

**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)	Case Nos. 12-2190-EL-POR
Edison Company for Approval of Their)	12-2191-EL-POR
Energy Efficiency and Peak Demand)	12-2192-EL-POR
Reduction Portfolio Plans for 2013)	
through 2015)	

**INITIAL BRIEF OF ENVIRONMENTAL LAW AND POLICY CENTER AND OHIO
ENVIRONMENTAL COUNCIL**

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INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO” or the “Commission”) has before it the applications of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively “FirstEnergy” or “Companies”) for approval of their respective updated Energy Efficiency (“EE”) and Peak Demand Reduction (“PDR”) Plans (the “Proposed Plans”), pursuant to Ohio Revised Code (“ORC”) § 4928.66 and the Ohio Administrative Code (“OAC”). The Proposed Plans were not, despite FirstEnergy’s claims, a product of a joint effort between the Companies and the Collaborative. Environmental Law and Policy Center (“ELPC”) and Ohio Environmental Council (“OEC”) respectfully ask the Commission to approve the Proposed Plans subject to the changes outlined below and explained in this brief.

The Commission should:

1. Require FirstEnergy to bid anticipated eligible EE and PDR resources into the PJM Base Residual Auction.
2. Order FirstEnergy to use the wattage of EISA-compliant CFLs as the baseline for determining savings from lighting and adjust savings estimates accordingly.

3. Order FirstEnergy to stop discounting Standard T-8 linear fluorescent lighting.
4. Order the Companies to include LED lighting technologies in their street lighting services and tariffs.
5. Order FirstEnergy to limit the use of the proposed energy efficiency kits to those distributed in schools, and order the Companies to use the remaining funds currently allocated toward kits to implement other, more successful programs.
6. Order FirstEnergy to develop a data centers subprogram that gives customers access to an expert firm that can help with training, design, and implementation of the program, and fund the subprogram through a budget increase rather than by shifting funds.
7. Reject FirstEnergy's Transmission and Distribution Improvements Program.
8. Reject FirstEnergy's Mercantile Customer Program or disallow FirstEnergy from using the "as-found" savings method.
9. Modify the Shared Savings mechanism.
10. Deny FirstEnergy's request for a waiver of the pro rata reporting requirement.
11. Require FirstEnergy to hold at least quarterly Collaborative meetings and memorialize FirstEnergy's agreement to provide the Collaborative with materials at least one week in advance of meetings.

LAW

ORC § 4928.66(A)(1)(a) requires utilities such as FirstEnergy to "implement energy efficiency [and peak demand reduction] programs that achieve" certain benchmarks over the next several years and beyond. For the years contemplated by the Proposed Plans, the Companies must reduce electricity consumption by 3.2% in 2013, 4.2% in 2014, and 5.2% in 2015.¹ Beginning in 2009, the law required utilities to "[i]mplement 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."² Overall, utilities have a

¹ ORC § 4928.66(A)(1)(a).

² Id. at (A)(1)(b).

statutory obligation to reduce energy consumption over 22% by 2025, and reduce peak demand 7.75% by 2018.³ To achieve these reductions, utilities can count efficiency achievements from a variety of sources, including their own energy efficiency programs, certain transmission and distribution projects, demand response, and mercantile self-directed (i.e. customer-sited) programs that are committed to the utility.⁴

The Commission's rules require electric distribution utilities to submit three-year EE/PDR program portfolios for PUCO approval:

Each electric utility shall design and propose a comprehensive energy efficiency and peak-demand reduction program portfolio, including a range of programs that encourage innovation and market access for cost-effective energy efficiency and peak-demand reduction for all customer classes, which will achieve the statutory benchmarks for peak-demand reduction, and meet or exceed the statutory benchmarks for energy efficiency.⁵

FirstEnergy must prove that its Proposed Plans are “consistent with the policy of the state of Ohio as set forth in section 4928.02 of the Revised Code,”⁶ which includes the requirement to “ensure the availability to consumers of . . . reasonably priced retail electric service.”⁷ Moreover, the utility has “the burden to prove that the proposed program portfolio plan . . . meets the requirements of section 4928.66 of the Revised Code.”⁸ One of the requirements of ORC § 4928.66 is that the utility's programs actually “achieve energy savings” equal to or in excess of the statutory benchmarks.

³ Id. at (A)(1).

⁴ Id. at (A)(2)(d).

⁵ OAC 4901:1-39-04(A).

⁶ Id. at 1-39-04(E).

⁷ ORC § 4928.02(a).

⁸ OAC 4901:1-39-04(E).

PROCEDURAL HISTORY

On July 31, 2012, the Companies filed their application for the Proposed Plans pursuant to ORC § 4928.66, OAC 4901:1-39, and the Commission's February 29, 2012 Entry in Case No. 12-814-EL-UNC. The Proposed Plans include the application, the individual plans of each FirstEnergy Ohio utility, and testimony by five expert witnesses. Intervenors and Staff filed direct testimony on October 5, 2012. The Commission held evidentiary hearings the week of October 22, 2012 and had an additional day of hearings on October 30, 2012 after the Companies filed rebuttal testimony on October 29, 2012.

ARGUMENT

I. FIRSTENERGY SHOULD BID ANTICIPATED ELIGIBLE SAVINGS INTO PJM RELIABILITY PRICING MODEL BASE RESIDUAL AUCTIONS

In order to understand this issue, it is important to understand the framework of the PJM Base Residual Auction ("BRA"). As Company Witness Dargie testified, the BRA is a competitive auction that secures capacity commitments three years before the resources will be needed.⁹ The year the capacity resources are needed is called the "delivery year" (June 1 to May 31), and the BRA for that delivery year takes place three years in advance.¹⁰ For example, the BRA for the 2015/2016 delivery year (June 1, 2015 to May 31, 2016) took place on May 7, 2012.¹¹ Participants in the BRA bid eligible resources into the auction, which commits them to install those resources by the delivery year. There is no requirement that the resources utilities bid into the BRA are actually installed at the time of the bid, only that they will be available by June 1 of the delivery year.

The fact resources do not need to be installed is critical to properly analyzing this issue

⁹ Tr. Vol. 1, at pages 23-24 (October 22, 2012).

¹⁰ IEU-Ohio Exhibit 2, PJM Manual 18, at page 6.

¹¹ EnerNOC Exhibit 1, 2015/2016 RPM Base Residual Auction Results, at page 2.

because, according to Witness Dargie, FirstEnergy proposes to bid only installed resources into the BRA.¹² The proposal leaves out all anticipated eligible resources, which include resources that the Companies plan on installing by the delivery year but that the Companies have not actually installed at the time of the BRA. The Companies propose to omit anticipated eligible resources despite the fact that Ohio law requires them to meet produce those savings in order to meet savings targets. Moreover, nowhere in this proceeding does the Company argue that it cannot meet its targets.

Company Witness Mikkelsen cites “severe financial harm” as the reason for FirstEnergy’s unwillingness to bid anticipated savings,¹³ but, as demonstrated below, the Companies have not met their burden of proof to show that the magnitude of these potential harms outweigh the benefits to customers. In fact, the record reflects the exact opposite; that the Companies are highly likely to meet their targets.

By refusing to bid anticipated eligible resources, the Companies fail to take advantage of the opportunity to significantly reduce the prices its customers pay for electricity. This price reduction would occur for two reasons. First, bidding anticipated eligible resources into the BRA could significantly reduce capacity prices for their customers. Second, it would serve as a revenue source that could be used to offset the costs of the energy efficiency portfolio plans. Customers are already paying for the EE and PDR resources produced by the portfolio plans and they should reap all the rewards from those investments, including revenues from the BRA. FirstEnergy’s refusal to bid anticipated eligible resources means that it will fail to meet its obligation under ORC § 4928.02(A) to ensure “the availability to consumers of . . . reasonably priced retail electric service.” Nor will it take full advantage of the ability of the BRA to mitigate

¹² Company Exhibit 1, Direct Testimony of John C. Dargie, page at 16, line 5.

¹³ Company Exhibit 23, Rebuttal Testimony of Eileen M. Mikkelsen, at page 4, lines 16-18.

costs associated with recent coal plan retirements, which the Commission ordered it to do in Case No. 12-814-EL-UNC (Review of FirstEnergy's participation in the BRA), and FirstEnergy's most recent Electric Security Plan Case No. 12-1230-EL-SSO ("ESP 3").

The Commission should require FirstEnergy to bid 75% of its anticipated eligible EE and PDR resources, which mandates the Companies ORC § 4928.66(A)(1)(a) to produce, into the BRA. For delivery years beyond the life of the Proposed Plans, the Companies should assume that the 2015 levels of anticipated eligible resources will continue, which is appropriate since the Companies are required to produce savings until at least 2025. The Companies should bid the resources into the BRA at a relatively low price that is just enough to cover the Companies' energy measurement and verification ("EM&V") costs and the administrative costs of actually bidding the resources. Bidding this price virtually guarantees that the resources will clear the auction and provide revenue. The revenue from the auction, minus the EM&V costs and the costs of bidding, should be passed through to the customers by offsetting the DSE-1 rider for ELR and OLR interruptible program savings, and the DSE-2 rider for the remainder of the EE/PDR program savings using the existing rate class allocation. If the Companies bid and clear more than 75% of their anticipated eligible resources, 85% of the revenues from those additional resources should pass through to customers and the remaining 15% should remain with the Companies as an incentive for bidding more than the mandatory 75%.

ELPC and OEC are not alone in believing that FirstEnergy should bid anticipated savings into the BRA. Staff Witness Scheck recommends that the Companies should bid 75% of anticipated savings,¹⁴ as does OCC Witness Gonzalez, who suggests that the Companies bid "all eligible [resources] into the Base Residual Auctions This includes all existing, planned, and

¹⁴ Staff Exhibit 5, Direct Testimony of Gregory C. Scheck, at page 12, lines 2-4.

forecasted resources.”¹⁵

If FirstEnergy falls short of the capacity it bid into the BRA for any year, the Commission should require the Companies to purchase the shortfall from the third incremental auction of the corresponding BRA. The balance of the incremental auction purchase, whether positive (purchased capacity at a price lower than the BRA) or negative (purchased capacity at a price higher than the BRA), should then be credited to or charged against the overall BRA revenues for that delivery year. Assuming the Companies acted prudently, in the event that purchasing from the incremental auction does not eliminate the Companies’ obligations, the Commission should hold FirstEnergy harmless and shift the burden of paying any penalties to the ratepayers. The Companies should also be held harmless if for whatever reason they are no longer required by law to achieve EE and PDR savings. While Company Witness Mikkelsen claims that there is “no risk protection mechanism in place to insulate each of the Companies (or their customers) from such financial harm,” the Ohio Consumer Council recommends that the Commission should shift the risk to the customers so long as the Companies act prudently. OCC Witness Gonzalez argues that the Commission should “have customers assume FirstEnergy’s risk of PJM penalties for any EE & [load management resource] capacity obligations cleared in the PJM BRA.”¹⁶ In essence, customers are willing to take on minimal risk in return for potentially substantial benefits.

FirstEnergy offers four reasons for its refusal to bid anticipated resources into the BRA, none of which are persuasive. Witness Mikkelsen argues that bidding anticipated resources: (1) is not required by Ohio law; (2) does not meet the primary purpose of the BRA; (3) subjects the Companies and their customers to the risk of severe financial harm; and (4) subjects the

¹⁵ OCC Exhibit 1, Direct Testimony of Wilson Gonzalez, at page 23, lines 3-6.

¹⁶ Id., at page 22, lines 17-19.

Companies to uncertainty.¹⁷ However, Witness Mikkelsen is incorrect about FirstEnergy's obligation under Ohio law and the purpose of the BRA, and the other arguments are unpersuasive in the face of the substantial benefits that will likely accrue to Ohio ratepayers if the Companies bid anticipated eligible savings into the BRA.

A. The Commission Should Require All Other Ohio Utilities to Bid Anticipated Eligible Savings into the BRA

Though Witness Mikkelsen correctly states that there is no "statewide directive providing consistent requirements for electric utilities" regarding the BRA,¹⁸ this should not prevent the Commission from requiring FirstEnergy to bid. Bidding anticipated resources into the BRA is an important component of achieving the purpose of the EE/PDR Portfolio Plans, including meeting the ORC § 4928.02(A) requirement that FirstEnergy ensure "the availability to consumers of . . . reasonably priced retail electric service." As Sierra Club Witness Loiter explained, providing reasonably priced electric service is achieved through the BRA in part by adding low-cost resources to the auction to shift the supply curve to the right to lower the clearing price of the auction, thereby making the capacity cheaper for FirstEnergy customers.¹⁹ Additionally, as demonstrated below, participation in the BRA also yields substantial revenues that can be passed on to FirstEnergy's customers to offset the costs of the portfolio programs. Further, in 12-814-EL-UNC and FirstEnergy's ESP 3, the Commission focused on the role that bidding EE/PDR savings can play in meeting FirstEnergy's "obligation to take all reasonable and cost-effective steps to avoid unnecessary RPM price increases for their customers."²⁰

Though PUCO rules require utilities to file updated EE/PDR portfolio plans every three

¹⁷ Company Exhibit 23, Rebuttal Testimony of Eileen M. Mikkelsen, at pages 4-5.

¹⁸ *Id.*, at page 4, lines 18-19.

¹⁹ Tr. Vol. 3, at page 563, lines 12-16 (October 24, 2012).

²⁰ 12-814-EL-UNC, Entry, at paragraph 4 (February 29, 2012).

years on April 15,²¹ in Case No. 12-814-EL-UNC, the Commission pushed the deadline for FirstEnergy to file its Proposed Plans back three and a half months to July 31, 2012 “[i]n order to encourage that all cost-effective steps are implemented promptly to offset generation retirements” through bids by the Companies into the BRA.²² The Commission required the Companies to implement “programs that in the aggregate would have a mitigating impact on the generation retirements.”²³ The Commission’s interest in FirstEnergy’s participation in the BRA was spurred by PJM’s prediction that the American Transmission System Inc. (“ATSI”) zone, in which the Companies operate, would be constrained in the 2015/2016 BRA, thereby driving up the cost of capacity in ATSI.²⁴ An increase in the ATSI capacity price would likely mean higher electricity costs of FirstEnergy customers.²⁵ The Commission’s concern was well founded and the ATSI zone cleared at \$357/MW-day, more than 2.5 times the \$136/MW-day for the rest of PJM.²⁶

Following the results of the 2015/2016 BRA, the Commission issued an order in ESP3 recognizing the role that bidding energy efficiency into the BRA could have on mitigating transmission constraints in ATSI. The Commission ordered FirstEnergy to require customers to "tender ownership of the energy efficiency resources to the Companies" as a condition for participation in the portfolio plan programs,²⁷ which the Companies have already begun doing. The Commission also ordered FirstEnergy to “take necessary steps to verify the energy savings to qualify for participation in the base residual auctions” and “bid qualifying energy resources

²¹ OAC 4901:1-39-04(A).

²² 12-814-EL-UNC, Entry, at paragraph 10 (February 29, 2012).

²³ Id.

²⁴ Id., at paragraph 1-3.

²⁵ See 12-1230-EL-SSO, Opinion and Order, at page 38 (July 18, 2012).

²⁶ EnerNOC Exhibit 1, 2015/2016 RPM Base Residual Auction Results, at page 14, Table 4.

²⁷ 12-1230-EL-SSO, Opinion and Order, at page 38 (July 18, 2012).

into the auction.”²⁸ These requirements are meant to take advantage of the fact that the Companies are “well positioned to substantially increase the amount of energy efficiency resources they can bid into the auction.”²⁹

As Staff Witness Scheck pointed out during cross-examination by Examiner Price, even though the Commission does not currently require any electric utilities to participate in the BRA, AEP Ohio has already bid resources and Duke Energy Ohio is exploring the possibility through the collaborative process.³⁰ Witness Scheck went on to note that, going forward, all Ohio electric utilities should be required to “bid into the PJM capacity market to offset revenues that are being spent on programs.”³¹ The Commission should take Witness Scheck's advice and begin requiring all electric utilities to bid anticipated eligible savings into the BRA, starting with FirstEnergy.

Not only has AEP already bid anticipated eligible resources in the BRA, utilities in other states and markets have done so as well. As Witness Loiter noted, Connecticut Municipal Energy Cooperative, in the very first ISO New England Forward Capacity Market, bid “substantially more than half of the planned resources that were going to be available by the . . . delivery period.”³² While Company Witness Demiray testified that FirstEnergy failed to explore what other utilities have done to bid anticipated eligible resources into the BRA,³³ Witness Mikkelsen testified that she was made aware through the Collaborative that ComEd had earned as much as

²⁸ Id.

²⁹ Id.

³⁰ Tr. Vol. 4, at pages 832-33 (October 25, 2012).

³¹ Id., at page 833, lines 15-18.

³² Tr. Vol. 3, at pages 623-24, lines 25-6 (October 24, 2012).

³³ Id., at page 534, lines 8-12 (October 24, 2012) (Witness Demiray stating that he has not looked at whether other utilities bid prospective savings into the BRA); Tr. Vol. 6, at page 1184, lines 13-17 (October 30, 2012) (Witness Mikkelsen affirming that she had no direct knowledge about whether other utilities bid anticipated savings into the BRA).

\$22 million by bidding anticipated eligible savings into the BRA.³⁴

By requiring FirstEnergy to bid not only installed but also anticipated resources into the BRA, the Commission will further its goal of mitigating the high prices in ATSI and provide the ratepayers additional revenue to offset the costs of the portfolio programs.

B. Bidding Anticipated Eligible Savings from the Plans into the BRA Meets the Purposes of the BRA

Witness Mikkelsen claims that the primary purpose of the BRA is to “provide certainty for system reliability.”³⁵ FirstEnergy argues that because “[b]idding resources that do not yet exist does not enhance system reliability,” anticipated eligible resources should not be bid into the BRA.³⁶ This claim, however, is contrary to the purpose and procedures of the BRA and contradicts Witness Mikkelsen's own testimony.

Witness Dargie testified that the BRA is a competitive auction that secures capacity commitments three years before the resources will be needed.³⁷ The BRA and its incremental auctions form the backbone of the PJM Reliability Pricing Model, which is designed to “ensure the adequate availability of necessary resources that can be called upon to ensure the reliability of the grid.”³⁸ According to PJM, “[p]lanned energy efficiency projects will be allowed to offer into Reliability Pricing Model (RPM) Auctions.”³⁹ As such, the BRA “provides a forward mechanism to evaluate the ongoing reliability requirements in a transparent way to provide opportunity for generation, demand response, energy efficiency, price responsive demand and

³⁴ Tr. Vol. 6, at pages 1184-85, lines 18-7 (October 30, 2012).

³⁵ Company Exhibit 23, Rebuttal Testimony of Eileen M. Mikkelsen, at page 4, lines 13-14.

³⁶ *Id.*, at page 4, lines 9-15.

³⁷ Tr. Vol. 1, at pages 23-24 (October 22, 2012).

³⁸ IEU-Ohio Exhibit 2, PJM Manual 18, at page 3.

³⁹ *Id.*, at page 4; see also IEU-Ohio Exhibit 3, PJM Manual 18B, at page 5 (“Planned energy efficiency projects will be allowed to offer into Reliability Pricing Model (RPM) Auctions . . .”).

transmission solutions.”⁴⁰ To the extent that FirstEnergy plans to implement eligible EE resources, the BRA specifically contemplates their participation.

By refusing to bid anticipated eligible resources into the BRA, the Companies distort the market by withholding the low-cost EE/PDR resources that are not yet installed but will be available in the relevant delivery year. Since, as PJM Manual 18 outlines, the BRA and incremental auctions are specifically designed to “align capacity pricing with system reliability requirements and to provide transparent information to all market participants far enough in advance for actionable response to the information,”⁴¹ the Companies proposal is inconsistent with the very purpose of the BRA. As Witness Loiter notes, by refusing to bid planned resources into the BRA, the Companies forestall any opportunity the EE/PDR resources might have to lower the clearing price by shifting the demand curve to the right.⁴²

The Companies’ position that anticipated eligible EE and PDR savings should not be bid into the market is also not consistent with Witness Mikkelsen’s testimony that “the PJM rules allow for bidding planned resources.”⁴³ Anticipated eligible resources serve the same purpose of ensuring long-term reliability and facilitating planning as anticipated generation or transmission solutions. While the Companies should not bid resources they do not expect to create by the delivery year, dismissing the notion that anticipated eligible resources that are mandated by Ohio law can serve the purposes of the BRA, misses the point of the capacity market. Moreover, it serves to increase the costs to FirstEnergy customers.

⁴⁰ IEU-Ohio Exhibit 2, PJM Manual 18, at page 3.

⁴¹ Id.

⁴² Tr. Vol. 3, at page 563, lines 12-16 (October 24, 2012).

⁴³ Tr. Vol. 6, at pages 1128-1129, lines 25-1 (October 30, 2012)

C. FirstEnergy Has Not Demonstrated that the Risks of Bidding Anticipated Savings into the BRA Outweigh the Substantial Benefits to Ratepayers

i. The benefits to the customers of bidding anticipated eligible savings is substantial

FirstEnergy can ostensibly generate substantial revenue by participating in the BRA. While the Witness Dargie admits that the Companies have not attempted to quantify the earning potential or the rate impact of bidding planned resources into the BRA,⁴⁴ their limited participation in the 2015/2016 BRA hints at the potential.

Though the 2015/2016 BRA was scheduled to take place on May 7, 2012, Witness Demiray testified that the Companies did not seek to procure the ownership rights they claim are necessary for bidding until April 23, only two weeks before the auction.⁴⁵ Despite this rushed effort to secure ownership rights to installed resources, Witness Demiray testified that the May 2012 BRA yielded \$4.7 million in additional revenue for the Companies.⁴⁶ According to Witness Demiray, this \$4.7 million represented only 36 MW of EE capacity bid by the Companies,⁴⁷ which Witness Dargie testified constitutes a mere 15% of the installed resources generated by the C&I Equipment (Commercial Lighting) Program.⁴⁸ Had the Companies secured ownership of even 75% of the Commercial Lighting savings, they would have earned as much as \$23.5 million.⁴⁹ Using the Companies' own savings estimates demonstrates significant revenue potential if the Companies bid anticipated savings into the BRA. Witness Miller estimates savings from the Residential Sector and Small Enterprise portions of the plans alone are

⁴⁴ Company Exhibit 1, Direct Testimony of John C. Dargie, at page 25, lines 8-11 and page 27, lines 14-17 (October 22, 2012).

⁴⁵ Tr. Vol. 3, at page 539-40, lines 25-2 (October 24, 2012).

⁴⁶ Id., at page 544, lines 1-3 (October 24, 2012).

⁴⁷ Id., at page 517, lines 18-19 (October 24, 2012).

⁴⁸ Company Exhibit 1, Direct Testimony of John C. Dargie, at page 18, lines 4-9.

⁴⁹ \$4.7 million x 5 = \$23.5 million.

anticipated to generate approximately 316 MW of savings through 2015.⁵⁰ Had the Companies bid 316 MW into the 2015/2016 BRA, they could have earned as much as \$41 million.⁵¹ Because the Companies have not estimated the earning potential of the BRA, it is difficult to know precisely how much revenue ratepayers could earn. However, it is safe to say that the potential is substantial, even setting aside the potential for significant low-cost capacity resources to lower the clearing price. This revenue and the potential to lower the clearing price will help ensure “the availability to consumers of . . . reasonably priced retail electric service,” as required by ORC § 4928.02(A).

- ii. FirstEnergy has not demonstrated that the risk of PJM penalties outweighs the significant benefits of bidding anticipated resources into the BRA

The Companies are already required by ORC § 4928.66(A)(1)(a) to "implement energy efficiency programs that achieve energy savings," many of which will qualify for the BRA, and they have been largely successful at meeting their goals thus far. Company Witness Dargie testified that all three of the Companies met their 2011 savings targets and only Ohio Edison failed to meet its 2011 cumulative target.⁵² Witness Dargie also testified that the Companies designed their Proposed Plans to "exceed the [statutory] targets."⁵³ Given FirstEnergy's own confidence in its ability to over-comply with its statutory requirements, the Commission has no reason to believe that the Companies or their customers will be at significant risk of incurring a PJM penalty for failing to deliver anticipated eligible resources that clear the BRA. Nonetheless, Company Witness Mikkelsen argues that the mere threat the Companies “would be subject to penalties from PJM” if they somehow failed to deliver the savings they bid into the BRA,

⁵⁰ Company Exhibit 4, Direct Testimony of Edward C. Miller, at Exhibit ECM-2.

⁵¹ 316 MW x \$357/MW-day x 365 days = \$41 million.

⁵² Tr. Vol. 1, at page 70, lines 11-22 (October 22, 2012).

⁵³ Id., at page 14, lines 23-24 (October 22, 2012).

constitutes reason enough to forgo the substantial benefits of bidding anticipated eligible savings into the BRA.⁵⁴ The Companies have burden of proof to demonstrate that the substantial benefits of bidding anticipated eligible resources into the BRA are outweighed by the risks. FirstEnergy has not presented any evidence of the magnitude of these penalties or the likelihood that they will occur. However, hypothetical situation demonstrates the weakness of FirstEnergy's argument and gives perspective regarding the level of penalties the Commission could reasonably expect.

As in the example above, assume \$41 million in revenue from bidding 316MW of anticipated savings into the 2015/2016 BRA. PJM Manual 18 section 9.1.3 provides the rules for calculating the Capacity Resource Deficiency Charge if FirstEnergy fails to deliver some portion of its cleared capacity resources. This penalty is defined as

$$\text{Penalty} = \text{DailyDeficiencyCharge} \times \text{DailyRPMCommitmentShortage}$$

Assume a DailyDeficiencyCharge of

$$(\$357/\text{MW-day}) + (0.2 \times \$357/\text{MW-day}) = \$428.4/\text{MW-day}$$

Assume also that FirstEnergy fails to deliver 10MW of its committed EE savings, resulting in

$$\text{DailyRPMCommitmentShortage} = 10\text{MW}.$$

PJM would assess the Companies a penalty of approximately

$$(10\text{MW})(\$428.4/\text{MW-day})(365 \text{ days}) = \$1.6 \text{ million}.$$

Since under this example FirstEnergy would only provide 306MW in the 2015/2016 delivery year, the revenue earned from PJM would be reduced to \$39.9 million. Subtracting the penalty from the new revenue amount means that FirstEnergy would still earn \$39.9 million - \$1.6million = \$38.3 million,

⁵⁴ Tr. Vol. 6, at page 1131, lines 1-6 (October 30, 2012).

which would flow back to ratepayers (after subtracting M&V and administrative costs).

In this example, the Companies would have to miss their anticipated savings by approximately 45% before the penalties would begin to outweigh the revenue from the auction. Given that the Companies have a statutory obligation under ORC § 4928.66(A)(1)(a) to install EE/PDR resources, the likelihood of a monumental failure to deliver resources is extremely small. The Commission should note that both the Ohio Consumer Counsel and Staff are encouraging FirstEnergy should accept this limited risk, and are willing to have consumers bear the risk that FirstEnergy fails to meet its obligation. The Companies have not met their burden of proof to show that the risk of penalties is greater than any of the other risks to which the Companies are regularly subjected in the normal course of business.

iii. FirstEnergy should make efforts to mitigate risk while still taking advantage of the significant benefits of bidding anticipated eligible savings into the BRA

Company Witness Mikkelsen argues that the lack of available risk protection for the Companies or their customers makes it imprudent for them to bid anticipated eligible savings into the BRA.⁵⁵ Her argument relies on her ill-defined risk of “severe financial harm” to dissuade the Commission from ordering FirstEnergy to take reasonable steps to secure the benefits that can come from bidding anticipated savings into the BRA.⁵⁶ While FirstEnergy faces some risk inherent in bidding resources into the BRA, the Companies overstate the risk and fail to include measures that the Companies can easily use to mitigate that risk.

Risk mitigation is standard practice in the utility context. For example, in ESP3 the Commission weighed the costs and benefits of laddered bidding and decided that “the laddering of products in order to smooth out generation prices, mitigating the risk of price volatility, will

⁵⁵ Company Exhibit 23, Rebuttal Testimony of Eileen M. Mikkelsen, at page 4, lines 19-21.

⁵⁶ Id., at page 4, lines 16-18.

benefit ratepayers and the public interest.”⁵⁷ Similarly, in this case Companies can take a variety of risk mitigation measures to ensure that the substantial benefits of bidding anticipated eligible savings into the BRA outweigh any risks.

In order to mitigate the risk of failing to secure sufficient resources to meet its BRA commitment, FirstEnergy can make conservative estimates about how much to bid into the BRA. As Staff Witness Scheck proposed, FirstEnergy bid 75% of its projected savings,⁵⁸ which would allow considerable room for the Companies should they fail to meet their targets or over rely on programs that are ineligible for participation in the capacity market.

OCC Witness Gonzalez notes that PJM will allow "many opportunities to modify" which resources FirstEnergy will use meet the commitments made through the BRA.⁵⁹ For example, if the Companies initially believe that they will meet 1/3 of their commitments through lighting but it turns out that they will meet 1/2 through lighting, then PJM will allow that modification, as long as FirstEnergy meets its commitment to provide eligible capacity in the delivery year.

Another mitigation step FirstEnergy can take if necessary is that it can supplement savings from its EE/PDR programs by purchasing additional capacity in incremental auctions. PJM Manual 18 sets out the rules that allow PJM to hold these auctions up to three times prior to the delivery year.⁶⁰ In the first and third incremental auctions, the Companies would have an opportunity to purchase additional capacity to make up for any anticipated shortfalls.⁶¹ OCC Witness Gonzalez testified that the incremental auctions have, with one exception, cleared below

⁵⁷ 12-1230-EL-SSO, Entry and Order, at page 32 (July 18, 2012).

⁵⁸ Staff Exhibit 5, Direct Testimony of Gregory C. Scheck, at page 12, lines 2-4.

⁵⁹ Tr. Vol. 4, at pages 882, lines 17-25 (October 25, 2012).

⁶⁰ IEU-Ohio Exhibit 2, PJM Manual 18, at pages 91-92.

⁶¹ Id.

the corresponding BRA.⁶² As Sierra Club Witness Loiter explains, “to the extent that the incremental auctions clear at a price lower than the original base residual auction, the Companies can actually make money on this difference.”⁶³ Even if the incremental auctions clear at a price higher than the BRA, unless the Companies anticipate falling extremely short of their estimates, they will be able to simply draw down from the substantial revenue that will be earned through the BRA.

While the Companies are correct that there is no guarantee that the incremental auctions will always be lower than the BRA, they go too far in completely ignoring past trends. Just as they argued in ESP3 that mitigation remained valuable “based on past experience,”⁶⁴ it is appropriate to assume the possibility of securing capacity credits in the incremental auctions at prices lower than in the BRA, especially when this mitigation method is combined with the other mitigation methods described above.

D. The Unknowns and Uncertainties Identified by FirstEnergy are Irrelevant

Witness Mikkelsen identifies three “unknowns and uncertainties associated with attempting to guess what future energy efficiency or load management resources will be installed, which of those will qualify to meet the projected commitments and meet M&V standards, and which of those resources the Companies will have ownership rights to.”⁶⁵ While it is true that certain programs might count as savings for the purposes of meeting FirstEnergy’s savings targets but would not be allowed to be bid in the BRA, this fact has no bearing on whether or not the Companies should entirely refuse to bid anticipated resources. If a resource is not eligible for participation into the BRA, then the Companies should simply not include the

⁶² Tr. Vol. 4, at page 891, lines 16-23 (October 25, 2012).

⁶³ Sierra Club Exhibit 1, Direct Testimony of Jeffrey Loiter, at page 6, lines 17-19.

⁶⁴ 12-1230-EL-SSO, Opinion and Order, at page 31 (July 18, 2012).

⁶⁵ Company Exhibit 23, Testimony of Eileen M. Mikkelsen, at page 5, lines 7-12.

resource in its bid, but instead bid the many resources that will qualify for the BRA. There is no penalty for attempting to bid resources that end up not being eligible. There is only a penalty, discussed above, if FirstEnergy fails to deliver accepted resources that clear the auction.

Another uncertainty Witness Mikkelsen identifies is “[c]ontracted demand resources.”⁶⁶ Contracted demand resources are PDR resources that the Companies acquire in part from third party providers called Curtailment Service Providers (“CSPs”). CSPs contract with customers to provide PDR services and then bid the savings from those demand reductions into the BRA. The Companies can then contract with the CSPs to take credit for the demand reductions for the purpose of meeting the Companies’ PDR requirements. Because CSPs retain “ownership rights for PJM bidding” and as Witness Mikkelsen notes “presumably have already bid those resources into future BRAs,”⁶⁷ the Companies cannot also bid the savings into the BRA. The Companies have estimates of how many MWs of contracted demand resources they will procure over the life of the plans, so they should not bid those anticipated resources into the BRA. Similarly, to the extent that the Companies do not anticipate having ownership rights to “energy efficiency projects historically implemented by Mercantile self-direct customers who have rider exemptions,”⁶⁸ the Companies should not bid those into the BRA. The same applies to anticipated savings from “behavioral energy efficiency” projects or other resources that PJM does not allow at the time of the BRA.⁶⁹

If an anticipated eligible resource does not qualify as a resource for the PJM capacity market at the time of the BRA (i.e., is not eligible), then the Companies should not be obligated to bid those resources into the BRA. For resources that do qualify (i.e., are eligible), the

⁶⁶ Id., at pages 5-6, lines 19-3.

⁶⁷ Id., at pages 5-6., lines 19-1.

⁶⁸ Id., at page 6, lines 8-10.

⁶⁹ Id., at page 6, lines 4-7.

Companies should bid at least 75% of anticipated resources. Bidding 75% of anticipated eligible savings gives the Companies a sufficient cushion should they end up relying on ineligible savings.

II. THE COMPANIES MUST IMPROVE THE PROGRAMS OFFERED IN THE PROPOSED PLANS

A. The Companies Should Change the Way they Evaluate and Discount Lighting Measures

The Companies rely heavily on lighting programs to meet their savings targets. For example, Ohio Edison expects to earn approximately 26% of its savings in 2013 from the Energy Efficient Lighting Programs,⁷⁰ and approximately 60% of its Residential Savings from the Energy Efficient Lighting Program⁷¹. Given this heavy reliance on lighting, the Commission must carefully examine these programs to make sure that the programs themselves actually generate the savings, and that the savings do not simply come from changes in the market place. This is particularly important because of the changes in the lighting standards due to the Energy Independence and Security Act of 2007 (“EISA”). As outlined above, ORC § 4928.66(a) requires that “energy efficiency programs achieve savings.” The operative word is “achieve.” The programs, in this case the discounts, must be the driver for customers to make a purchase they would not otherwise make, or to purchase a more efficient bulb or fixture than they would otherwise purchase. Thus, savings that would naturally occur regardless of the standards cannot count towards FirstEnergy’s goals.

Given the changes driven by the new EISA standards and the information set forth in the record, the Commission should (i) not allow FirstEnergy to use the EISA standard as the baseline

⁷⁰ $((0.034 \text{ MWh/year per unit}) \times (718,384 \text{ units in 2013})) / (40,613 \text{ MWh}) = 60.14\%$.

⁷¹ Sierra Club Exhibit 2, Direct Testimony of Glenn Reed, at pages 5-6, lines 22-2 (estimating that Ohio Edison intends for lighting to account for approximately 62% of residential savings).

to determine energy savings from compact fluorescent light bulbs (“CFLs”) and Light Emitting Diodes (“LEDs”), and (ii) not allow FirstEnergy to discount Standard T-8 fixtures. EISA phases out inefficient lighting from 2012-2014 by banning the manufacture and import of products that cannot achieve a certain minimum lumen output per watt. The standards will change the market so that inefficient lighting will become progressively less available at retail, and therefore more efficient lighting will become the new baseline for determining savings.

- i. FirstEnergy should not use the EISA standard as the baseline to determine energy savings for CFLs and LEDs

FirstEnergy proposes to calculate savings for energy efficient lighting by using the baselines established in EISA. However, this vastly overstates the savings generated by FirstEnergy’s lighting program. EISA requires screw-in light bulbs to use fewer watts for a similar lumen output, progressively reducing the amount of allowable watts over the course of three years, from 2012-2014.⁷²

Today's Bulbs	After the Standard	Standard Effective Date
100 watt	≤ 72 watts	01/01/12
75 watt	≤ 53 watts	01/01/12
60 watt	≤ 43 watts	01/01/12
40 watt	≤ 29 watts	01/01/12

Energy Independence and Security Act of 2007, US EPA Backgrounder - Spring 2011, http://www.energystar.gov/ia/products/lighting/cfls/downloads/EISA_Backgrounder_FINAL_4-11_EPA.pdf

For example, as Witness Miller testified, effective January 1, 2014, EISA reduces the baseline for 60 watt incandescent lumen-equivalents to 43 watts.⁷³ This means EISA requires that manufacturers must replace 60 watt bulbs with bulbs that produce the equivalent amount of light

⁷² H.R. 6 (110th), Section 321(a)(3), Energy Independence and Security Act of 2007 (enacted), hereinafter “EISA”.

⁷³ Company Exhibit 21, Rebuttal Testimony of Edward C. Miller, at page 4, lines 8-9; EISA, at Section 321(a)(3)(A)(ii)(I)(cc).

with 43 watts or less. While the standard only moves the 60 watt bulb to a 43 watt maximum, as Witness Miller acknowledged, the EISA compliant CFLs use only 13-15 watts and are approximately four times as efficient at the 43 watt EISA standard.⁷⁴ LEDs are even more efficient than the 15 watt CFLs.⁷⁵ FirstEnergy proposes to take credit for customers installing the 15 watt CFL as though the baseline for savings is the new 43 watt standard, and it notes that this is consistent with the savings measurement in the Ohio Draft TRM.⁷⁶ However, Witness Miller's savings measurement assumes that there will be 42- or 43 watt bulbs for sale that are 60 watt equivalent.⁷⁷ The Companies include "EE Incandescent" and "Halogen" bulbs as examples of Energy Efficient Lighting Products that can produce savings through the Residential and C&I programs.⁷⁸ Yet Witness Miller, FirstEnergy's primary witness on this issue, acknowledged that FirstEnergy does not know whether EISA compliant bulbs between the 43 watt EISA standard and 15 watt CFLs will be on the market.⁷⁹ Witness Miller testified that he could "not speak to the . . . availability of other, more efficient" bulbs other than CFLs and LEDs that will meet the EISA standard for 60 watt replacements.⁸⁰

OAC 4901:1-39-04(E) places the burden of proof on the Companies to demonstrate that their Proposed Plans will achieve savings sufficient to meet their statutorily defined goals. The key issue here is whether the customers would buy a 14 watt CFL to replace the 60 watt bulb without the discount. If there are no, or very few, 42 watt bulbs on the market, then FirstEnergy cannot take credit for generating savings from its program because the discount did not actually

⁷⁴ Tr. Vol. 6, at page 1071, lines 11-15 (October 30, 2012).

⁷⁵ Case No. 09-0512-GE-UNC, 2010 Ohio Technical Reference Manual, at pages 9-10 (August 6, 2010).

⁷⁶ Company Attachment A, at Appendix C-1: EE&C/DR Program Measure Assumptions.

⁷⁷ Tr. Vol. 6, at page 1070, lines 5-8 (October 30, 2012).

⁷⁸ Company Attachment A, at Appendix C-1: EE&C/DR Program Measure Assumptions.

⁷⁹ Tr. Vol. 6, at pages 1069-70 (October 30, 2012).

⁸⁰ Id., at pages 1070-71, lines 20-2.

generate the savings. Under that scenario, the customers who take advantage of the bulbs are freeriders. Based on the record in this proceeding, the Commission cannot assume that customers would buy the less efficient 43 watt bulb absent FirstEnergy's discounting of the CFLs. Thus, the baseline for determining the savings generated by FirstEnergy should not be the EISA minimum, it should be the energy used by EISA-compliant CFLs, and the Commission should order FirstEnergy to adjust its savings estimates and program implementation accordingly.

ii. FirstEnergy should not discount Standard T-8 fixtures

In addition to discounting bulbs that become the norm, FirstEnergy proposes to provide incentives for Standard T-8 linear fluorescent bulbs and fixtures, despite the fact that the Standard T-8 fixtures became the least efficient fixtures on the market under EISA on July 14, 2012.⁸¹ As required by the new standard, manufacturers have ceased producing new T-12 ballasts. While a limited number of T-12 fixtures may still be available for purchase today, within a few months the least efficient fixture on the market will be the Standard T-8. Thus, the Standard T-8 becomes the new baseline. Given this market change, ELPC and OEC submit that FirstEnergy should start discounts and rebates with the High Performance T-8s, not the Standard T-8s.

In his rebuttal testimony Witness Miller defends rebating Standard T-8s based on the theory that T-12s will remain in retail and customer stock,⁸² and that discounting Standard T-8s encourages early retirement of older fixtures. FirstEnergy, however, fails to demonstrate that such discounts will generate sales from customers who will retire their T-12 fixtures early, but would only do so if the Standard T-8s are discounted; i.e. they would retire the T-12 to purchase the Standard T-8 but not the High Performance T-8. This distinction is critical because, as Sierra

⁸¹ Company Exhibit 21, Rebuttal Testimony of Edward C. Miller, at pages 11-12, lines 23-1.

⁸² Id., at page 12, lines 1-2.

Club Witness Loiter testified, High Performance T-8s are 46% more efficient than the Standard T-8s.⁸³ While the High Performance T-8 fixtures cost \$100 compared to the Standard T-8s' \$82 (a 22% difference),⁸⁴ Witness Miller testified that the fixtures have a 15 year lifespan,⁸⁵ so the cost difference is negligible over the life of the measure. As Witness Crandall notes, FirstEnergy should not encourage customers to purchase less efficient equipment,⁸⁶ which is what it will do by discounting Standard T-8s.

Throughout this proceeding FirstEnergy has emphasized offering customers choices, and in fact, customers will have the option of purchasing the less efficient Standard T-8 if they choose to do so. The issue is should FirstEnergy be discounting the less efficient fixtures. The only reason this would make sense would be if FirstEnergy demonstrated that the price differential is significant enough that customers would not retire T-12s early to purchase High Performance T-8s, but they would do so to purchase Standard T-8s. Moreover, FirstEnergy fails to proffer any information regarding how many customers that take advantage of the program are customers retiring T-12s before they would need to be replaced. FirstEnergy's discounts are available to all customers, including those retiring fixtures that simply wear out.

As Witness Loiter notes, Duke Energy Ohio ("Duke") began eliminating incentives for Standard T-8s on July 15, 2012 in favor of encouraging customers to adopt High Performance T-8s.⁸⁷ Duke cites the Department of Energy's "strategy to encourage replacement of less-efficient lighting systems with highly efficient T8 and T5 fluorescent technologies" as the reason for

⁸³ Sierra Club Exhibit 1, Direct Testimony of Jeffrey Loiter, at pages 12, line 11.

⁸⁴ *Id.*, at pages 12, line 11.

⁸⁵ Tr. Vol. 6, at page 1075, lines 1-5 (October 30, 2012).

⁸⁶ ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 12, lines 4-5.

⁸⁷ Sierra Club Exhibit 1, Direct Testimony of Jeffrey Loiter, at pages 12-13, lines 16-2, citing <http://www.duke-energy.com/ohio-business/smart-saver/smart-saver-incentive-updates.asp>.

phasing out discounts for Standard T-8s.⁸⁸ Duke is not alone in eliminating standard T-8 incentives. As Witness Crandall pointed out, in Illinois Commonwealth Edison typically incentivizes only high performance or reduced wattage T-8s.⁸⁹

Given the changes in the market place and the lack of evidence that discounting Standard T-8s will generate savings that would not otherwise be achieved, the Commission should order FirstEnergy to join Duke and Commonwealth Edison in discontinuing discounts for Standard T-8s. The FirstEnergy discounts should start with High Performance T-8s.

B. The Companies Should Include Efficient LED Lighting Technologies in their Street Lighting Services and Tariffs

FirstEnergy offers company-owned, company-operated street lighting and area lighting tariff services. As ELPC/OEC Witness Crandall explained, “The Companies are not proposing to use high efficiency solid state lighting referred to as light emitting diodes (LED), technology in their street lighting and area lighting tariff services.”⁹⁰ He adds, “The Companies’ eligible street lighting services include the use of less efficient high pressure sodium, mercury vapor and incandescent lighting technology.”⁹¹ A program for LED technology in the Companies’ street lighting and area lighting tariff would create significant savings. Moreover, because the proposed change to offer LED technology is merely a change to the Companies’ tariffs, these savings would be generated at no cost to consumers.

The lack of an LED street lighting program represents a significant failure to take advantage of a simple and important efficiency opportunity. As Witness Crandall testified, and according to the Department of Energy, “LED technology is becoming very cost competitive

⁸⁸ Duke Energy Ohio, "Lighting incentives for standard T8s and T5s to end in Ohio," available at <http://www.duke-energy.com/ohio-business/smart-saver/smart-saver-incentive-updates.asp>.

⁸⁹ ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 11, lines 19-23.

⁹⁰ Id., at page 9, lines 11-13.

⁹¹ Id., at page 10, lines 1-3.

with standard lighting applications for outdoor use.”⁹² Mr. Crandall described the case for LED street light and area lighting as follows:

Recent advances in LED technology have provided new opportunities for outdoor area lighting with distinct advantages over mercury vapor or high pressure sodium. The advantages include better control of the light, less energy use, and much longer life with better lumen maintenance. In addition, LED lights do not contain lead or mercury, do not present disposal hazards, light up instantly without re-strike delay, and reduce light trespass, sky glow and glare.⁹³

Witness Crandall provided several examples of utilities that have taken advantage of this low-hanging fruit, including the Wisconsin Electric Company (WI), Interstate Power and Light Company (IA), Central Hudson Gas and Electric Corporation (NY), and Vermont Utilities.⁹⁴ Given the cost savings and other advantages from LED lighting the Companies’ Plans should include a program or sub-program that offers LED technology for company-owned street lighting and area lighting tariff services.

C. The Companies’ Plan Over-Relies on Ineffective Energy Efficiency Kits Rather than More Effective Long-Term Programs

The Companies’ proposed plan includes a drastic overreliance on unproven and short-sighted energy efficiency kits, which the record indicates have very low installation rates and provide little benefit. An energy efficiency kit is a package of items the Company would send to customers, upon request, free of charge. A typical kit includes a number of CFLs, furnace whistles, faucet aerators, LED nightlights, smart strips, and shower heads. The Companies proposed kits for both residential and commercial customers, with kits representing about 36% of total aggregate residential savings in the plan period and 32% of small mercantile savings.⁹⁵ FirstEnergy’s heavy reliance on the kits means that the Companies fail to take advantage of more

⁹² Id., at page 9, lines 16-17.

⁹³ Id., at pages 9-10.

⁹⁴ Id., at attachments GCC-8 and GCC-9.

⁹⁵ Sierra Club Exhibit 2, Direct Testimony of Glenn Reed at 5, lines 17-18.

successful and effective programs that alleviate free rider concerns, result in long-term savings, and more effectively transform the market.

There are two main issues with the use of the kits. First, the free CFLs generate most of the projected savings from the kits, and FirstEnergy fails to demonstrate that the customers receiving the kits would not purchase those CFLs if FirstEnergy did not provide them for free. As Sierra Club Witness Reed notes, simply giving away the CFLs has a negative effect on market development.⁹⁶ Second, the measures included in the kit have very low installation rates, and the Companies fail to substantiate the high projected rate they claim for the CFLs and other measures in the kit.

The Companies' proposed kits circumvent normal market channels. As Staff Witness Scheck recognized in his testimony, "the best way to approach the mass market with CFLs would be to go through . . . large box retailers and various retailers."⁹⁷ As the Companies themselves concede, more than 75% of Ohio residences have CFLs, with the median number of bulbs being six.⁹⁸ Due to the fact that most consumers are already aware of and in fact use CFLs, Witness Reed explains that the kits simply undermine the market channels already in place for those customers to buy efficient products at retail.⁹⁹ Put simply, by giving away the CFLs for free, FirstEnergy "reduces the amount of CFLs that a homeowner would then likely purchase at retail."¹⁰⁰

In addition to failing to justify that customers would not otherwise purchase the same CFLs, FirstEnergy fails to justify its projected installation rates for the bulbs and other measures

⁹⁶ Tr. Vol. 3, at 662-63 (October 24, 2012).

⁹⁷ Tr. Vol. 4, at page 761, lines 5-7 (October 25, 2012).

⁹⁸ Company Attachment C, Appendix D, Market Potential Study, at 67.

⁹⁹ Tr. Vol. 3, at page 662-63 (October 24, 2012).

¹⁰⁰ Id., at page 661, lines 17-21.

that the record indicates are inflated and unrealistic. As Company Witness Miller testified, approximately “85% of the savings” from the kit come from CFLs,¹⁰¹ for which the Companies use a projected installation rate of 0.86.¹⁰² FirstEnergy derives this installation rate from the Ohio Technical Reference Manual (“TRM”), which recommends a 0.86 installation rate for “CFLs *purchased* through retail channels.”¹⁰³ As Witness Reed testified, one would expect the installation rate for CFLs received in a free energy efficiency kit to be considerably lower than those purchased by a consumer at retail.¹⁰⁴ A customer who actively purchases a bulb at retail is more likely to immediately install that bulb than a customer who simply checks a box to receive six or more free CFLs in the mail.¹⁰⁵ In fact, FirstEnergy’s own experience in Pennsylvania supports a lower projected installation rate. Company Witness Miller testified that the actual installation rates for the Pennsylvania kit CFLs were only 70 percent three months after receipt of the kits.¹⁰⁶ The Companies’ inflated projected installation rate is therefore not supported by either the Ohio TRM or Companies’ own experience in Pennsylvania.

For other kit measures, the installation rates are even lower. Witness Miller conceded during cross-examination that the Pennsylvania Statewide Evaluator for energy efficiency programs found that the kits distributed by MetEd, a FirstEnergy company, “had low installation rates for nightlights (36 percent), faucet aerators (38 percent), and furnace whistles (0 percent).”¹⁰⁷ These low installation rates suggest that the energy efficiency kits will not produce the savings estimated by the Companies, and that they will not successfully engage customers

¹⁰¹ *Id.*, at page 418, line 16.

¹⁰² Tr. Vol. 2, at page 344, line 25 (October 23, 2012).

¹⁰³ *Id.* at 345, line 10 (emphasis added).

¹⁰⁴ Tr. Vol. 3, at pages 664-65 (October 24, 2012).

¹⁰⁵ Sierra Club Exhibit 2, Direct Testimony of Glenn Reed, at page 5, lines 7-9.

¹⁰⁶ Tr. Vol. 6, at page 1072-73 (October 30, 2012).

¹⁰⁷ Tr. Vol. 2, at page 348, lines 4-6 (October 23, 2012); see also ELPC Exhibit 3, Pennsylvania Statewide Evaluator Report, 6/1/10 to 5/31/11, at page 64.

with energy efficient practices going forward.

While ELPC/OEC do not support general distribution of the kits, we do support FirstEnergy's distribution of the school energy efficiency kits. The school kits include many of the same measures discussed above, but they would be distributed in schools for children to take home as part of a school program that could include a "homework assignment [or] simple pledge form that the student takes home [and] has the family complete."¹⁰⁸ ELPC/OEC Witness Crandall noted that "[t]hese kits are likely to provide benefits due to the active participation by teachers and students and the high[er] installation rates that are expected to result" and should therefore be approved.¹⁰⁹

The Companies' other proposed kits, including "the standard or the all electric kits for small commercial, industrial and residential" suffer from the problems addressed above and should not be authorized by the Commission.¹¹⁰ Rather than over-rely on problematic kits, the Companies should implement other, more successful programs, like those discussed in this brief. The Commission should order the Companies to reallocate the proposed budget for energy efficiency kits to other lighting programs as outlined above, with the goal of promoting greater market transformation.

D. The Companies Should Expand their Proposed Data Center Sub-Program

Data centers are facilities that primarily contain electronic equipment used for data processing, data storage, and communications networking. This is an important, growing area of energy consumption in the United States. According to Witness Crandall, in 2007, the EPA estimated that energy use from computer servers would reach more than 100 billion KWh/year

¹⁰⁸ Tr. Vol. 3, at page 459, lines 16-19 (October 24, 2012).

¹⁰⁹ ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 13, lines 9-11.

¹¹⁰ ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 7, lines 11-13.

by 2011, costing approximately \$7.4 billion.¹¹¹ NRDC Witness Swisher notes that data centers are tremendously inefficient, with only about 3% of their electricity consumption used to perform useful computing.¹¹² While the Companies' market potential study did not disaggregate the existing or projected energy use or savings potential for data centers, combining the EPA estimate with Witness Swisher's estimate of energy used to perform useful computing, means that data centers waste approximately 97 billion KWh/year across the United States. The savings potential of increasing data center efficiency is enormous.

Initially, FirstEnergy's Proposed Plans contained no program specifically designed to address this critical issue. However, to FirstEnergy's credit, in Witness Miller's rebuttal testimony the Companies commit to "develop a sub-program to specifically target data center participation."¹¹³ The commitment is a good step toward addressing what ELPC/OEC Witness Crandall identified as "prime opportunities for energy efficiency."¹¹⁴

Beyond the agreement to run the program, consistent with Witness Swisher's testimony, the Commission should ensure that FirstEnergy addresses the need for specialized knowledge by requiring that FirstEnergy provide specific training for the more specialized IT work.¹¹⁵ Rather than hiring an implementation-only contractor, FirstEnergy should work with an expert firm that can help with the design and implementation of the program. This would include technical assistance, facility assessments, and engineering and architectural expertise. For example, according to Witness Swisher, AEP-Ohio's data center efficiency program includes a facility

¹¹¹ Id., at page 7, lines 3-5, citing the EPA 'Report to Congress on Server and Data Center Energy Efficiency Public Law 109-431, at page 5 (August 2, 2007)', available at http://www.energystar.gov/ia/partners/prod_development/downloads/EPA_Datacenter_Report_Congress_Final1.pdf.

¹¹² NRDC Exhibit 1, Direct Testimony of Joel Swisher, at page 10, lines 5-6.

¹¹³ Company Exhibit 21, Rebuttal Testimony of Edward C. Miller, at page 8, lines 6-8.

¹¹⁴ ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 7, lines 20-21.

¹¹⁵ NRDC Exhibit 1, Direct Testimony of Joel Swisher, at page 12, lines 6-7.

assessment to identify energy efficiency opportunities.¹¹⁶

ELPC and OEC support the Companies' proposal of a \$3.2 million budget for the sub-program, but assert that the funding should come from a total budget increase rather than from shifting funds around the Commercial and Industrial Efficient Equipment Program – Large & Small.

E. The Commission Should Not Allow FirstEnergy to Count Savings from its Transmission & Distribution Improvement Program or As Found Savings from its Mercantile Customer Program in the Proposed Plans

The Proposed Plans include a Transmission & Distribution (“T&D”) Improvement Program and a Mercantile Customer Program that, according to Witness Dargie, will be addressed in separate dockets.¹¹⁷ These programs fail to meet the requirements set out in ORC § 4928.66 and PUCO rules outlining portfolio requirements and therefore should not be approved as part of FirstEnergy's portfolio plan.

- i. FirstEnergy should not include the T&D improvements program as part of its portfolio plan

FirstEnergy proposes to count savings from transmission and distribution upgrades through its T&D Improvement Program. Pursuant to OAC 4901:1-39-07(A)(1), the Companies are only allowed to count savings from T&D improvements if the improvements are “undertaken primarily for energy efficiency or demand reduction purposes.” Witness Miller, however, testified that FirstEnergy's T&D Improvements would “be primarily undertaken for the purpose of ensuring reliability load-serving capabilities.”¹¹⁸ Witness Miller went on to state that FirstEnergy would have conducted these improvements regardless of whether the improvements

¹¹⁶ *Id.*, at page 11, lines 18-20.

¹¹⁷ Company Exhibit 1, Direct Testimony of John C. Dargie, at page 12, lines 17-20.

¹¹⁸ Tr. Vol. 3, at page 432, lines 14-17 (October 24, 2012).

saved energy or the Companies received credit under the energy efficiency standard.¹¹⁹ Nothing in the record supports the position that FirstEnergy's T&D improvements can be considered energy efficiency improvement.

In addition to the fact that FirstEnergy provides no evidence that it will undertake T&D programs for the purpose of producing efficiency savings, it also fails to comply with OAC 4901:1-39-03, which requires FirstEnergy to conduct an "assessment of potential energy savings and peak-demand reduction from adoption of energy efficiency and demand-response measures." While FirstEnergy contracted with Black & Veatch to conduct its assessment, the resulting Market Potential Study explicitly omitted "savings resulting from Transmission and Distribution upgrades."¹²⁰ Nor could Company Witness Dargie provide such an assessment. On cross-examination, Witness Dargie testified that he did not know "what the potential reductions for the T&D programs will be because I don't know what T&D projects will be implemented throughout the term of the plan."¹²¹ According to Witness Dargie, no one on his team knows what T&D improvements FirstEnergy will make.¹²²

Based on the fact that the Companies' Proposed Plans do not include an assessment of the potential energy savings from T&D projects, and because those projects would not be undertaken primarily for energy efficiency or demand reduction purposes, the proposed T&D Improvements Program does not comply with Ohio law and therefore should not be approved by the Commission.

¹¹⁹ Id., lines 10-20.

¹²⁰ Company Attachment A, Appendix D, Market Potential Study, at page 12.

¹²¹ Tr. Vol 1, at pages 80-81, lines 23-1 (October 22, 2012).

¹²² Tr. Vol 1, at page 81, lines 2-9 (October 22, 2012).

ii. The Commission should not allow FirstEnergy to include as found savings

In addition to FirstEnergy's failure to provide a budget and expenditures, its proposal overstates savings by including "as found" savings in its calculations. The as found method allows utilities to count savings from the replacement of failed equipment or the replacement of equipment due to normal replacement schedules, even if that new equipment is the least efficient on the market; often the least efficient equipment in terms of compliance with federal or state regulations. FirstEnergy's reliance on the as found method for savings stems from the Commission's erroneous ruling allowing such savings in the Mercantile Pilot in 10-834-EL-POR. However, the Pilot Program has only been extended through March 15, 2013, with no guarantee of extension or permanent adoption. Given the legal and policy reasons against counting as found savings set forth below, the Commission should not allow FirstEnergy's plan to rely on the as found method of measurement for the 2013-2015 period.

The least efficient equipment on the market does not comply with OAC. 4901:1-39-05(H), which states that "an electric utility shall not count in meeting any statutory benchmark the adoption of measures that are required to comply with energy performance standards set by law or regulation." Hence, if a mercantile customer replaces old equipment with new equipment that merely meets minimum standards set by law, it cannot be counted. Additionally, The as found method of measurement is contrary to SB 221, which requires savings to be the result of "programs," rather than business-as-usual practices,¹²³ and the Commission consistently rejected the as found method until its September 15, 2010 order establishing the Pilot Program in 10-834-EL-POR. The programs themselves must cause the change necessary to meet the benchmarks - compliance cannot be achieved simply by coincidental reductions in energy usage that have

nothing to do with utility programs.¹²⁴

The as-found method is also in direct conflict with the Commission's own regulations, including OAC 4901:1-39-05(F), which addresses the savings of mercantile customers:

A mercantile customer's energy savings and peak-demand reductions shall be measured by including the effects of all demand-response programs of the mercantile customer and all mercantile customer-sited energy efficiency and peak-demand reduction programs. A mercantile customer's energy savings and peak-demand reductions shall be presumed to be the effect of a demand response, energy efficiency, or peak-demand reduction program to the extent they involve the early retirement of fully functioning equipment, *or the installation of new equipment that achieves reductions in energy use and peak demand that exceed the reductions that would have occurred had the customer used standard new equipment or practices where practicable.* Electric utilities may make an alternative demonstration that mercantile customer energy savings or peak demand reductions are effects of such a program.¹²⁵

The operative language here requires that mercantile customers' installation of new equipment must achieve savings beyond replacement with "standard" new equipment. Thus, in order to count towards efficiency goals, the mercantile customer must replace old equipment with new equipment that is more efficient than standard equipment.

In its Entry on rehearing in the Technical Reference Manual Case, Case No. 09-512-GE-UNC, the Commission provided its most definitive statement on the issue, stating that

In certain cases, energy savings may be derived from activities that can only be categorized as "business as usual" practices; these activities do not constitute energy efficiency programs. Section 4928.66(A)(1)(a) and (c), Revised Code, underscores the efficacy of programs that encourage the adoption of cost-effective efficiency measures beyond the simple replacement of worn-out equipment."¹²⁶

In the final analysis, there is good reason to believe that the as found method will not

¹²⁴ ORC § 4928.66.

¹²⁵ OAC 4901:1-39-05(F) (emphasis added).

¹²⁶ In the Matter of Protocols for the Measurement & Verification of Energy Efficiency & Peak Demand Reduction Measures, 09-512-GE-UNC, 2010 WL 2536301, Entry on Rehearing (June 16, 2010).

continue as a valid method in Ohio. The rejection of the as found method would result in significantly less savings than what FirstEnergy has projected for the Mercantile Customer Program. Savings from the mercantile program can be made up by requiring FirstEnergy to implement the programs discussed in this brief, including the lighting and data center programs, in order to ensure compliance with the statutory benchmarks.

III. THE SHARED SAVINGS MECHANISMS SHOULD BE APPROVED WITH MODIFICATIONS AND CLARIFICATIONS

As part of the Plan, FirstEnergy proposes a shared savings incentive mechanism. The Companies assert the shared savings incentive mechanisms “provide added encouragement for the Companies to exceed the EE&PDR benchmarks,”¹²⁷ and “for the Companies to share in the . . . net benefits . . . with customers.”¹²⁸ The net benefit proposed in this Incentive Mechanism is calculated on a Utility Cost Test (“UCT”) basis, and is the difference between the costs avoided by implementing the EE/PDR programs and the utility incurred costs of the EE/PDR programs.

The incentive would be triggered if a Company exceeds both its annual and cumulative energy savings targets as set forth in ORC § 4928.66 (A)(1)(a).¹²⁹ If the Companies achieve the incentive target for a given year, they will earn rewards based on a tiered Compliance Percentage, increasing up to a 13% incentive if FirstEnergy’s savings exceed 115% of the statutory goal. Companies plan to collect incentive dollars through Rider DSE and based on an allocation at the rate schedule level in the proportions at which the Adjusted Net Benefits were achieved for the reported year.¹³⁰

Shared savings incentive mechanisms are permissible, although not required, and have

¹²⁷ Company Exhibit 5, Direct Testimony of Eren G. Demiray, at page 4, lines 3-4.

¹²⁸ *Id.* at lines 20-22.

¹²⁹ Company Exhibit 5, Direct Testimony of Eren G. Demiray, at page 8, lines 5-16.

¹³⁰ Company Exhibit 5, Direct Testimony of Eren G. Demiray, at pages 11-12.

been a contentious issue in Commission proceedings for all of Ohio's EDU's, not just FirstEnergy. Shared savings must be outlined in the 'annual portfolio report, and must also show the comparison between fixed distribution cost impacts and shared savings.¹³¹ The precedent for Commission review of a shared saving mechanism, and which was also the basis for FirstEnergy's proposed incentive mechanism in this case, is the recently approved AEP-OH plan from its 2012-2014 Portfolio case. In that case, AEP-Ohio requested approval to collect costs and shared savings through an EE/PDR rider, subject to an annual true-up of actual costs and shared savings. The Commission gave approval for measurable shared savings programs, noting that:

There will be a shared savings mechanism that provides an after-tax net benefit of 87 percent to AEP-Ohio's customers and 13 percent to AEP-Ohio, based on the utility cost test (UCT) inclusive of all costs at the portfolio level, when it exceeds the energy efficiency benchmark compliance requirement by 15 percent.¹³²

The Commission went on to set up an annual achievement target formula for the shared savings plan. The Commission, in the AEP case, further set out the qualifications for shared savings plans: 1) no shared savings for the mercantile customers Self Direct programs; 2) no shared savings for Community Assistance Programs; 3) no shared savings for internal transmission and distribution line loss reduction as a result of investments to improve facility efficiency; 4) efficiency reductions can only be counted one time (no double counting shared savings) and they can only be counted in the year they were generated; 5) savings will only be counted in the current year, even if over compliance of the previous year was used to comply with the benchmark; and 6) Customer savings from previously installed EE/PDR resources approved by the Commission do not count towards shared savings.¹³³ Finally, shared savings

¹³¹ PUCO Case No. 11-5568-EL-POR, Entry (March 21, 2012).

¹³² Id., at page 7.

¹³³ Id.

must also be “trued-up” annually to reflect their actual costs.¹³⁴

As Witness Demiray testified, the Companies based their shared savings incentive proposal on the recently approved incentive for AEP-Ohio.¹³⁵ Generally, FirstEnergy’s proposal follows the Commission guidelines set forth in the AEP Order. However, FirstEnergy’s shared savings proposal also seems to deviate from the AEP order where FirstEnergy proposes to receive incentives based on energy savings for which the company is merely a Free Rider. According to the FirstEnergy’s Proposed Plan, and the testimony of Company Witness Demiray, the shared savings incentive calculation is based on Compliance Percentage equal to the Adjusted Annual Energy Savings in MWh, divided by the Annual Statutory Target in MWh.¹³⁶ Witness Demiray explains that the Adjusted Net Benefits will be calculated by modifying the Total Discounted Net Lifetime Benefits produced by the Portfolio in a given year to exclude the impacts of certain programs or projects.¹³⁷ Those excluded impacts include mercantile customer projects that were installed prior to March 23, 2011, and certain T&D Projects. However, this would allow the Companies to benefit from mercantile projects installed after March 23, 2011 and such inclusion is inconsistent with the premise of incenting FirstEnergy to achieve greater savings. FirstEnergy does not control the mercantile projects and should not benefit from the activities those customers undertake. The Commission should not change course from its ruling on this in the AEP case.

Similarly, we request that the Commission deny the Companies request to receive any shared savings incentive for its T&D Improvement Program. FirstEnergy agrees to exclude routine savings from T&D projects, but proposes to include savings where the mercantile

¹³⁴ Id., at page 10.

¹³⁵ Company Exhibit 5, Direct Testimony of Eren G. Demiray, at page 7, lines 3-4.

¹³⁶ Id., at page 10, lines 1-2.

¹³⁷ Id. at lines 11-14.

customer modified the project “to provide additional energy efficiency benefits.”¹³⁸ The problem is that the Commission cannot accurately determine when a customer has modified a T&D improvement to provide additional energy efficiency benefits. As Company Witness Miller stated, the Companies do not “have a specific list of projects” and that their projects would “be primarily undertaken for the purpose of ensuring reliability load-serving capabilities.”¹³⁹ Essentially FirstEnergy fails to provide any real parameters for making a determination that it has modified a T&D project for the purpose of improving efficiency. The Proposed Plans provide sufficient opportunities for the Companies to earn shared savings without including T&D improvements, and as a regulated public utility FirstEnergy should be expected to take some actions that benefit customers as a routine part of its obligation to serve.

IV. THE COMMISSION SHOULD DENY THE COMPANIES’ REQUEST FOR A WAIVER OF THE PRO RATA REPORTING REQUIREMENT

In the Companies’ application, they again request a waiver of the requirement to use the pro rata methodology for measuring energy efficiency savings. Under the pro rata methodology, “[w]hen measures are implemented during a year, only the savings from the time of implementation until the end of the year count for purposes of meeting the benchmark.”¹⁴⁰ The pro rata standard is more accurate than the annualized methodology, which allows a utility to count an entire year’s worth of savings in the year a measure is implemented regardless of the date that measure is actually installed. For example, under the annualized methodology, FirstEnergy could count in 2013 the same amount of savings for a CFL installed on December 30 as for a CFL installed on January 1, even though, as Company Witness Fitzpatrick agreed, the CFL installed on January 1 will actually “save more electricity . . . in the year 2013” than the

¹³⁸ Company Exhibit 5, Direct Testimony of Erin G. Demiray, at page 10, lines 19-21.

¹³⁹ Tr. Vol. 3, page 432 (October 24, 2012).

¹⁴⁰ Case No. 08-888-EL-ORD, Entry and Order at page 9 (June 17, 2009).

CFL installed on December 30.¹⁴¹

The Companies' justification that using an annualized methodology is less costly has been rejected by the Commission Case Nos. 08-888-EL-ORD, Entry and Order (June 17, 2009) and 09-1947-EL-POR, Entry and Order (Sept. 7, 2011). The Commission should continue to require the pro rata method because it more accurately measures efficiency savings and is consistent with SB 221, which requires the Companies to achieve actual savings each year. Moreover, as ELPC Witness Crandall testified and as the Commission recognized in Case No. 09-1947-EL-POR, allowance of the annualized methodology creates "a potential disincentive for a utility to diligently implement an energy efficiency program."¹⁴² For example, if FirstEnergy knows it can count an entire year's worth of savings for a measure no matter when that measure is installed, it lacks an incentive to implement that measure as quickly as possible. In the words of the Commission, this would delay "the delivery of cost-effective energy savings opportunities [and] the net cost savings which customers enjoy."¹⁴³

While the Companies and Staff argue that the annualized methodology would be less costly, this argument is not supported by the evidence.¹⁴⁴ Company Witness Fitzpatrick and Staff Witness Scheck seem to believe that the only alternative to using annualized savings is to try to pinpoint the precise moment that the customer implemented the measure. However, as Witness Scheck acknowledged on cross-examination, the Companies could keep track of measure installations on a weekly, monthly, or even a quarterly basis, which could significantly reduce

¹⁴¹ Tr. Vol. 2, at page 151-52, lines 21-2 (October 23, 2012).

¹⁴² ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 14, lines 3-5.

¹⁴³ 09-1947-EL-POR, Entry and Order, at paragraph 9 (Sept. 7, 2011).

¹⁴⁴ Company Application, at page 12, paragraph 30; Staff Exhibit 5, Direct Testimony of Gregory C. Scheck, at pages 2-3.

administrative costs relative to a daily basis.¹⁴⁵ Furthermore, as Company Witness Miller testified, the Companies already engage in monthly reporting for many measures, including for reports from retail partners, which demonstrates that daily reporting is not necessary for compliance with the pro rata requirement.¹⁴⁶

While Witness Fitzpatrick testified that use of the pro rata method increased costs during the current plan period “by approximately \$51.2 million,”¹⁴⁷ that number represents a one-time program startup issue that is irrelevant to the Proposed Plans. Because of the timing of the Commission’s approval in the Companies’ initial portfolio case, the Companies got a late start on their 2009-2012 Plan, and Fitzpatrick acknowledged that “additional programs and measures had to be included in the plan to make up for the short fall.”¹⁴⁸ As Fitzpatrick explained on cross-examination, the Companies had to implement more programs in order to “catch up” because they “didn’t have . . . truly a full year” to create savings.¹⁴⁹ The Companies’ programs have now been in full operation for a number of years, and the Companies have been able to “catch up” and achieve the benchmarks. Therefore, these start-up costs are irrelevant to the Proposed Plan, and the Companies do not present any evidence of increased program costs going forward.

Additionally, Witness Fitzpatrick clarified during cross-examination that the \$51.2 million was “purely [the] cost” of the programs and did not take into account any of the energy savings or other benefits realized by the Companies’ customers.¹⁵⁰ In fact, the \$51.2 million is not really a cost to customers at all because it results in cost-effective energy savings that represent a net cost-savings for ratepayers. The Commission explicitly rejected the Companies’

¹⁴⁵ Tr. Vol. 4, at pages 758-59 (October 25, 2012).

¹⁴⁶ Tr. Vol. 2, at pages 341-43 (October 23, 2012).

¹⁴⁷ Company Exhibit 3, Direct Testimony of George L. Fitzpatrick, at page 11, lines 1-5

¹⁴⁸ *Id.*

¹⁴⁹ Tr. Vol. 2, at page 150, lines 8-10.

¹⁵⁰ *Id.* at page 150.

argument regarding increased costs in FirstEnergy's original portfolio cases, 09-1947-EL-POR, et al.

With regard to the Companies' argument that customers would pay \$51.2 million more than is necessary, the Companies' reasoning is flawed The Companies' argument is based upon the contention that it would cost \$51.2 million to deliver the programs so that the energy savings actually occurred during the year they were to be counted. However, because these energy savings must be cost-effective, by definition, customers in the aggregate save money when the Companies deliver energy savings opportunities to their customers instead of energy. To the extent the Companies accelerate the delivery of cost-effective energy savings opportunities to their customers, they will also accelerate the net cost savings which customers enjoy. Thus, every kWh of energy that can be displaced through cost-effective energy efficiency programs is a savings, not a cost, to the Companies' customers.¹⁵¹

The Commission's reasoning in 09-1947-EL-POR, et al. was sound, and it should again reject the Companies' request for a waiver.

The fact that AEP Ohio recently received a waiver of the pro rata reporting requirement has no bearing on this case. In the AEP portfolio case, the Commission did not make a determination that the annualized methodology was more consistent with SB 221 or the appropriate standard going forward.¹⁵² Instead, AEP's waiver request was one aspect of a settlement agreement among the parties that contained numerous issues. The Commission recognized that the issue was part of an overall compromise by the parties, noting that "[i]f the [pro rata] waiver is granted by the Commission, [AEP] agrees to reduce the Self Direct incentive payment from 100 percent of the prescriptive or custom incentive [to] 75 percent."¹⁵³ The case at hand is being litigated and lacks the elements of compromise that resulted in the granting of AEP's waiver request. Finally, AEP's use of the annualized approach was accompanied by a more balanced and comprehensive plan than that being proposed by the Companies in this case.

¹⁵¹ 09-1947-EL-POR, Entry and Order (Sept. 7, 2011) (internal citations omitted).

¹⁵² Case Nos. 11-5568-EL-POR, et. al., Opinion and Order, at 12 (March 21, 2012).

¹⁵³ Id.

The weaknesses of the Companies' proposed plan, as discussed above, provide additional reasons why the waiver request should be denied in this case.

As the Commission has stated, "to the extent the Companies accelerate the delivery of cost-effective energy savings opportunities to their customers, they will also accelerate the net cost savings which customers enjoy."¹⁵⁴ Requiring the pro rata methodology, in addition to its obvious advantages in terms of accuracy, creates an incentive for the Companies to implement measures as quickly as possible, thus accelerating the delivery of energy and cost savings to customers. In making the same arguments that the Commission has rejected at least twice before, the Companies have failed to demonstrate that a waiver is warranted in this instance. The Commission should continue to require the Companies to measure savings using the pro rata methodology.

V. THE COLLABORATIVE PROCESS SHOULD BE IMPROVED

A. The Collaborative Process is Ineffective and Should be Changed

In its approval of FirstEnergy's Existing Plans in Case Nos. 09-1947-EL-POR, et. al., the Commission noted that the FirstEnergy Ohio Collaborative ("Collaborative") is important because it "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."¹⁵⁵ To that end, the Collaborative should play an important role in ensuring that portfolio plans are efficiently developed and implemented.

Unfortunately, in its current state the Collaborative has been largely ineffective.

¹⁵⁴ Case No. 09-1947-EL-POR, et. al., Entry and Order, at page 6, paragraph 9 (Sept. 7, 2011).

¹⁵⁵ Case No. 09-1947-EL-POR, et. al., Opinion and Order, at page 20, (March 23, 2011).

Collaborative meetings are held infrequently and irregularly. When the meetings finally occur, the Companies have had significant problems getting materials to Collaborative members in time for meaningful review.

On cross-examination Company Witness Demiray acknowledged the concerns expressed by intervenors, and stated the Companies commitment to improve the Collaborative process.¹⁵⁶ That being said, the Commission should memorialize that commitment through its Order in this case. Specifically, it should direct FirstEnergy to provide meeting materials at least one week in advance of Collaborative meetings and, as Witness Crandall testified, to hold quarterly meetings.¹⁵⁷ These two simple steps will improve the Collaborative process so that future portfolio plan implementation and development will take full advantage of the benefits that the Collaborative has to offer. Finally, in order to make sure FirstEnergy complies with this directive, the Commission should order Staff to advise the Commission if FirstEnergy fails to comply.

B. The Proposed Plans are Not the Result of Work Between FirstEnergy and the Collaborative

Despite Company Witness Dargie's claims to the contrary, the Proposed Plans were not developed with robust Collaborative input. Witness Dargie severely overstates the role that the collaborative played when he claims that it partially oversaw the FirstEnergy Program Development and Implementation teams during the plan development process.¹⁵⁸ In reality, the Companies mostly kept Collaborative members in the dark while they developed the Proposed Plans throughout the first half of 2012.

In order for the Collaborative to play a large role in development of the Proposed Plans, it would have needed to meet regularly with the Companies to exchange ideas and review the

¹⁵⁶ Tr. Vol. 3, at page 475, lines 5-9 (October 24, 2012).

¹⁵⁷ ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 15, lines 10-11.

¹⁵⁸ Company Exhibit 1, Direct Testimony of John C. Dargie, at page 8, lines 4-8.

Proposed Plans as they developed, but this simply did not happen. As Witness Demiray testified, FirstEnergy cancelled several meetings and Collaborative members complained about FirstEnergy's failure to provide timely information before the meetings.¹⁵⁹ Moreover, Witness Dargie confirmed that the full Collaborative met only once in 2012 before the Companies filed their Proposed Plans.¹⁶⁰ The meeting occurred on July 10, 2012, only three weeks before the Companies filed.¹⁶¹

Not only did the Companies wait until three weeks before their filing to hold a full Collaborative meeting, but as Witness Demiray admitted, the Companies did not even distribute a draft of the Proposed Plans prior to the meeting.¹⁶² They provided only a "PowerPoint presentation that had a number of details about the plans" that did not include "all of the details."¹⁶³ As Witness Sullivan noted on cross examination, Collaborative members needed opportunity to comment on a draft plan in order to provide valuable feedback to the Companies.¹⁶⁴ The bottom line is that the Proposed Plans were not a product of work between the Companies and the Collaborative, because the Companies failed to seek meaningful input from the Collaborative members. Hence, the Commission should ignore FirstEnergy's assertions that the Plans reflect such input.

CONCLUSION

Ohio law requires FirstEnergy to implement EE and PDR program portfolios. In addition to providing cost-effective energy and demand reductions, these programs must help ensure reasonable electricity prices for FirstEnergy customers. FirstEnergy, which has the burden of

¹⁵⁹ Tr. Vol. 3, at page 475, lines 5-9 (October 24, 2012).

¹⁶⁰ Tr. Vol. 1, at page 20, lines 22-24 (October 22, 2012).

¹⁶¹ Id.

¹⁶² Tr. Vol. 3, at page 478 (October 24, 2012).

¹⁶³ Id., at page 478, lines 6-8, 13-15 (October 24, 2012).

¹⁶⁴ Tr. Vol. 5, at page 962, lines 21-22 (October 26, 2012).

proof in this case, has failed to demonstrate that its Proposed Plans comply with Ohio law and PUCO rules. The Commission, therefore, should only approve the Proposed Plans subject to the modifications recommended and detailed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Initial Brief*, submitted on behalf of the Environmental Law & Policy Center and Ohio Environmental Council, was served by electronic mail upon the following Parties of Record this 20th day of November, 2012.

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