in the auction. FirstEnergy admits that it has not performed a "paper analysis" of the risks or any quantification of the risks.[32] Mr. Ridmann relied on the point that FirstEnergy employees responsible for energy efficiency and peak demand reduction "know in their minds" about the risks, but that quantification is not necessary because the Companies were not willing to "take any risks" associated with bidding unless they were held harmless.[33] Not only did FirstEnergy not quantify the risks that they try to claim excuse them from considering participation in the BRA, but FirstEnergy did not even bring the issue of risk to the Commission until discussions regarding the Entry in Case No. 12-814, in March of 2012.[34] According to Mr. Ridmann, FirstEnergy asked the Commission in discussions that FirstEnergy "be held harmless[,]" which he considers "a very specific mitigation mechanism."[35] There is no evidence in the record that FirstEnergy made any specific requests to the Commission. To the extent participation in the 2015/2016 BRA did pose risks to FirstEnergy, the Companies should have brought those risks to the Commission for mitigation before deciding to completely ignore the auction.

[31] Id. at p.330, lines 13-19.
[32] Id. at lines 1-5.
[33] Id. at pp.329-330.
[34] Id. at p.332, lines 16-24.
[35] Id. at lines 11-15.

With hundreds of millions of dollars at stake, the Companies owed a duty to their customers to get the full value of their energy efficiency investments and to offset the predicted record capacity price. Instead, FirstEnergy ignored this duty citing risks, *post hoc*, that (a) the Companies never quantified or compared to potential benefits and (b) were never raised with the Commission in an application for specific mitigation measures. Moreover, as the section below details, the *post hoc* risks cited by FirstEnergy are nothing more than red herrings, that FirstEnergy could have mitigated had they performed responsible planning in the months or even weeks leading up to the auction. Simply put, risk had nothing to do with FirstEnergy's decision. What really mattered, what drove their decision not to participate in the auction, was that the Companies were unwilling to save their customers hundreds of millions of dollars without a profit for their shareholders. If this calculated, and wholly imprudent, decision is allowed to stand, Ohio customers will be stuck with potentially hundreds of millions of dollars in avoidable costs—money that should have flowed back to FirstEnergy customers, but instead will flow to generators in the ATSI zone, including generating assets owned by FirstEnergy Solutions.

3. The *Post Hoc* Risks Cited by FirstEnergy Are Without Merit

As discussed above, the Companies never quantified any risk, nor did they even raise risk as an issue until being asked by the Commission and Signatory Parties to prepare a bid, apparently because, as Witness Ridmann stated, "there is no profit to be made in this activity by [FirstEnergy]."[36] This philosophy does not align with the obligations of a public utility nor is it aligned with Ohio policies.[37] Moreover, the risks that FirstEnergy cited after failing to prepare a bid for the 2015/2016 BRA are meritless and pretextual.

[36] Id. at p.330, lines 13-19
[37] See Section II, Applicable Law, *Supra*.

a) FirstEnergy's planned compliance with future benchmarks serves to minimize or eliminate any risk that FirstEnergy would have had.

Sierra Club witness Chris Neme testified that compliance with future benchmarks was a catalyst that would have produced any future savings bid into the 2015/2016 BRA:

> While the Companies do not have approved efficiency program plans for future years, it is clear the current [Ohio] law will require them to continue to increase their efforts to promote efficiency in the future. Thus, the risk of falling short of commitments made in the market is tantamount to the risk of falling short of meeting statutory savings goals.[38]

FirstEnergy Witness Ridmann testified that it was "the intent of the [FirstEnergy] EDUs to meet the statutory [energy efficiency] requirements they are obligated to meet."[39] Therefore, the risk of bidding in future savings at minimum compliance levels was not a risk that justified preventing FirstEnergy from bidding into the auction. As stated by Sierra Club Witness Neme, other utilities "view the rewards of participation to be too great not to bid future years' peak savings."[40] When questioned about his knowledge of other Ohio's utilities' efforts to capture these savings for their customers, Mr. Ridmann simply stated "Don't know, don't care."[41]

b) FirstEnergy could have made up any shortfall by purchasing needed resources in a future, incremental auction.

To the extent any shortfalls did arise between the resources bid and the resources realized, FirstEnergy would have the ability to purchase supplemental resources at a lower price than the BRA clearing price during incremental auctions. Incremental auctions between the BRA and the delivery year allow entities to sell or purchase megawatts should the need arise. Experience with incremental auctions provides sufficient comfort that these incremental auctions will clear at a much lower price than the BRA and create an opportunity to true up any shortfall

[38] Sierra Club Exhibit 5, Direct Testimony of Chris Neme, page 8.
[39] Cross Examination of William R. Ridmann, Hearing Transcript Volume I, p.325, lines 9-14.
[40] Sierra Club Exhibit 5, Direct Testimony of Chris Neme, page 8.
[41] Cross Examination of William R. Ridmann, Hearing Transcript Volume I page 333, line 2 .

in capacity, likely at a lower cost. In fact, FirstEnergy witness Stoddard states that "so far there's only been one instance that [incremental auction prices have been higher than BRA prices]."[42]

c) Ownership of future resources could have been mitigated by simply making it a condition of future participation.

The question of ownership of energy efficiency resources is also not a barrier that prevents participation. FirstEnergy witness Ridmann acknowledged that the Companies merely assumed the ownership of residential lighting savings.[43] FirstEnergy unilaterally decided it was only reasonable to assume ownership of residential lighting savings without permission from customers. Moreover, it is not clear that FirstEnergy does *not* already have ownership rights to these savings. Given that FirstEnergy is the administrator of these programs, and the magnitude of savings that participation in the auction would have realized for customers, it would be reasonable for the Companies to have assumed ownership of all savings, similar to their decision with regard to residential lighting savings.

Regarding Commercial and Industrial customers, witness Ridmann noted disappointing results from the Companies' efforts to secure ownership of the savings resources for completed projects, procuring only about "ten percent of the eligible load.[44] But the Witness acknowledged that these efforts were made in a timeframe of less than a month.[45] Had the Companies prepared in time for the 2015/2016 BRA ownership of greater resources, if it is necessary, could have been procured. This does not appear to be a barrier for other Ohio Companies.[46] In fact,

[42] Cross Examination of Robert Stoddard, Hearing Transcript Volume IV, page 14 lines 6-9.
[43] Cross Examination of William R. Ridmann, Hearing Transcript Volume 1, page 302, lines 9-25, page 303, line 1.
[44] Id. at page 298, lines 1-7.
[45] Id. at page 301 lines 11-14.
[46] In the 2015/2016 BRA, PJM approved an offer of 204MW of resources from AEP Ohio who is situated similarly to FirstEnergy with regard to this ownership issue and did not require affirmative statements from their customers.

FirstEnergy could merely require this as part of a condition of participation for customers not planning on bidding the load in themselves.[47]

d) FirstEnergy Witness Ridmann admitted that the difference in measurement and verification between the proposed Ohio requirements and PJM requirements was minimal.

Measurement and verification of resources, which FirstEnergy cited as problematic for participation in the 2015/2016 BRA auction, was also a non-issue. Once the Companies decided to prepare a token bid, the M&V plan was drafted and submitted within a month's timeframe[48] and approved by PJM. Witness Ridmann noted that "adjustments" were made to Ohio protocol in order to comply with the PJM M&V requirements.[49] Thus, despite the characterization made in FirstEnergy's report to the Commission on this issue,[50] the plan was completed, submitted and approved very quickly. Therefore, the PJM measurement and verification protocols were not an obstacle that justifies the Companies' lack of participation in the auction.

In sum, the excuses FirstEnergy cited *post hoc*—never quantifying or attempting to mitigate—are without merit. FirstEnergy made its decision not to bid because it saw no profit motive. And when confronted by the Commission and Signatory Parties, the Companies claimed that there were risks that were somehow insurmountable. In fact, had the Companies planned on preparing a bid in a reasonable time frame, none of the risks posed an issue.

4. The Consequences of FirstEnergy's Failure

After ignoring the auction until hastily putting together an M&V plan in the six days prior to the April 7, 2012 PJM deadline, FirstEnergy cleared 36 megawatts of energy efficiency,

[47] Sierra Club Exhibit 5, Direct Testimony of Chris Neme, page 16, lines 22-24, page 17, lines 1-2.
[48] Cross Examination of William R. Ridmann, Hearing Transcript Volume I, page 306, lines 4-10.
[49] Id. at, page 307, lines 18-21.
[50] Case No. 12-814, FirstEnergy Report at 5.

solely from existing lighting programs, for the 2015/2016 BRA. Had FirstEnergy decided to use the time leading up to the 2015/2016 BRA to consider bidding even the statutory minimum requirements for energy efficiency under Senate Bill 221, Sierra Club expert Chris Neme estimates that FirstEnergy could have bid, as a ballpark estimate, approximately 339 megawatts.[51] Mr. Neme estimated the 339 megawatts using data provided by FirstEnergy and assuming the Companies intend to meet at least the minimum energy efficiency requirements of Senate Bill 221.[52] Mr. Neme built the estimate from the ground up, assessing realization rates for all applicable energy efficiency programs for the years eligible for the 2015/2016 BRA. But as Mr. Neme explained, the total number approaches 300 megawatts even if we start with FirstEnergy's limited M&V plan and extrapolate the 65 megawatts in savings for 10 months and extend it to the full 48 months of the 2015/2016 BRA.[53] That is, simply taking FirstEnergy's 10-month plan and expanding it to a 48 month plan, as the BRA is designed to accommodate, FirstEnergy could have bid over 300 megawatts into the BRA.

These additional 300 megawatts would have benefitted customers, as Mr. Ridmann testified, in two ways.[54] First, at a clearing price of $357/MW-day, the 300 megawatts would have produced nearly $39 million[55] in revenue that would have gone back to customers as a reduction in the Rider DSE.[56] Second, the 300 megawatts of low cost resources would decrease the market clearing price by approximately $120/MW-day to a final clearing price of around

[51] See Sierra Club Exhibit 5, Direct Testimony of Chris Neme, page 9; and Cross Examination of Chris Neme, Hearing Transcript Volume I, p.340, line 20.
[52] Id.
[53] Sierra Club Exhibit 5, Direct Testimony of Chris Neme, page 12, lines 6-15.
[54] Company Exhibit 4, Supplemental Testimony of William R. Ridmann, p.3, lines 12-23.
[55] That number assumes the 300 megawatts did not impact the final clearing price. If the clearing price dropped due to the 300 additional megawatts of low cost resources, as Mr. Ridmann claimed would be a benefit of bidding in his supplemental testimony and Mr. Neme quantified in his direct testimony, the additional revenues would decrease to $22 million. See Company Exhibit 4, Supplemental Testimony of William R. Ridmann, p.3, lines 12-23; and Sierra Club Exhibit 5, Direct Testimony of Chris Neme, page 13, lines 13-15.
[56] See Sierra Club Exhibit 5, Direct Testimony of Chris Neme, page 13, lines 5-15; and Company Exhibit 4, Supplemental Testimony of William R. Ridmann, p.3, lines 12-23.

$200/MW-day.[57] This decrease in capacity price could have saved ATSI zone customers up to $600 million in unnecessary capacity payments.[58]

The potential $600 million is admittedly a ballpark estimate given the information publicly available at this time. Mr. Neme testified that he used conservative assumptions of the total megawatts FirstEnergy should have bid, but admitted that the impact of those megawatts on final clearing price is not known at this time. As Mr. Stoddard testified, we don't know whether the clearing price ended on a flat portion of the supply curve, where additional low cost resourced would not have a significant impact on the clearing price, or on a steep portion of the curve, where impacts could be significant and approach Mr. Neme's $600 million estimate.[59] But even Mr. Stoddard admits that 300 megawatts is a substantial size resource, and that the 1,800 megawatts of other demand side resources that did clear the market had a lowering effect on the capacity clearing price.[60]

Simply put, with the information available well before the 2015/2016 BRA results were announced, it was clear that FirstEnergy's decision – first to ignore the auction and eventually to submit a very limited bid – was likely to cost customers a substantial amount of money, from tens to hundreds of millions of dollars. The exact amount was not knowable *ex ante*, but the negative impact to customers was only a matter of degree. FirstEnergy was in a position to save its customers this money, but, as outlined above, it was unwilling to take any steps without a clear profit motive and thus did nothing. When PJM releases information about the 2015/2016 BRA, the Commission will be able to determine the exact amount of money. As noted by Sierra

[57] Sierra Club Exhibit 5, Direct Testimony of Chris Neme, page 14, lines 8-15.
[58] Id. at p.15, lines 8-13.
[59] Cross Examination of Robert Stoddard, Hearing Transcript Volume IV, p.23, lines 2-16.
[60] Id. at pp.21-22.

Club witness Neme, the Commission has already requested information about the auction from from PJM.[61]

5. FirstEnergy Should Be Held Accountable for Financial Harm it Caused to Ohio Customers.

The Companies should be held financially accountable, in some substantive way, for the economic harm their failure to prepare anything more than a token bid for the 2015/2016 BRA will cause their customers. As noted above, the Commission has already requested information from PJM that will assist in quantifying the financial impact this will have on FirstEnergy's Ohio customers and has the authority to require this investment of the Companies.[62] Once the cost impacts are quantified, the Companies should be required to compensate their customers for their lost savings. One manner of compensating customers would be to require the Companies invest in efficiency savings, above and beyond those minimums required by Senate Bill 221, while ensuring that these investments will not qualify for any shared savings revenue that may ultimately be approved. Doing so would bring those dollars back to Ohio customers while lowering the need for additional capacity in the future at the least cost, and allowing for maximum additional efficiency revenues to be earned from future BRAs.

B. Recommendations for Future BRAs

For the reasons stated above, the Commission should modify the stipulation and/or require the following as a condition prior to approval:

1. **Require Commission approval of a plan for future BRAs**: The Company must not be able to leave these revenues on the table in future auctions. FirstEnergy's customers invest in energy efficiency programs partially as a means for lowering their need to

[61] Cross Examination of William R. Ridmann, Hearing Transcript Volume 1 at page 357, lines 16-22.
[62] OCEA Comments in Case No. 12-814 at pages 19-21.

purchase capacity. If FirstEnergy fails to bid these investments into the BRAs, customers will be paying for capacity twice; paying once through energy efficiency investments to lower their need, then paying again to have the capacity supplied regardless. For the next (2016/2017) and all subsequent BRAs, the Commission should require that FirstEnergy submit its plan for bidding of efficiency resources for approval by the Commission. The plan should be filed at least 90 days before the deadline for submitting all pre-requisites for bidding (e.g. an M&V Plan) to PJM. The approval process should be transparent and should allow interested parties the opportunity to participate to ensure energy efficiency investments receive their maximum value.

2. **Create a default requirement that FirstEnergy bid all eligible efficiency resources in future BRAs**: For the next (2016/2017) and all subsequent BRAs, the Commission should establish a default requirement that FirstEnergy bid, at a minimum, all eligible efficiency resources that it can reasonably expect to acquire in the process of meeting Ohio's statutory efficiency savings requirements. For 2016/2017, that means all eligible efficiency resources it will reasonably expect to acquire between June 2012 and May 2016. FirstEnergy should be required to present compelling evidence, meaning quantitative analysis - not merely information contained solely in its employees' minds - that the financial cost and/or financial risk of bidding certain efficiency resources into the market would be greater than the likely benefits (both capacity payments and impacts on market clearing prices) in order to exclude any expected efficiency savings from its bids.

3. **Require a mechanism for assuring ownership of future efficiency peak capacity savings**: The Commission should require FirstEnergy to put in place, as soon as feasible, mechanisms for assuring ownership of all peak capacity credits generated by its efficiency programs in the future, or alternatively simply clarify that FirstEnergy has the ability to claim ownership of the savings currently. Any change to contract/rebate forms should require ownership as a means for participating in the rebate and incentive programs. The Commission should not rely on FirstEnergy's claim that this will hinder participation in the programs as there is no clear evidence that would be the result and, in fact, experience from other utilities is to the contrary. More specifically, customers should not be given an opportunity to participate in programs while opting out of giving FirstEnergy ownership rights of the resulting savings for purposes of bidding into the PJM auctions.

4. **Require an assessment of cost-effectiveness of efficiency investments beyond statutory minimum:** As part of the development of its bidding plan (per the second recommendation above), FirstEnergy should be required to assess whether additional efficiency resources – i.e. over and above the level of savings currently required by statute – would generate more capacity benefits (in the form of both capacity payments and impacts on market clearing prices) than they would cost to acquire. To the extent that they would, the Companies should be required to acquire all such additional cost-effective resources.

5. **The Commission should investigate the imprudent management practices of FirstEnergy:** In addition to the recommendations above, and as a separate matter, the Commission should evaluate the need to initiate a formal investigation of prudence. The potential of several hundred million dollars in costs that have resulted from the Companies' inaction with regard to the 2015/2016 BRA is not something the Commission should take lightly. While the Companies' collective failure to bid energy efficiency resources into the capacity markets has a significant and deleterious impact on customers, it also has a correspondingly positive impact on the bottom line of FirstEnergy's unregulated generation affiliate, FirstEnergy Solutions. Absent action by the Commission, the increase in capacity prices experienced in Ohio will pad FirstEnergy Solutions' coffers. The Companies seek to distance themselves from this obvious linkage, asserting that "[a]lthough the Companies understand the Commission is interested in issues related to the electric generating assets of the Companies' affiliate, FirstEnergy Solutions Corp., the Companies are not the custodian of information related to those assets."[63] While perhaps neither the "custodian[s] of the information" or the owners of the generating assets, the Companies were well aware that their failure to pursue bidding energy efficiency resources into the 2015/2016 BRA would have an impact on prices, and that higher prices redound to the benefit of FirstEnergy Solutions to the extent the distribution companies are permitted to pass those higher prices along to their retail customers. Given the customer dollars involved, the failure of the Companies to position themselves to bid energy efficiency resources into the 2015/2016 BRA, and the positive impact that this inaction has on FirstEnergy Solutions' bottom line, the

[63] FirstEnergy comments in Case No. 12-814 at p.8

Commission may well conclude that the Companies' have not engaged in prudent planning.

C. Lost Revenue and Advanced Energy Rider Costs.

Lost Revenue Collection and Alternative Energy Rider Costs were included in the proposed Stipulation. Regarding these issues Sierra Club also recommends that the Commission:

1. Defer lost revenue recovery to the pending energy efficiency portfolio case:

As stated by Witness Gonzalez, the decision regarding lost revenues should be deferred to the Companies' portfolio filing due no later than July 31, 2012.[64] The cost and impacts of efficiency programs, including their impact on supposed lost revenues, will be more clearly discussed in the portfolio case. There is no need to address the recovery of lost revenues in this expedited ESP case and there is no reason the issue cannot be deferred into a case that is more relevant for the issue to be decided. Additionally, the Commission Chairman stated in his concurring opinion in the 09-1947-EL-POR Order that:

> "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."[65]

In complete disregard of the Chairman's Opinion, FirstEnergy seeks approval in this expedited ESP proceeding without offering the Commission any alternative to the lost revenue recovery proposal. When questioned about how the ESP provision on lost revenues addresses the

[64] OCC Exhibit 11, page 40, lines 14-17, page 41, lines 1-4.
[65] OCC Exhibit 11, page 39, lines 16-20, page 40, lines 1-2.

Chairman's opinion, FirstEnergy's Vice President of Rates and Regulatory Affairs asserted that the discouragement was limited to "that time…that case[,]" as if the Commission has compelling reasons to have substantially changed its position.[66] Stated simply, the issue of lost revenues is better suited for the upcoming portfolio case and should be deferred by the Commission for decision in that case.

2. Advanced Energy Rider costs should be trued up to the findings in the Staff Audit in Case No. 11-5201-EL-RDR.

In Case No. 11-5201-EL-RDR, the Commission Staff is auditing the Companies' advanced energy rider ("AER").[67] As a condition of deferring recovery of the rider, the Commission should clarify that any cost recovery through this rider will be adjusted according to audit findings which are due on August 15, 2012.

IV. CONCLUSION

For the foregoing reasons, the Sierra Club respectfully request that the Commission consider and adopt the Sierra Club's recommendations as submitted.

Respectfully submitted,

[66] Ridmann, V.I, 179:17-25

[67] *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 11-5201-EL-UNC-RDR, Commission Entry at ¶1 (January 18, 2012).

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Initial Brief by the Sierra Club* was served upon the persons listed below via electronic transmission this 22nd day of June, 2012.

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