BEFORE
THE PUBLIC COMPANIES COMMISSION OF OHIO

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

REPLY BRIEF
BY
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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") submits this Reply Brief on behalf of all the approximately 1.9 million residential utility consumers of Ohio Edison Company ("Ohio Edison"), the Cleveland Electric Illuminating Company ("CEI"), and the Toledo Edison Company ("Toledo Edison") (collectively, "FirstEnergy" or the "Utilities"). At issue in this proceeding is the Utilities' application ("Application") requesting approval of their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans ("EE/PDR Portfolios") for 2013 through 2015. The EE/PDR Portfolios contain programs that would, if approved, be offered to all customer classes in FirstEnergy's service territory.

This proceeding is significant because an appropriately designed EE/PDR Portfolio can result in lower costs for electric energy and capacity in the wholesale market leading to lower retail electric energy prices for customers, and can also allow customers to better control their energy use. But there are serious issues with the

Utilities' EE/PDR Portfolio as proposed. OCC submits this Reply Brief with recommendations to protect customers and to maximize savings.

II. ARGUMENT

A. The Commission Should Reject The Shared Savings Incentive Mechanism Proposed By The Utilities.

Although an electric utility ***may*** submit a request for recovery of a shared savings mechanism per Ohio Admin. Code 4901:1-39-07, such mechanism is not required under Ohio law. The shared savings incentive mechanism proposed by FirstEnergy allows the Utilities to collect from customers up to a maximum of 13 percent of the avoided energy and capacity costs for savings (minus utility program costs) if they achieve 115 percent of the statutory benchmark in EE/PDR.[1]

In addition, under the Utilities' proposal, FirstEnergy will receive an incentive of 5 percent for simply meeting the statutory requirement.[2] But the shared savings mechanism, as proposed by FirstEnergy, is not reasonable. FirstEnergy states that "[s]hared savings are designed as a mechanism to encourage the [Utilities] to exceed the benchmarks set by statute,"[3] but the Utilities fail to explain why an incentive mechanism is necessary for them to achieve performance above the EE/PDR benchmarks.[4]

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[1] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, et al, FirstEnergyTr. Ex. 5, Demiray Direct Testimony at 10.

[2] Id.

[3] FirstEnergy Initial Brief at 22.

[4] Post-Hearing Brief of Ohio Energy Group ("OEG") at 8.

1. The Utilities' proposed incentive mechanism lacks support.

First, the Utilities' proposed shared savings mechanism lacks proper support and is based upon the shared savings mechanism approved by the Commission in a stipulated proceeding.[5] In this regard, the Ohio Energy Group ("OEG") notes that the Utilities "offered no empirical analysis or justification to support [their] proposed incentive mechanism."[6] FirstEnergy "merely points to the incentive mechanisms established through settlements for other utilities."[7]

The Utilities acknowledge that their shared savings mechanism is influenced by the shared savings mechanism approved in the most recent AEP-Ohio EE/PDR proceeding.[8] In reality the shared savings tiers proposed by FirstEnergy in this proceeding are **identical** to those approved in the AEP-Ohio EE/PDR case.[9] The Utilities' reliance on the AEP-Ohio EE/PDR proceeding is improper. The AEP-Ohio EE/PDR proceeding was a negotiated case, resulting in a settlement. As such, the AEP-Ohio settlement included a package of provisions—one of which was a shared savings mechanism. The AEP-Ohio shared savings mechanism carries no precedential or evidentiary weight in this proceeding. To this end, the AEP-Ohio EE/PDR Stipulation states:

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[5] The Utilities primarily relies on the Shared Savings Mechanism approved in the AEP-Ohio EE/PDR proceeding (Case Nos. 11-5568-EL-POR and 11-5569-EL-POR), see FirstEnergy Tr. Ex. 5 (Demiray Direct Testimony) at 7.

[6] Post-Hearing Brief of OEG at 8.

[7] Id. Similarly, Nucor Steel Marion, Inc. ('Nucor") states: "FirstEnergy's main (and only) justifications for the proposed shared savings mechanism appear to be that other Ohio utilities have requests such an incentive" at 15

[8] FirstEnergy Tr. Ex. 5 (Demiray Direct Testimony) at 7. See also, Post-Hearing Brief of FirstEnergy at 22.

[9] Trial Transcript Vol. III (Demiray) at 4866.

- Except for enforcement purposes, neither this Stipulation nor the information and data contained herein or attached hereto shall be cited as a precedent in any future proceeding for or against any Signatory Party, or the Commission itself, if the Commission approves the Stipulation. Nor shall the acceptance of any provision as part of the settlement agreement be cited by any party or the Commission in any forum so as to imply or state that any signatory party agrees with any specific provision of the settlement.

- … no specific element or item contained in or supporting this Stipulation shall be construed or applied to attribute the results set forth in this Stipulation as the results that any Signatory Party might support or seek, but for this Stipulation in these proceedings or in any other proceeding.

- … this Stipulation, **taken as a whole**, represents a reasonable compromise of varying interests.[10]

As such, the Utilities' proposed shared savings mechanism lacks proper support because the incentive mechanism approved in a stipulated proceeding has no precedential value (or relevance) to this proceeding.

Second, FirstEnergy failed to demonstrate why it needs an incentive mechanism to exceed the statutory benchmarks. As Nucor Steel Marion, Inc. ("Nucor") points out, Toledo Edison and CEI far exceeded the statutory benchmarks in 2011, even though no shared savings mechanism was in place.[11] Ohio Edison achieved its incremental 2011 EE target, but not its cumulative target.[12] Simply put, the Utilities demonstrated that they can meet the statutory benchmarks without a shared savings incentive. FirstEnergy failed to show why they now need an incentive to meet the statutory benchmarks.

Third, as the Natural Resources Defense Counsel ("NRDC"), Sierra Club and Citizen Power explain, there are inherent differences between the lost revenue recovery

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[10] Case Nos. 11-5568-EL-POR, et al., Stipulation and Recommendation at 14. (Emphasis added).

[11] Post-Hearing Brief of Nucor at 16.

[12] Tr. Transcript Vol. I (Dargie) at 70.

mechanism approved in the Duke and AEP-Ohio EE/PDR proceedings, and FirstEnergy's. To this end, "[the Utilities' shared savings mechanism] does not take into account [FirstEnergy's] potentially lucrative lost revenue recovery mechanism, which unlike the decoupling mechanism operating at Duke and AEP, allows the Companies to collect "lost revenues" even if they might be over-collecting their distribution revenue requirement."[13] OCC witness Gonzalez estimates that residential customers will be asked to pay for the Utilities' lost distribution revenues at an estimated $70 million through the term of ESP III.[14]

2. The intervening parties recommend many changes to the Utilities' proposed incentive mechanism.

The Utilities argue that several intervening parties "support a shared savings mechanism."[15] However, it should be emphasized that no intervening party supports the Utilities' incentive mechanism as proposed. In fact, several intervening parties propose **alternative** shared savings mechanisms in this proceeding.[16] But the consensus is that the incentive tiers proposed by the Utilities are too high. Undoubtedly, the laddered incentive percentages proposed by the Utilities should be reduced, given FirstEnergy's lucrative arrangement for collecting lost revenues from customers that the PUCO approved (over OCC's opposition) in the settlement in the FirstEnergy Electric Security Plan III Proceeding (Case No. 12-1230-EL-SSO).

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[13] See Initial Brief of NRDC, Sierra Club and Citizen Power at 61.

[14] Gonzalez Direct at 11. Given the open nature of the Utilities' lost revenue recovery mechanism, the total lost revenue collected could conceivably be over $140 million over the lifetime of the programs as demonstrated in Exhibit WG-2.

[15] See FirstEnergy Post Hearing Brief at 22.

[16] OCC, OEG, NRDC, Sierra Club, Citizen Power, and PUCO Staff all proposed alternative shared savings mechanisms.

Several intervening parties, including OCC as a secondary alternative,[17] argue that if the Commission approves an incentive mechanism in this proceeding, significant modifications should be made to the Utilities' proposal. In this regard, OEG and Nucor recommend that the level of annual incentive payments should be capped at no more than 8 percent of prudent program spending.[18] They propose a modified incentive mechanism with a top tier of 6%, and do not recommend providing an incentive to the Utilities for simply meeting the statutory benchmarks.[19] In calculating the incentive payment, OEG and Nucor recommend that the incentive percentage should be applied only to the portion of net program benefits attributable to program performance in excess of the statutory benchmarks.[20] Finally, they suggest that "the effects of all mercantile self-direct projects, transmission and distribution projects, and behavioral programs should be removed from the shared savings calculation."[21]

Although the PUCO Staff supports the Utilities' request for a shared savings mechanism, they also recommend noteworthy alterations to the mechanism as proposed by FirstEnergy.[22] The PUCO Staff shares OCC's concern that FirstEnergy's "proposed after-tax incentive percentage level of 13% is too high." Instead, Staff suggests that the highest percentage level of savings should be 10%.[23] Staff also recommends that "historical self-direct mercantile consumption and the associated savings should not be

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[17] See OCC's Initial Post-Hearing Reply Brief at 5-16, where OCC recommends a number of substantial changes to the Utilities' proposed incentive mechanism.

[18] Post-Hearing Brief of OEG at 10, and Post-Hearing Brief of Nucor at 6. This recommendation is consistent with OCC Witness Gonzalez' recommendation (see OCC Tr. Ex. 1 at 16).

[19] Post-Hearing Brief of Nucor at 19, and Post-Hearing Brief of OEG at 10.

[20] OEG at 10, and Nucor at 19.

[21] OEG at 11, Nucor at 20.

[22] Initial Post-Hearing Brief of PUCO Staff at 12.

[23] Id.

included in the shared savings calculation."[24] Consistent with OCC's position,[25] Staff opines that the Utilities should only be "rewarded" for actions it takes to encourage customers to be more energy efficient.[26]

NRDC, Sierra Club and Citizen Power recommend that the maximum shared savings available to the Utilities should be 10%.[27] Further, these groups propose that the incentive be capped at $10 million dollars per-year, split among the Operating Companies.[28] They also contend that the Utilities should not earn a portion of the net benefits from mercantile customer projects installed after March 23, 2011, from projects that may not actually reflect additional action by customers (from the Online Audit program), and from projects on which the Companies are already earning a return (T&D projects).[29] To do so would reward FirstEnergy for inaction or actions that occurred without its involvement.

3. The total resource cost test should be used to determine net shared savings.

The Utilities argue that the net shared savings used in determining the incentive be calculated net of the Utility Cost Test ("UCT").[30] OCC reasserts its position that the Total Resource Costs ("TRC") test should be used to calculate a shared savings incentive in this proceeding. The UCT is a benefit-cost test which measures the net costs of a

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[24] Id.

[25] See OCC's Initial Post Hearing Brief at 8 and 14.

[26] Initial Post-Hearing Brief of PUCO Staff at 13.

[27] Initial Brief of NRDC, Sierra Club, and Citizen Power at 63.

[28] Id.

[29] Id. Similarly, the Ohio Environmental Council ("OEC") and Environmental Law and Policy Center ("ELPC") argue that the Commission should deny the Utilities' request to receive any shared savings incentive for its T&D Improvement Program, at 37-38.

[30] Id. at 5-6. The UCT is a benefit- cost test which measures the net costs of a program from the utility perspective and excludes any net costs incurred by the participant.

program from the utility perspective and excludes any net costs incurred by the participants.[31] Specifically, the benefits in the UCT are the avoided energy, capacity and transmission and distribution costs from the energy efficiency programs. The costs in the UCT are all utility costs to implement the program including administration, marketing, incentives paid to customers, implementation costs, and evaluation costs.[32]

The Utilities claim that OCC witness Gonzalez agreed that the TRC is "not designed as a measure for considering proper incentive levels for a utility,"[33] but this is an inaccurate depiction of Mr. Gonzalez' testimony. Mr. Gonzalez explained that none of the tests in the California Standard Practice are used to allocate incentives.[34] Instead, these tests [including the TRC and the UCT] are used to calculate cost/benefit analysis from different perspectives.[35] Mr. Gonzalez explained that the UCT is problematic because it only captures the benefits of the programs to the utility and ignores the individual customers' costs as a whole.[36] In contrast, the TRC test is the only measure that accounts for all the costs and benefits of an energy efficiency program.[37] NRDC, Sierra Club and Citizen Power support OCC on this issue when they state "… the [Utilities] should receive an incentive based on the Total Resource Cost test."[38]

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[31] OCC Tr. Ex. 1, Gonzalez Direct at 12.

[32] Id.

[33] Post-Hearing Brief of FirstEnergy at 23.

[34] Trial Vol. IV at 857.

[35] Id.

[36] OCC Tr. Ex. 1, Gonzalez Direct at 12. The Utilities also point out that the Commission approved the UCT in the AEP-Ohio portfolio case (see FirstEnergy Post-Hearing Brief at 23). As discussed earlier, the AEP-Ohio EE/PDR case resulted in a Stipulation, and the UCT was one negotiated element in that case.

[37] Id.

[38] Initial Brief of NRDC, Sierra Club and Citizen Power at 63.

4. Savings resulting from self-direct mercantile, transmission distribution projects, and behavioral programs should not be included for purposes of determining the savings used in the shared savings calculation.

The Utilities acknowledge that several intervenor witnesses questioned the inclusion in the shared savings calculation savings derived from Transmission and Distribution ("T&D") improvements and mercantile customer projects.[39] But FirstEnergy continues to argue that because R.C. 4928.66 allows the Utilities to include the results from both approved mercantile customer projects and approved T&D infrastructure improvements when determining whether FirstEnergy achieved the benchmarks, the results from these types of projects should be included when calculating a shared savings mechanism.[40] The Utilities' argument should be rejected. OCC has consistently suggested that the Utilities should not be rewarded for projects that it had little, or nothing, to do with. [41]

With respect to mercantile self-direct projects, NRDC, Sierra Club and Citizen Power point out that the Utilities' proposed mechanism is not sufficiently tied to the Utilities' own performance in delivering energy efficiency programs, is overly generous to the Utilities, and does not include enough safeguards for customers.[42] OEG argues that it is improper to include mercantile self-direct projects installed after March 23, 2011, because the savings produced by these projects would be the result of the customer's own

[39] Post Hearing Brief of FirstEnergy at 2.

[40] Id. at 24.

[41] See OCC Initial Post Hearing Brief at 14, OCC Tr. Ex. 1, Gonzalez Direct, at 13, and OCC Objections at 12.

[42] NRDC Tr. Ex. 4, (Direct Testimony of Sullivan) at 14 and 9.

efforts, not a program operated by FirstEnergy.[43] The Environmental Law and Policy Center ("ELPC") and Ohio Environmental Council ("OEC') state that "inclusion [of mercantile projects installed after March 23, 2011] is inconsistent with the premise of incenting FirstEnergy to achieve greater savings."[44]

Ohio Partners for Affordable Energy ("OPAE") urges the Commission to "adopt the recommendations of Witnesses Scheck, Gonzalez, and Sullivan with regard to savings from mercantile self-direct programs and T&D programs for shared savings calculations.[45] OPAE explains that these savings are either 1) not a part of the Utilities' actions or are 2) rewarded to the Utilities elsewhere.[46] Nucor is clear when it states that "in calculating shared savings, the effects of mercantile self-direct, transmission and distribution projects, and behavioral programs should be removed.[47] And the PUCO Staff reaffirmed that it does not support the historical self-direct mercantile consumption and the associated savings being included in the shared savings calculation.[48]

Further, behavioral programs do not easily meet the PUCO Staff's recommendation that "[e]nergy efficiency savings must be clearly and easily measurable"[49] and thus, should not be included in the calculation of a shared savings mechanism. Behavioral program savings are difficult to measure, and it is not clear

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[43] OEG Initial Brief at 10. See also, Initial Brief of ELPC and OEC where they state "FirstEnergy does not control the mercantile projects and should not benefit from the activities those customer undertake" at 37.

[44] ELPC and OEC Initial Brief at 37.

[45] OPAE Initial Brief at 18.

[46] Id.

[47] Nucor Initial Brief at 20.

[48] Initial Post-Hearing Brief of PUCO Staff at 12.

[49] OCC Tr. Ex. 1, (Direct Testimony of Wilson Gonzalez) at 15. OEG and Nucor similarly recommend that the "effects of all mercantile self-direct projects, transmission and distribution projects and behavioral programs should be removed from the shared savings mechanism." See Post Hearing Brief of OEG at 11, and Nucor's Post-Hearing Brief at 20.

whether the behavioral program savings will persist over time.[50] Behavior-based programs cannot be bid into the PJM BRA, limiting their shared savings value.[51]

In sum, a utility energy efficiency incentive mechanism should reward a utility for the savings the utility actively generates through the design and implementation of its programs. But savings from mercantile self-direct programs are generated by projects that a mercantile customer (not the Utilities) initiated and directed, and therefore should not be included in FirstEnergy's proposed incentive mechanism.[52] An incentive mechanism being given to the Utilities should stem from their actions and their activities — it is not an incentive mechanism for mercantile customers who undertake the projects.[53] Savings from behavioral programs are difficult to measure, and behavior-based programs cannot be bid into the PJM BRA. As such, these programs should be excluded from a shared savings calculation.

5. The incentive mechanism should have a cap.

The Utilities contend that the incentive amount should not "be subject to an arbitrary cap."[54] But Nucor counters by explaining that a shared savings cap "is no more arbitrary than the tiers and incentive percentages that FirstEnergy proposes."[55] OCC agrees. The Commission should reject the Utilities' proposal to have an incentive mechanism without a cap on the amount of dollars FirstEnergy can collect from its customers. A hard cap protects consumers from paying for excessive profits, or other

[50] OCC Tr. Ex. 1 (Direct Testimony of Wilson Gonzalez) at 15.

[51] Id.

[52] OCC Tr. Ex. 1, Gonzalez Direct at 14.

[53] Id.

[54] FirstEnergy Initial Brief at 27.

[55] Post-Hearing Brief of Nucor at 18.

unintended negative consequences of a shared savings type mechanism.[56] OCC recommends an overall cap of no more than eight percent of prudent program spending.[57]

Several intervening parties stress the importance of an overall cap in this proceeding. For instance, OEG explains that without a cap, FirstEnergy has an incentive "to spend as much as possible to exceed the statutory benchmarks—even if the excess spending creat[es] significant financial hardship for customers."[58] NRDC, Sierra Club and Citizen Power argue that a cap should be required from "given the [Utilities'] poor track record running the type of energy efficiency programs that shared savings mechanisms are designed to encourage, and the lack of trust between the [Utilities] and the parties."[59] OPAE states "[a]n absolute cap on incentives is appropriate to ensure customer[s] pay a fair price for energy efficiency and nothing more."[60]

The PUCO Staff did not recommend a cap in this case because they are of the opinion that the Significantly Excessive Earnings Test (SEET) already functions as a sufficient cap for an of Ohio's electric distribution utilities earnings.[61] OCC disagrees. A shared savings mechanism should reward exemplary performance that exceeds the statutory benchmarks, but using a "Significantly Excessive" SEET as a cap by definition is too generous. Staff recognizes that the purpose of a shared savings mechanism is to

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[56] The Utilities correctly state on page 27 of their Post-Hearing Brief that using known avoided costs removes one of the risk factors. The Utilities also claim on page 27 that the use of the UCT avoids this risk. This is nonsensical, as the utility avoided costs used in the UCT and the TRC are identical. More importantly, FirstEnergy fails to address the greater shared savings risk factor of cost-cutting technological innovation addressed by witness Gonzalez on page 16 of his Direct Testimony. .

[57] OCC Initial Post-Hearing Brief at 11. OEG and Nucor adopted OCC's recommendation in this regard, and also propose a shared savings cap of no more than 8% of prudent program spending.

[58] OEG Initial Brief at 9

[59] Initial Brief of NRDC, Sierra Club and Citizen Power at 62.

[60] OPAE Initial Brief at 19.

[61] PUCO Staff Tr. Ex. 1 (Direct Testimony of Scheck), at 11.

incentivize electric distribution utilities to go beyond the statutory mandates of SB 221.[62] But, considering the Utilities did not have an incentive mechanism in place in 2011, and Toledo Edison and CEI far exceeded the statutory benchmarks, the PUCO should conclude that an incentive mechanism with an eight percent overall cap based on prudent management of energy efficiency program spending will properly incentivize the Utilities.

B. The Utilities' Bidding Strategy Is Unreasonable.

The Utilities reassert their bidding strategy in their Initial Brief, stating:

> [t]he [Utilities] intend to bid into PJM auctions-the annual Base Residual Auction ("BRA") and incremental auctions, as appropriate—all eligible, installed energy efficiency resources for which they have ownership rights at the time of the auction, provided that these resources are of sufficient scale, will meet PJM Measurement and Verification ("M&V") standards and are included in an M&V plan approved by PJM.[63]

FirstEnergy contends that following these guidelines will allow it to "prudently manage risk to the [Utilities] and their customers."[64] But the PJM rules permit the Utilities to bid ***planned*** resources into the PJM BRA (not just owned resources).[65] And, as discussed below, the intervening parties have expressed serious concerns with FirstEnergy's bidding strategy. The PUCO should not permit the Utilities to leave these revenues and capacity savings on the table in future PJM BRA auctions.

[62] Id.

[63] Post-Hearing Brief of FirstEnergy at 28.

[64] FirstEnergy Initial Brief at 28.

[65] Trial Vol. VI (Mikkelson) at 1154.

1. Requiring FirstEnergy to bid potential capacity reductions into the PJM base residual auction will benefit customers.

The PUCO Staff and several other intervening parties (including OCC) acknowledge that requiring the Utilities to bid energy efficiency savings into PJM auctions can "substantially benefit customers."[66] FirstEnergy should be required to bid all the saved megawatts projected in its Portfolio and approved by PJM (as spelled out in PJM Manual 18B).[67] And, as the Utilities acknowledge,[68] the Commission directed[69] them to secure the property rights of their programs' capacity savings and perform the necessary measurement and verification to assure PJM acceptance, in advance of the upcoming base residual auction.

But FirstEnergy's commitment to bid only installed energy efficiency and load management ("LM") is insufficient as it prevents "a substantial amount of customer benefits from being realized."[70] In this regard, there are two major dollar benefit streams from the Utilities' bidding in additional capacity to the PJM BRA for customers.[71]

1) Bidding EE savings into PJM can lower the final capacity auction price; and

2) The potential revenue payments received by FE from bidding the EE savings into the BRA can be used to reduce EE program costs.[72]

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[66] Initial Post-Hearing Brief of PUCO Staff at 8. See also,

[67] PJM Manual 18B: Energy Efficiency & Verification, March 1, 2010.

[68] Post-Hearing Brief of FirstEnergy at 28.

[69] Case No. 12-1230-EL-SSO, ESP III Opinion and Order, at 38.

[70] OCC Trial Ex. 1, Gonzalez Direct at 19.

[71] Id.

[72] Initial Post-Hearing Brief of PUCO Staff at 9.

The Utilities insistently argue that bidding planned resources into the PJM BRA poses too great a risk.[73] However, several intervening parties (including OCC) oppose this argument, and presented evidence to the contrary.

The PUCO Staff, for example, contends that the Utilities' argument "carries little weight."[74] And during the evidentiary hearing, PUCO Staff witness Scheck recommended that all [Ohio Utilities] be required to bid into the PJM capacity market to offset revenues that are being spent on programs.[75] In fact, Staff explains that there is a "wealth of evidence that proves that [FirstEnergy] can mitigate its bidding risk, benefit customers, and potentially profit from bidding resources into PJM."[76]

In this regard, intervening parties have proposed the following:

- FirstEnergy can bid into the auction the price of zero.[77]
- FirstEnergy can mitigate potential "performance or quantity risks" by bidding in 75% of its projected capacity reduction into the BRA.[78]
- Any utility risks from this endeavor should be mitigated by purchasing program capacity shortages from the PJM incremental auctions (if beneficial to customers). The cost of those capacity purchases, any associated (not due to imprudence), any collateral requirements, and any incremental measurement and verification costs should be deducted from the BRA revenue stream returned to customers.[79]

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[73] Post-Hearing Brief of FirstEnergy at 30.

[74] Initial Post-Hearing Brief of Staff at 10.

[75] Tr. Transcript Vol. IV (Scheck) at 833.

[76] Id

[77] Staff Tr. Ex. 1, Scheck Direct at 12.

[78] Id. See also, Post-Hearing Brief of ELPC and OEC where they argue "the Commission should require FirstEnergy to bid 75% of its anticipated eligible EE and PDR resources" at 6.

[79] Initial Post-Hearing Brief of OCC at 18. The ELPC/OEC Initial Brief (pages 14-16) demystifies the risk of PJM penalties by providing an example of a penalty calculation and demonstrating that the benefits of bidding anticipated resources into the PJM BRA far outweigh the penalty risks.

Several other intervening parties criticize the Utilities' bidding strategy because it prevents a substantial amount of customer benefits from being realized.[80] For example, ELPC and OEC explain that FirstEnergy has not demonstrated that the risks of bidding anticipated savings into the BRA outweigh the substantial benefits to customers.[81] They further point out that "[b]y refusing to bid anticipated eligible resources, the [Utilities] fail to take advantage of the opportunity to significantly reduce the prices [their] customers pay for electricity."[82] OCC agrees.

FirstEnergy Witness Dargie testified that the Utilities designed their Portfolio to "exceed the [statutory] targets."[83] But FirstEnergy witness Mikkelson contends that there is too great of risk to bid eligible energy efficiency megawatts into the PJM BRAs "given that PJM BRAs are for delivery years three years in the future, there are too many unknowns and uncertainties associated with guessing what resources will be installed, which of those installed resources will qualify to meet the projected commitments and M&V standards, and which of those the [Utilities] will have ownership rights to."[84]

The Utilities cannot have it both ways. As ELPC and OEC argue, given FirstEnergy's confidence in its ability to over-comply with its statutory requirements, the Commission has no reason to believe that the [Utilities] or their customers will be at significant risk of incurring a PJM penalty for failing to deliver anticipated eligible

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[80] See generally, Post-Hearing Briefs of NRDC, ELPC and OEC, OCC, and Sierra Club.

[81] Post-Hearing Brief of ELPC and OEC at 13.

[82] Id. at 5.

[83] Tr. Transcript Vol. I at 14.

[84] Post-Hearing Brief of FirstEnergy at 30.

resources that clear the BRA.[85] And it should be noted that there is no requirement that the resources utilities bid into the BRA are actually installed at the time of the bid. The requirement is that the resources are available by June 1 of the **delivery year**.

NRDC, Sierra Club and Citizen Power suggest that the Utilities' should be required to present compelling evidence (i.e., qualitative analysis) demonstrating that the financial cost or risk of bidding in certain efficiency resources into the market would be greater than the likely benefits in order for the PUCO to permit FirstEnergy from excluding any expected energy efficiency savings from its bids.[86] But the opportunity for the Utilities to present such evidence has passed, and FirstEnergy admittedly has not quantified or calculated the alleged "financial harm" it claims could result from bidding in planned resources into the PJM BRA.[87] The only risk mitigation mechanism put forward by the Utilities is to bid all eligible installed energy efficiency resources for which they have ownership rights at the time of the PJM BRA.[88] Customers will not experience the full avoided cost capacity benefit potential if the Utilities fail to bid all eligible EE/PDR resources into the PJM BRA.

2. The Utilities should not receive dual incentives.

ELPC and OEC recommend that the Commission require FirstEnergy to bid 75% of its anticipated eligible EE and PDR resources.[89] However, if the Utilities bid and clear more than 75% of their anticipated eligible resources, ELPC and OEC suggest that 85% of the revenues from those additional resources pass through to customers, and the

[85] Post-Hearing Brief of ELPC and OEC at 14.

[86] Post-Hearing Brief of NRDC, Sierra Club and Citizen Power at 58.

[87] Trial Transcript Vol. VI (Mikkelson) at 1145.

[88] Id. at 1150.

[89] Post-Hearing Brief of ELPC and OEC at 6.

remaining 15% should remain with the Utilities as an incentive for bidding more than the mandatory 75%.[90] If the Commission provides an incentive for the Utilities to bid planned resources into the PJM BRA, as suggested by ELPC and OEC, OCC submits that a shared savings mechanism is unnecessary. The Utilities should not be eligible for dual incentives.

As explained above, bidding planned resources in the PJM BRAs is something FirstEnergy should be doing to benefit customers. PUCO Staff witness Scheck explained that AEP-Ohio, though not required, bid eligible energy efficiency in the PJM BRA auctions.[91] In fact, AEP-Ohio bid 204 megawatts of energy efficiency into the 2015/2016 PJM BRA auction.[92] Duke Energy Ohio, Inc. ("Duke") is exploring bidding in to the PJM BRA, and the topic is being discussed as part of the collaborative process.[93] Ultimately, the PUCO should require all utilities to bid eligible savings into the BRA as it will benefit customers. And if the Commission decides to provide an incentive to the Utilities, it should be either a modified shared savings mechanism as proposed by OCC, or an incentive to bid in eligible EE and PDR resources into the PJM BRA—not both.[94]

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[90] Id. In addition, PUCO Staff Witness Scheck states in Direct Testimony at 12 that "[i]t is possible that FE 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 an FE Operating Company." OCC recommends that the Utilities receive either a shared savings mechanism, **or** an incentive for bidding into the PJM BRA—not both.

[91] Tr. Transcript Vol. IV (Scheck) at 833.

[92] Trial Transcript Vol. IV (Gonzalez) at 900.

[93] Id.

[94] Assuming OCC's 8% of spending cap is triggered (if the Utilities significantly over-comply in all 3 years of their Portfolio) then the Utilities would be entitled to $19.9 million ($248,929,790 Budget x .08). If the Utilities conservatively clear 350 MW over the next three PJM BRA auctions and received 15% of the BRA revenues, that would be an additional estimated $21 million (350 MW x $357 MW/Day x 365 days x 3 years x .15). Having the Utilities collect from consumers a total of $41 million on top of their lucrative "lost revenue" arrangement is excessive, especially during these hard economic times.

3. The PUCO should reduce FirstEnergy's incentive to reflect poor performance in the last (2015/2016) PJM base residual auction.

OCC previously recommended that to the extent that FirstEnergy failed to capture substantial capacity benefits for customers in the 2015/2016 PJM BRA (bidding in only 36 MW out of a larger subset of 6858.3potentially eligible MW) an additional reduction in the calculated amount of the net avoided capacity benefit should be made.[95] The Utilities suggest that several intervenors "mistakenly" focused on the theoretical maximum amount of energy efficiency resources that could be bid into a PJM BRA based on projected cumulative benchmark levels for the BRA delivery year.[96] But the intervenors' focus in this regard is significant.

FirstEnergy argues that "PJM BRAs are for delivery years three years in the future, [and] there are too many unknowns and uncertainties associated with guessing what resources will be installed…."[97] This argument should be rejected. As explained *supra*, there is no requirement that the resources utilities bid into the BRA are actually installed at the time of the bid. And consequently, the May 7, 2012 BRA for the American Transmission System Inc. ("ATSI") zone delivery year 2015/2016 resulted in the highest capacity price of all the zones in the PJM footprint.[98] To this end, ELPC and OEC note that the PJM ATSI zone (in which FirstEnergy participates) capacity price for the 2015/2016 BRA "cleared at $357/MW-day, more than 2.5 times the $136/MW-day for the rest of PJM."[99]

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[95] OCC Initial Post-Hearing Brief at 17.

[96] FirstEnergy Post-Hearing Brief at 29.

[97] Id. at 30.

[98] Post-Hearing Brief of NRDC, Sierra Club, and Citizen Power at 19.

[99] Post-Hearing Brief of ELPC and OEC at 9.

Staff is also critical of the Utilities in this regard, stating: "[u]nfortunately, [FirstEnergy's] bid of 36 MW was only 55% of the 65 MW that FE could have bid into PJM. Bidding the full 65 MW could have saved customers more money by reducing future capacity costs."[100] And OPAE adopted OCC's recommendation that given the Utilities' poor performance in the PJM 2015/2016 BRA, the shared savings capacity benefit should be discounted by 45%[101] in the first year any incentive is triggered.[102] In sum, if the PUCO determines that an incentive mechanism is appropriate in this case, it should be reduced to account for FirstEnergy's incentive for poor performance in the last (2015/2016) PJM base residual auction.

C. The Utilities Should Improve Their Residential Programs By Reducing Their Dependence On Efficiency Kits.

The Utilities propose to obtain 36 percent of the residential savings through an energy efficiency kit.[103] The kits may contain a combination of various measures, including CFLs, LED nightlights, furnace whistles, smart plug-in strips, shower heads and aerators.[104] OCC supports the recommendation made by a number of environmental parties[105] that the efficiency kit budget be reduced, reallocated and redirected. To this end, the dollars should be "redirected to develop a more robust retail market for efficient products, primarily through expanded retailer participation in upstream lighting

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[100] Initial Brief of PUCO Staff at 9.

[101] 45% is appropriate because the Utilities only bid in 55% of the 65 MW identified by the Utilities that could have been bid.

[102] See OPAE Post-Hearing Brief at 25-26. ELPC and OEC Post-Hearing Brief at 9, where they explain that the PJM American Transmission System Inc. ("ATSI") zone (in which FirstEnergy participates) capacity price for the 2015/2016 BRA cleared at $357/MW-day—more than 2.5 times the $136/MW-day for the rest of PJM.

[103] Post-Hearing Brief of NRDC, Sierra Club, and Citizen Power at 29. They also challenge the veracity of the kit's savings estimates.

[104] FirstEnergy Post-Hearing Brief at 40.

[105] NRDC, Sierra Club, OEC and ELPC.

incentives, and increased existing home retrofit participation and savings through increased numbers of all-electric and comprehensive audits."[106] As noted by ELPC and OEC in their brief, "FirstEnergy's heavy reliance on the kits means that the [Utilities] fail to take advantage of more successful and effective programs that alleviate free rider concerns, result in long-term savings, and more effectively transform the market."[107]

In-home audit efforts and HVAC and Domestic Hot Water ("DHW") rebates should be increased using budget reallocated from efficiency kits.[108] Only by developing the retail energy efficiency market in Ohio will residential customers be able to fend for themselves in the future if utility energy efficiency programs are curtailed or eliminated, and electricity prices increase.

D. The Commission Should Consider Appointing A Third Party Administrator For Residential Programs.

NRDC, Sierra Club and Citizen Power make a compelling case for the Commission to appoint a third party administrator to design and implement the Utilities' residential programs:[109]

> [t]he [Utilities'] management is hostile to the energy efficiency benchmarks and resents being made to run energy efficiency programs. The Utilities have a supply-side bias, rewarding activities that encourage generation sales, rather than those that increase efficiency. Even employees in the energy efficiency department are not rewarded when they meet or exceed Ohio's benchmarks, and receive no assistance to develop professionally as energy efficiency experts. Also, several utilities tie a portion of account representative compensation to the "selling" of energy efficiency: the [Utilities] do not. The programs in the [Utility's] Existing Plan have been poorly implemented according to independent evaluation.[110]

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[106] Post-Hearing Brief of NRDC, Sierra Club, and Citizen Power at 29.

[107] Post-Hearing Brief of ELPC and OEC at 26-27. They further state, "The [Utilities'] proposed kits circumvent normal market channels."

[108] Id.

[109] Post-Hearing Brief of NRDC, Sierra Club, and Citizen Power at 63-67.

[110] Id. at 64.

Similarly, OPAE suggests that "NRDC 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…."[111] OPAE also states that the Utilities' residential programs have been too rigid and have lacked innovative and comprehensive strategies.[112] OCC urges the Commission to give strong consideration to NRDC's proposal of having the Utilities' residential programs be administered by a competent third party.

III. CONCLUSION

For the reasons stated in OCC's Initial Brief, and articulated herein, the Commission should reject the Utilities' shared savings incentive mechanism and approve the alternative mechanism proposed by OCC. In addition, the Commission should require the Utilities to bid in all eligible saved megawatts into the PJM Base Residual Auction. FirstEnergy's commitment, as presented in this proceeding, leaves a substantial amount of customer benefits from being realized.

Finally, the Commission should improve the Residential programs proposed by the Utilities by reducing FirstEnergy's dependency on efficiency kits. The PUCO should also strongly consider having a competent third party administer the Utilities' residential programs.

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[111] OPAE Initial Brief at 9.

[112] Id. at 13.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic service this 30th day of November 2012.

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