BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio	)	
Edison Company, The Cleveland Electric	)	Case No. 12-2190-EL-POR
Illuminating Company, and The Toledo	)	Case No. 12-2191-EL-POR
Edison Company for Approval of their Energy	)	Case No. 12-2192-EL-POR
Efficiency and Peak Demand Reduction .	)	
Program Portfolio Plans for 2013 through 2015.	)	

OHIO PARTNERS FOR AFFORDABLE ENERGY'S
POST HEARING BRIEF

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") hereby submits to the Public Utilities Commission of Ohio ("Commission") this post-hearing brief in the applications of Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (together "FirstEnergy" or "Companies") for approval of their energy efficiency and peak demand reduction program portfolio plans for 2013 through 2015. These applications were filed by FirstEnergy to meet the benchmarks for efficiency and demand response established by Senate Bill 221, enacted in 2009. The FirstEnergy companies met their respective savings levels as required by the law for their current portfolio plans.

The new portfolio plans appear, on their face, to provide a slate of programs adequate to meet the benchmarks during the upcoming three years. However, as the hearing in these cases demonstrated, the Companies are missing opportunities to target their plans to areas where the need is greatest, to achieve more permanent and deeper energy and demand savings, and further to offset the costs and impacts of future energy price increases in the coming years.

Moreover, the Companies' proposed shared savings mechanism excessively rewards shareholders, while the Companies' approach to bidding energy efficiency and demand response savings into the PJM auctions unnecessarily penalizes ratepayers with additional costs. Therefore, the Commission should act to modify the Companies' proposed plans as set forth in this brief below.

II. Funding for low-income energy efficiency programs in FirstEnergy's service territories should be increased in this proceeding.

The Companies are proposing no change in the current level of funding for low-income programs. FirstEnergy witness Edward C. Miller stated that the low-income program, formerly called Community Connections, provides weatherization measures, energy efficiency solutions and client education to the Companies' low-income customers at no additional cost to them. FirstEnergy Ex. 4 at 9.

The Commission approved the proposed extension of the Community Connections program in its July 18, 2012 Opinion and Order in the Companies' Electric Security Plan ("ESP") Case No. 12-1230-EL-SSO, Order at 13. This is the same program funded at the same level since the Community Connections program was first established in FirstEnergy's rate case, Case No. 07-551-EL-AIR. The same funding was provided again in FirstEnergy's second ESP, Case No. 08-935-EL-SSO. When the same funding was approved again in Case No. 12-1230-EL-SSO, the Commission's Order stated, quoting from the Stipulation and Recommendation filed in that case, that the funding "amount may be increased as a result of the energy efficiency collaborative approval of such funding increase, and the Commission approval of the increase and authorization of recovery of the increased funding through Rider DSE or other applicable rider." Case No. 12-1230-EL-SSO, Opinion and Order at 13. In short, there is anticipation that the funding for the low-income program will increase because the programs are still receiving the same amount of funds as was first established about five years ago.

The need for low-income programs has increased since the time that funding was first established for the Community Connections program. One place where this need can be seen is the annual revenue requirement for the Universal Service Fund ("USF") rider, which recovers the costs of the Percentage of Income Payment Plan ("PIPP") program, a program that assists low-income residential customers to pay their utility bills. The cost of the program for the three FirstEnergy operating companies in 2008 was as follows:

Cleveland Electric Illuminating Company ("CEI")	$15,371,278
Ohio Edison Company ("OE")	$44,050,245
Toledo Edison Company ("TE")	$14,323,628

Application of Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities, Case No. 08-658-EL-UNC, Opinion and Order, December 17, 2008, at 5.

For 2009, the cost of the program for the three FirstEnergy operating companies was as follows:

Cleveland Electric Illuminating Company (“CEI”)	$30,219,778
Ohio Edison Company (“OE”)	$42,461,053
Toledo Edison Company (“TE”)	$15,435,002

Application of Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities, Case No. 09-463-EL-UNC, Opinion and Order, December 16, 2009, at 12.

For 2010, the cost of the program for the three FirstEnergy operating companies was as follows:

Cleveland Electric Illuminating Company (“CEI”)	$35,891,211
Ohio Edison Company (“OE”)	$37,183,947
Toledo Edison Company (“TE”)	$17,880,104

Application of Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities, Case No. 10-725-EL-USF, Opinion and Order, December 15, 2010, at 10.

For 2011, the cost of the program for the three FirstEnergy operating companies was as follows:

Cleveland Electric Illuminating Company (“CEI”)	$52,851,181
Ohio Edison Company (“OE”)	$83,902,372
Toledo Edison Company (“TE”)	$35,356,326

Application of Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities, Case No. 11-3223-EL-USF, Opinion and Order, December 14, 2011, at 10.

Obviously, the costs of the low-income PIPP program have escalated as poverty rates have increased and the need for low-income programs has increased.

Moreover, participation in the PIPP program does not capture the entire need for low-income assistance in Ohio. The Companies' description of the Community Connections program misrepresents the market potential for low-income programs. The study attached to the FirstEnergy application uses PIPP customers as a surrogate for the number of eligible customers for Community Connections. In fact, PIPP customers represent only a fraction of FirstEnergy customers with incomes below 200% of the federal poverty line. Recent census data indicates that the number of households under 200% of the federal poverty line range from 17.7% in Union County to 40% in Ashtabula County, with an unweighted average of 29.56%. In Cuyahoga County, the largest county by population in FirstEnergy's service territory, 33.9% of all households have incomes under 200% of the federal poverty line. The potential for expansion of the Community Connections program is significant.

For 2011, according to the United States Census Bureau, Community Survey, Ohio Households by Income, 8.8% of Ohio households had estimated income of less than $10,000; 6.4% of Ohio households had estimated 2011 income between $10,000 to $14,999, 12.2% had 2011 estimated income between $15,000 and $24,999, and 11.6% had 2011 estimated income between $25,000 and $34,999.

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?fpt=table.

In addition, the FirstEnergy applications artificially reduce the amount of kWh savings produced by the Community Connections program. The historical data used by FirstEnergy is an anomaly. It reflects production characteristics during the period when the American Reinvestment and Recovery Act ("ARRA") funding was available. At that time, Community Connections had no limits on health and safety expenditures – primarily roof repairs and replacement and electric wiring upgrades. Because of the influx of ARRA funds, a large percentage of Community Connections funding was allocated to these health and safety measures, which do not necessarily produce the kWh savings as other Community Connections activities. A better example for kWh savings from low-income programs is provided by the evaluation of American Electric Power's ("AEP") Community Assistance Program during the 2010-2011 program years. The AEP evaluation found an average savings per unit of 1,423 kWh at a cost per unit of $1,096. For the FirstEnergy operating companies, OPAE projects production of 3,878 units per year based on the $5 million funding level. This will produce an annual savings of 5,518,020 kWh, far in excess of the savings projections included in the applications.

The applications' calculated total resource cost ("TRC") test is also incorrect for the Community Connections program going forward. Again, since it is based on historic data including the now-defunct ARRA funds, it is not an accurate picture of the program's cost-effectiveness. The TRC test number for the program as it will operate going forward is 0.5, still not cost-effective under the TRC test but far higher than the numbers assumed in the applications. As electric distribution rates increase, the cost-effectiveness of the Community Connections program will also increase going forward.

As the applications note, funding for Community Connections was renewed in Case No. 12-1230-EL-SSO at the same level of $5 million per year. Because ARRA money is long gone and federal funding has declined significantly – Ohio's funding from the U.S. Department of Energy was zero for Fiscal Year 2012 – the network available to Community Connections has significant under-used capacity and can ramp up to provide a higher level of kWh savings in the future.

OPAE recommends increasing the funding by $3 million in 2013; $4 million in 2014; and $5 million in 2015. This would increase total funding to $8 million, $9 million, and $10 million for Community Connections over the coming three years. OPAE recommends that the additional $5 million be provided to the program through the DSM rider. A $10 million program is comparable to the size of other Ohio distribution utility programs, such as AEP's, which have been approved by the Commission. More than 40% of FirstEnergy's residential customers qualify for Community Connections, meaning there is a huge market potential for the program. Given the significantly larger number of eligible customers projected by the market potential study, these funding levels more closely represent an equitable commitment to this large percentage of FirstEnergy's customer base.

The need for low-income programs has increased since 2005, but FirstEnergy's funding level for the Community Connections program has remained the same since 2005. The Commission should act in this case to increase the level of funding for low-income energy efficiency programs in the three FirstEnergy service territories.

III. FirstEnergy's Residential Portfolio Proposal should be improved.

The Natural Resources Defense Council's witness Dylan Sullivan recommended an alternative to FirstEnergy's management and administration of the residential portfolio. He testified that FirstEnergy's management has a "negative attitude" toward energy efficiency programs that causes the Companies to do the minimum amount of efficiency possible. NRDC Ex. 4 at 20. Given management's hostility to energy efficiency programs, Mr. Sullivan found it unlikely that FirstEnergy will devote management attention and ingenuity to the task of developing, implementing and improving energy efficiency programs. He recommended that the Commission give clear direction to FirstEnergy to shift strategically to building program infrastructure or greater collaborative input. In the alternative, he recommended that the Commission assign an independent Board the task of administering the Company's programs, issuing requests for proposals, contracting for evaluation, measurement, and verification, and reporting to the Commission. The key benefit of the independent Board would be that it does not have FirstEnergy's cultural conflicts with energy efficiency and would seek to maximize program effectiveness under a given budget constraint. NRDC Ex. 4 at 23.

While the NRDC's witness Sullivan may be correct about the need to wrest program development and implementation from the hands of FirstEnergy's management and place this task into the hands of an independent Board and while the Commission may choose to take this step, there are also recommendations made in this case that may serve to improve FirstEnergy's own performance. The first of these is improvements to FirstEnergy's lighting programs.

The Ohio Environmental Council ("OEC") and The Environmental Law and Policy Center's ("ELPC") witness Geoffrey Crandall is concerned about rebates on standard T-8 lamps and T-12 lamps. Mr. Crandall testified that a rebate should not be available for standard T-8 technology but instead should be applied to the high performance T-8 and T-5 technologies. OEC/ELPC Ex. 1 at 11. In terms of rebates on bulbs, FirstEnergy's focus should be on encouraging customers to purchase the most efficient bulbs available. The Commission should require the Companies to modify their proposed program to eliminate marginal measures, such as compliant incandescent bulbs and standard T-8 bulbs, from the programs. OEC/ELPC Ex. 1 at 17.

Other recommended changes are improving rebate programs by increasing rebate levels and simplifying the rebate process. FirstEnergy's rebate levels should be more comparable to national median rebate levels. Sierra Club witness Jeffrey Loiter testified that low incentives may not induce program participation and that few customers are prompted to switch from standard efficiency to high efficiency options when rebate levels are too low. Sierra Club Ex. 1 at 8.

A number of new measures are included in the Companies' residential portfolio for the 2013-2015 programs, but some of the rebate levels, particularly for appliances, also seem too low to motivate customers who may invest in the upgrades. See Appendix C-4. FirstEnergy indicates that subsidies will be regularly reviewed and altered as necessary to achieve the targeted outcome. OPAE recommends this review occur sooner rather than later so that these programs achieve the projected program savings. Increasing rebate levels and maintaining rebate levels to at least the national median level will contribute to the Companies' achieving and even exceeding their savings goals.

In the Home Performance Program**,** the comprehensive audit rebates significantly lag market rebate levels, which are in the $450 range. Gas companies subsidize these audits so that the customer only contributes $50, which is refunded if the customer moves forward with recommended measures. In addition, all-electric homes benefit from a comprehensive audit. Homes where the energy usage is all base load need only have a less expensive walk-through assessment. A gas-company project within the FirstEnergy territory, Cleveland Energy $avers, uses a concierge approach which provides support to customers interested in investing in comprehensive efficiency. The program has prompted an average investment of $7,000 per unit by using higher discounts and rebates than anticipated by FirstEnergy's plans. The Companies should consider assisting the expansion of this program.

In addition, there are cases where the rebate application is burdensome to contractors and customers and where delays in rebate processing exist. Improvements to rebates should be made. Moving from paper-based applications to online rebate applications would reduce the error rate and speed up the rebate processing. ELPC/OEC Ex. 1 at 12. Online forms could be designed with required data fields and data validation parameters. Simplifying rebate forms and copying forms so that the homeowner has a copy after the forms are submitted is also helpful. Increasing rebate amounts, particularly for Energy Star refrigerators and high efficiency central air conditioning systems, is also recommended. ADM Final Report, Case No. 12-1533-EL-EEC, Evaluation of 2011 Energy Efficient Products Program, Conclusions and Recommendations at 6-2.

The Market Potential Study documents a large technical potential, but is quite negative regarding the economically achievable level of savings. The projections appear to ignore the impact of rising electricity prices – which are inevitable – and improvements in technology. While these do not have a direct impact on the current portfolio or the ability to achieve the required savings, they are critical to achieving the long term goals of stabilizing and ultimately reducing overall energy consumption in Ohio. All elements of the portfolio exceed the level called for by the total resource cost ("TRC") test, as imperfect a measurement approach as it is. This means there is significant headroom to push additional technologies. While the cost of energy efficiency on a per kW basis exceeds the market price for capacity, it remains far less expensive than constructing new power plants. Pressure will grow for new plants, justified by the closure of a number of old generation facilities. While not a total replacement, energy efficiency and demand response remain a lower cost option than new power plants and justify a significant investment in energy efficiency and demand response. A more aggressive program to ensure a higher percentage of the technically achievable savings level could be achieved.

For example, the plan incorrectly indicates that Ohio has no energy efficiency loan programs. Ohio actually has two: an Advanced Energy Fund, which is admittedly quite small; and the Eco-Link Program offered through the State Treasurer's Office. Both offer on-line applications. The latter provides a 3% reduction in interest rates. Several utilities have partnered with regional banks to offer low-cost loans under Eco-Link. FirstEnergy should initiate similar partnerships.

FirstEnergy should also revamp the all-electric home program into a whole-house program similar to the comprehensive low-income programs operating across the state. There has been a significant amount of litigation regarding the rate design available to these all-electric home customers in FirstEnergy's service area. The declining block rate will be phased out over time. FirstEnergy should take the opportunity afforded by the energy efficiency requirements to invest significant sums to achieve greater long-lived energy savings, which will also mitigate the impacts of the phase-out of the declining block rate. This would involve the direct installation of all cost-effective measures in all-electric homes. Based on a recent evaluation of the Ohio Department of Development's Electric Partnership Program, actual savings based on bill analysis will be in the range of 3,000 kWh per year, about 11% of pre-treatment usage. This approach will increase portfolio savings while mitigating the price increases faced by all-electric homeowners as the declining block rate design phases out.

OPAE also sees significant potential for a program targeted to low-income multi-family master-metered buildings. This must be funded as a commercial sector program, but can be combined with federal funds. The program should also coordinate with natural gas utility programs to provide comprehensive services when central boilers are used for heating and hot water.

In short, the Companies' approach to residential programs has been too rigid; the Companies have lacked innovative and comprehensive strategies. By improving rebate standards, levels, and procedures, expanding loan opportunities, coordinating programs with natural gas companies, and promoting low-income programs, the Companies could achieve much more energy efficiency than they are currently experiencing and plan to experience.

III. The Companies' small commercial programs should be improved.

Sierra Club witness Loiter testified that the Companies over-rely on efficiency kits, especially for the small commercial sector. Sierra Club Ex. 1 at 9. These kits represent nearly 40% of the cumulative three-year savings for the small commercial sector for Ohio Edison and 30% for the other two operating companies. Because these kits have a measure life of just three years, they will contribute little in the way of lasting savings for 2016 and beyond.

Mr. Loiter discussed the barriers to energy efficiency programs for small commercial customers, who may have limited access to capital and limited education about energy efficiency opportunities. He recommended programs in the direct install model that combine high incentives with simple program requirements that have been successful in other service areas. Sierra Club Ex. 1 at 10-11. In addition, as OEC/ELPC's witness Crandall recommends, Mr. Loiter recommended bringing incentives to high efficiency lighting and removing incentives from less efficient lighting.

Smaller commercial organizations have not been as active in the Companies' programs as more energy intensive organizations such as manufacturing firms. ADM Evaluation Report, Executive Summary, Energy Save Ohio C/I Energy Efficiency Incentive Programs, at 6. The lower level of participation of small commercial organizations suggests that these small commercial organizations face additional barriers such as less expertise in energy efficiency equipment, financial constraints that prevent adoption of energy efficiency equipment, and reduced benefits from improvements because they often rent or lease the space they occupy. Smaller businesses are less likely to have policies and procedures for managing energy efficiency improvements and are less likely to have the resources to dedicate to personnel to make decisions about energy efficiency improvements. Larger businesses are also more likely than smaller businesses to be the target of sales calls because of the potential scale of larger projects. Id.

Recommended program improvements for the small commercial class include increasing program marketing efforts by increasing the frequency of utility bill insert promotions, additional online advertising, and the provision of efficiency information using the internet. More television and print ads could also help promote small business customer awareness of energy efficiency programs. Id. at 6-2.

The Commission should adopt these recommendations to increase the participation and savings of small business organizations in energy efficiency. The special problems of dealing with this class of customers should not mean that they are left behind in terms of energy efficiency.

IV. The Companies' shared savings proposal should be revised.

FirstEnergy witness Eren Demiray presented First Energy's shared savings proposal. He supported the utility cost ("UC") test to determine the net benefits under the incentive mechanism rather than the total resource cost ("TRC") test. Mr. Demiray testified that using the UC test would set incentives high enough, while the TRC test would not consider the proper incentive levels. FE Ex. 5 at 5-6. Mr. Demiray also presented FirstEnergy's recommend incentive tiers. FE Ex. 5 at 10. He also opposed a cap on the amount of shared savings that could be received. FE Ex. 5 at 12.

Staff witness Scheck also recommended that the UC test be used for determining the percentage of net shared savings retained by the Companies above the annual benchmarks. Mr. Scheck testified that the UC test encourages the Companies to keep administrative program costs and rebates as low as possible in order to achieve the maximum shared savings above compliance while reducing total utility costs to all customers. Staff Ex. 5 at 10.

OCC witness Wilson Gonzales opposed the use of the UC test for determining the benefit of portfolio programs. OCC Ex. 1 at 12. The costs considered in the UC test are all utility costs to implement the programs including administration, marketing, incentives paid to customers, implementation costs, and evaluation costs. For OCC, the problem is that the UC test only captures the benefits of the programs from the utility's perspective and ignores the individual customer costs. For this reason, according to Mr. Gonzales, the UC test can overstate the program benefit and understate the costs, making incentives more costly to customers. Mr. Gonzales recommended using the TRC test because it accounts for all of the costs and benefits of an energy efficiency program. While the net benefits under the UC test seem higher because the participants' costs are excluded, the TRC test allows the incentive to come from the total net benefit of the programs. OCC Ex. 1 at 13.

Other utilities in Ohio have used the UC test for the determination of the shared savings incentives. The many flaws inherent in the TRC test work against its use for determining shared savings incentives. OPAE recommends that the Commission order that the UC test be used to determine shared savings.

Staff witness Scheck also recommended that each of the FirstEnergy operating companies use a baseline that removes the historical self-direct mercantile consumption and the associated savings from determining the shared savings incentive. In this way, shared savings are better related to actions taken by the Companies to exceed the annual energy efficiency benchmarks. Also, only those transmission and distribution ("T&D") projects that were implemented primarily for energy efficiency purposes should be included in the determination of net benefits. However, the Staff stated that the Companies could count any approved historical mercantile self-direct projects and T&D projects that are approved by the Commission toward its annual goal and for purposes of banking savings, if not for the shared savings incentive. Staff Ex. 5 at 10.

OCC witness Gonzales agreed with the Staff that savings from self-direct mercantile programs, T&D projects, and behavioral programs are inappropriate in the shared savings calculation. OCC Ex. 1 at 13. Mercantile self-direct programs are generated by mercantile customers, not the Companies. T&D projects are capitalized and receive a return on the utility's investment in distribution rate cases. T&D projects should receive no additional incentive payment. OCC Ex. 1 at 14. Savings from behavioral programs should also not be included because they are difficult to measure and may not persist. Id. at 15.

The Natural Resources Defense Council's witness Dylan Sullivan also testified that the Companies should not have incentives for actions that the Companies had little or nothing to do with, like mercantile self-direct programs, or actions that would have occurred anyway, like T&D projects. NRDC Ex. 4 at 14.

The Commission should adopt the recommendations of Witnesses Scheck, Gonzales, and Sullivan with regard to savings from mercantile self-direct programs and T&D programs for shared savings calculations. These savings are either not a part of the Companies' actions or are rewarded to the Companies elsewhere.

Also with regard to shared savings, Staff witness Scheck testified that the Staff is concerned about the Companies' proposed incentive tiers. The Staff was concerned about the magnitude of the after-tax incentive of 13% of the adjusted net benefits for exceeding the annual benchmarks by greater than 115%. Staff Ex. 5 at 9.

Staff recommended that the maximum incentive percentage be 10% after-tax for compliance greater than 125%. Staff testified that shared savings mechanisms should only be set marginally above what the Companies would earn from any alternative investments. If the comparable alternative investment is generation, it is not likely those returns are very high currently. Staff recommended the following for percentage shared savings for exceeding the annual benchmarks of the FE operating companies: 0% for less than 100%; 3% for between 100 and 110%, 5% for 110 to 115%, 7.5% for 115 to 120%, 10% for greater than 125%. Staff Ex. 5 at 9.

OCC witness Gonzales questioned the calculation of the shared savings incentive on an after-tax basis. He stated that using an after-tax calculation means that customers are not only paying the Companies an incentive on their shared savings, but are also being asked to pay for the Companies' tax liabilities. OCC Ex. 1 at 15.

The Commission should adopt Mr. Scheck's proposed shared savings tiers and Mr. Gonzales' recommendation about the use of an after-tax basis. Both of these recommendations will keep the shared savings mechanism from producing excessive returns to the Companies.

The final issue on shared savings is whether the Commission should place a cap on the shared savings incentive. The dominant opinion, though it is not one OPAE shares, is that utilities should have incentives to exceed the statutory mandates. This has become accepted practice in Ohio. However, customers should be protected by a cap on shared savings incentives. FirstEnergy is collecting program costs and lost distribution revenues. The lost distribution revenues include a rate of return. The impact of the portfolio plans has no impact on distribution revenues, so a utility can only be ambivalent about the reductions in usage. Utility rates are exceedingly high. Providing excessive incentives reduces the cost-effectiveness of the overall portfolio. An absolute cap on incentives is appropriate to ensure customer pay a fair price for energy efficiency and nothing more.

FE's witness Demiray opposed a cap on the shared savings incentive. FE Ex. 5 at 12. Staff witness Scheck testified that there should not be an absolute cap on the earnings that the Companies can receive from shared savings. According to Mr. Scheck, this is because the Significantly Excessive Earnings Test ("SEET") in Ohio already functions as a sufficient cap for any of the electric distribution utilities. Because the purpose of a shared savings mechanism is to incentivize electric distribution utilities to go beyond the minimum statutory mandates of Senate Bill 221, an absolute annual cap may disincentivize the utilities from implementing measures that go beyond the minimum statutory requirements. The Staff believes that the SEET trigger is the cap for the utilities. Staff Ex. 5 at 11.

OCC witness Gonzales testified in favor of a hard cap because such a cap protects consumers from paying for excessive profits. OCC Ex. 1 at 16. He testified that the incentive mechanism should have at most an 8% overall before-tax cap. Id. The NRDC's witness Sullivan also recommended a cap on the amount of shared savings that could be earned. NRDC Ex. 4 at 19-20.

OPAE agrees with OCC witness Gonzales and NRDC witness Sullivan that a cap on shared savings is necessary to protect consumers from paying for excessive profits to the FirstEnergy companies for their over-compliance with the statutory benchmarks. While the Commission has awarded shared savings for exceeding benchmarks for other utilities, the Commission has also approved caps on the amount of shared savings that can be collected. The Commission should also order a cap in these proceedings for the First Energy companies.

V. FirstEnergy artificially limits the level of energy efficiency and demand response bid into the PJM market

FirstEnergy witness John Dargie testified that the FE Companies intend to bid eligible installed energy efficiency credits for which the Companies have ownership rights at the time of the PJM auctions. FirstEnergy Ex. 1 at 15. He testified that the Commission recently directed the Companies to make customers knowingly, as a condition of participation in the Companies' energy efficiency programs, to tender ownership of the credits to the Companies. Mr. Dargie testified that there are programs that do not lend themselves to having customers knowingly commit energy efficiency attributes. Id. at 16. He also believes that the Commission's directive could have a chilling effect on customer participation in the energy efficiency and demand response programs. Id. at 16-18. Because of these difficulties, he requested that the Commission clarify in this proceeding that, should the Companies find they are having difficulty meeting their statutory energy efficiency and demand response targets as a result of implementing the Commission's directive, the Companies would be permitted to petition the Commission for a modification of the directive. FE Ex. 1 at 18.

Staff witness Scheck testified that the Companies should be required to bid-in the capacity component of planned energy efficiency programs and any other peak demand reduction programs in the PJM Base Residual Auction ("BRA") for future planning years, including the May 2013 BRA. Staff Ex. at 11. The Staff recommended that the Companies mitigate both the price and performance risk by being a price taker, i.e., bidding in $0 and 75% of its projected capacity reductions. If FirstEnergy falls short of its cleared bid amount, it can purchase its obligations in the residual incremental PJM auctions. The incremental auctions have recently been lower in price than the results of the original BRA. Any revenues received by FirstEnergy from the BRA should be credited back to the appropriate DSE Rider. It is possible that FirstEnergy could share in any revenues received from the PJM auctions so long as the amount cleared and delivered into PJM exceeded the annual peak demand reduction benchmark for a FirstEnergy operating company. Staff Ex. at 12.

OCC witness Gonzales testified that the Companies' commitment to bid energy efficiency and load management into the PJM BRA is insufficient. OCC Ex. 1 at 19. FirstEnergy should be more aggressive in bidding portfolio resources into the PJM BRA. Mr. Gonzales recommended that customers could assume FirstEnergy's risk of PJM penalties for any energy efficiency and load management capacity obligations cleared in the PJM BRA where FirstEnergy has been prudent in managing the portfolio plan and uses its best effort to deliver capacity savings and that the Companies should be allowed to charge customers for reasonable incremental measurement and verification ("M&V") and other reasonable charges for getting the maximum amount of energy efficiency and load management approved and delivered to PJM. OCC Ex. 1 at 23. OCC made these recommendations at Pages 23-24 of Mr. Gonzales' testimony.

The Sierra Club's witness Jeffrey Loiter also testified that the failure to bid the savings from planned efficiency programs results in substantially higher costs for FirstEnergy customers. This comes from both lost revenue from the proceeds of the auction and the likelihood that FirstEnergy's efficiency and demand response resources would have reduced the clearing price of the auction, thus saving customers money on every MW needed to fulfill their load obligations. Sierra Club Ex. 1 at 4. He also testified that if the Companies believe they will not achieve their forecasted savings, they can shed part of their obligation in later incremental auctions. He testified that customers will not likely forego rebates and incentive payments when the value of their ownership rights is less than the rebate and incentive rewards. Mr. Loiter recommended that the Commission deny the Companies' request to retain the option to petition for reconsideration of the Commission's directive on bidding into the PJM auctions.

FirstEnergy's applications indicate that "it is the Companies' policy to only bid those resources for which it has ownership at the time of the auction…" This policy artificially limits the amount of resources to be bid into the PJM BRAs or incremental auctions. The Companies have a portfolio of programs. They have data on the performance of individual programs over time. FirstEnergy is capable of estimating the savings from programs going forward to bid in the auctions. While it is appropriate to discount these projections somewhat, it is not appropriate to limit these projections to the term of the currently approved portfolio. Portfolios do not change much; there are only so many types of energy efficiency programs. While the farther out capacity is bid, it is reasonable to increase the discount, it is damaging to customers for the Companies not to recognize the efficiency that will result simply from meeting portfolio requirements. FirstEnergy should abandon its policy on ownership and develop instead a protocol for bidding forward into PJM auctions along with appropriate risk management techniques.

With regard to the ownership of energy efficiency and demand response resources**,** a rule of thumb is that whoever pays for a measure should own the demand response from the measure. In most residential programs, FirstEnergy is only paying a portion of the cost. However, since the total value of the efficiency will be reflected in the market bid and because it is a complex endeavor to coordinate bidding of residential resources, the Companies should be able to bid the resources so long as the entire revenue from the process is netted against the costs of the programs, lost distribution revenues, and shared savings.

The approach to be used for larger customers, where brokers are competing for demand response and energy efficiency resources, is more complicated. Clearly, capacity resources have value. Should a customer choose to retain those resources, there will not be any revenue flowing back to FirstEnergy from the sale so there will be a lower impact on the rider, which is paid by all customers in the class. OPAE recommends that the value of capacity resources be part of the negotiation over the payments or credits to be provided for committing the resource. Other customers within the class should not have to pay higher riders than necessary.

Revenues from bidding the efficiency and demand response into the PJM BRA and incremental auctions should be credited back to the customer class which pays the rider which produces the expenditure. As a general rule, this means that the value of demand response/reductions paid for by the residential class should be credited against the residential rider. One of the exceptions to the general rule, though not to the principle of returning benefits to those bearing the cost, are large customers served under interruptible tariffs where the delta revenues are paid for by other customers. The revenues produced by committing these resources into the PJM BRA or incremental auctions should be returned to those paying the costs, not large customers receiving these huge, historical subsidies.

With regard to the inclusion of additional energy efficiency and demand response into the market, FirstEnergy should seek opportunities to develop additional resources that can be bid into capacity and other markets established by PJM. Capacity costs will increase markedly in the ATSI zone in the coming years. The value of energy efficiency and demand response will increase commensurately. While this phenomenon will improve the cost effectiveness of portfolio investments, it also presents additional opportunities to develop larger revenue streams to offset program costs. FirstEnergy should work with the collaborative to develop these opportunities and create programs designed to harvest the revenue these opportunities present.

Finally, with respect to the May 7, 2012 PJM 2015/2016 BRA auction, the FirstEnergy companies only bid 36 MW of energy efficiency resources. OCC Ex. 1 at 17. This was only 55% of the 65 MW identified by the Companies that could have been bid. The result is that Ohio consumers will end up paying more for capacity for the PJM year 2015/2016. OCC witness Gonzales testified that given the poor performance of FirstEnergy's energy efficiency bid into the PJM RPM BRA for 2015-2016, the shared savings capacity benefit should be discounted by 45% in the first year any incentive is triggered. Mr. Gonzales recommended an additional reduction in the calculated amount of the net avoided capacity benefit to give customers back some of their avoided capacity benefit that was foregone due to the limited MWs bid into the PJM BRA by FirstEnergy. OCC Ex. 1 at 18. OPAE recommends that the Commission adopt Mr. Gonzales' recommendation.

VI. Conclusion

FirstEnergy has proposed a conventional portfolio that fails to capture the opportunities available for energy efficiency and demand reductions. The proposed rebates should be carefully scrutinized and, in many cases, increased to ensure the projected savings and demand response yields are realized. Several programs need to be more aggressively funded and redesigned to yield higher savings and produce other positive outcomes.

In particular, funding for Community Connections should be increased to better reflect the large number of eligible customers in the FirstEnergy service territories. The home retrofit program should be expanded and targeted to all-electric homes, using a direct installation model based on existing low-income programs.

The Commission should also adopt the recommendations of Sierra Club witness Loiter and OEC/ELPC's witness Crandall for programs for small businesses. Sierra Club Ex. 1 at 10-11. There should be incentives for high efficiency lighting and incentives for less efficient lighting should be removed. Increased education efforts and rebates should also be available for small commercial customers.

The shared savings mechanism should be adjusted as recommended by OCC witness Gonzales with regard to after tax amounts and Staff witness Scheck with regard to the tiers. The UC test should be used in the determination of shared savings. A cap should also be placed on shared savings to ensure that they are not excessive as recommended by OCC witness Gonzales and NRDC witness Sullivan. Finally, the recommendations of Staff witness Scheck, OCC witness Gonzales, and Sierra Club witness Loiter regarding the bidding of energy efficiency and demand response savings in the PJM BRA should be adopted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post Hearing Brief was served electronically upon the following parties identified below in these cases on this 20th day of November 2012.

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