BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

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

APPEARANCES:

Kathy J. Kolich and Carrie M. Dunn, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, and Calfee, Halter & Griswold, LLP, by James F. Lang, 1405 East 6th Street, Cleveland, Ohio 44114 on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

Mike DeWine, Ohio Attorney General, by Devin D. Parram, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Ohio Consumers' Counsel, by Kyle L. Kern, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

Robert Kelter and Justin Vickers, 35 East Wacker Drive, Suite 1600, Chicago, Illinois 60601, and Nicholas McDaniel, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212, on behalf of the Environmental Law and Policy Center.

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

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo and Joseph Oliker, 21 East State Street, Suite 1700, Columbus, Ohio 43215-4228, on behalf of Industrial Energy Users-Ohio.

Bricker & Eckler, LLP, by J. Thomas Siwo, 100 South Third Street, Columbus, Ohio 43215-4291, on behalf of the Ohio Manufacturers' Association Energy Group.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215-4291, and Richard L. Sites, General Counsel and Senior Director of Health Policy, 155 East Broad Street, 15th Floor, Columbus, Ohio 43215-3620, on behalf of the Ohio Hospital Association.

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

Brickfield, Burchette, Ritts & Stone, P.C., by Michael K. Lavanga, 1025 Thomas Jefferson Street, N.W., 8th Floor, West Tower, Washington, D.C. 20007-5201, on behalf of Nucor Steel Marion, Inc.

Rebecca J. Riley, 2 North Riverside Plaza, Suite 2250, Chicago, Illinois 60606, and Williams, Allwein & Moser, LLC, by Christopher J. Allwein, 1373 Grandview Avenue, Suite 212, Columbus, Ohio 43212, on behalf of the Natural Resources Defense Council.

Manuel Somoza, 85 Second Street, Second Floor, San Francisco, California 94105-3459, and Williams, Allwein & Moser, LLC, by Christopher J. Allwein, 1373 Grandview Avenue, Suite 212, Columbus, Ohio 43212, on behalf of the Sierra Club.

Williams, Allwein & Moser, LLC, by Todd M. Williams, Two Maritime Plaza, Third Floor, Toledo, Ohio 43604, on behalf of Advanced Energy Economy Ohio.

Boehm, Kurtz & Lowry, by Michael L. Kurtz and Jody Kyler Cohn, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

Gregory J. Poulos, 471 East Broad Street, Suite 1520, New Albany, Ohio 43215, on behalf of EnerNOC, Inc.

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

OPINION:

## I. HISTORY OF PROCEEDINGS:

On August 31, 2012, the Cleveland Electric Illuminating Company (CEI), Ohio Edison Company (OE), and The Toledo Edison Company (TE) (collectively, the Companies or FirstEnergy) filed an application for approval of their respective energy efficiency and peak demand reduction (EE/PDR) program portfolios and the associated cost-recovery mechanisms (demand side management and energy efficiency riders) (Riders DSE).

Intervention in these proceedings was granted to: Industrial Energy Users-Ohio (IEU-Ohio); Natural Resources Defense Council (NRDC); Ohio Consumers' Counsel (OCC); the Ohio Energy Group (OEG); the Ohio Environmental Council (OEC); Ohio Partners for Affordable Energy (OPAE); Citizen Power, Inc. (Citizen Power); Sierra Club; Ohio Hospital Association (OHA); the Environmental Law and Policy Center (ELPC); EnerNOC, Inc. (EnerNOC); Nucor Steel Marion, Inc. (Nucor); Ohio Manufacturer's Association Energy Group (OMAEG); Advanced Energy Economy Ohio (AEEO); and the Northeast Ohio Public Energy Council (NOPEC).

The hearing in this proceeding commenced on October 23, 2012, and continued through October 30, 2012. FirstEnergy presented five witnesses in support of its application and three rebuttal witnesses. Interveners presented eight witnesses, and Staff presented one witness.

Initial briefs were filed in this proceeding by FirstEnergy; IEU-Ohio; NRDC, Sierra Club, and Citizen Power, jointly; OCC; OEG; OEC and ELPC, jointly; OPAE; OHA; EnerNOC; Nucor; OMAEG; AEEO; and the Commission's Staff (Staff). Reply briefs were submitted by FirstEnergy; IEU-Ohio; NRDC, Sierra Club, and Citizen Power, jointly; OCC; OEG; OEC and ELPC, jointly; OPAE; OHA; Nucor; OMAEG; and Staff.

## II. APPLICABLE LAW

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

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

> distribution utility during the preceding three calendar years to customers in this state. [T]he savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, one per cent from 2014 to 2018, and two per cent each year thereafter, achieving a cumulative, annual energy savings in excess of twenty-two per cent by the end of 2025[.]
>
> (b) Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018. In 2018, the standing committees in the house of representatives and the senate primarily dealing with energy issues shall make recommendations to the general assembly regarding future peak demand reduction targets.

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

## III. THE COMPANIES' APPLICATION

### A. Program Portfolio Plans

The Companies initially request Commission approval to continue several previously implemented energy efficiency and demand reduction programs. These programs include the Appliance Turn-In Program, which removes inefficient operating appliances from the system by offering customers an incentive and pick-up and disposal service for refrigerators, freezers, and room air conditioners; the Direct Load Control Program, which offers residential customers a programmable thermostat that allows customers to achieve energy savings and the Companies to curtail load during peak periods; and, the Low-Income Program (formerly "Community Connections"), which provides weatherization measures, energy efficiency solutions, and client education to low-income customers at no cost to those customers. (App. at 4-5; Co. Exs. 12-14.)

Further, the Companies request approval of several more previously implemented programs with modifications. First, the Companies request approval of the Energy Efficient Products Program, which is a continuation and consolidation of the existing Energy Efficient Products Program and Compact Fluorescent Lighting (CFL) program, which serves to provide rebates to consumers and/or financial incentives to manufacturers, distributors, and retailers that sell energy efficient products. The changes to this program include addition of whole house fans and ductless mini-splits to the heating, ventilation, and air-conditioning (HVAC) and Water Heating Subprogram; removal of programmable thermostats because they are no longer ENERGY STAR certified; addition of freezers to the Appliance Subprogram; addition of televisions, computers, and computer monitors to the Consumer Electrics Subprogram; and addition of point-of-sale CFLs and light-emitting diodes (LEDs), ceiling fans, and new emerging technologies to the Lighting Subprogram. (App. at 5-6; Co. Exs. 12-14.)

Additionally, the Companies request approval of the Home Performance Program, which is a continuation and consolidation of the existing "Comprehensive Residential Retrofit Program," "Online Audit Program," and "Efficient New Homes Program." The changes to this consolidated program include addition of all-electric home audits; addition of energy efficiency kits including customized contents for standard and all-electric customers, and an educational program at schools that provides energy efficiency kits; and, addition of a behavioral program that provides customers with energy usage reports. (App. at 6; Co. Exs. 12-14.)

Next, the Companies seek approval of the Commercial and Industrial (C&I) Energy Efficient Equipment Program - Small, which is a continuation and consolidation of the existing C&I Equipment Program - Small, C&I Equipment Program (Industrial Motors) - Small, and C&I Equipment Program (Commercial Lighting) - Small. The new program provides financial incentives (prescriptive and performance) and support to customers directly or through manufacturers, distributors, and retailers for purchasing and installing energy efficient equipment and products. The changes to this consolidated program include expansion of measures in the HVAC and Water Heating Subprogram; expansion of measures including recycling in the Appliances Subprogram; expansion of measures in the Food Service Subprogram; expansion of measures to include LED, Halogen, and other EE lighting technologies in the Lighting Subprogram; and removal of prescriptive rebates for motors up to and over 200 horsepower from the Customer Equipment Subprogram. (App. at 7; Co. Exs. 12-14.)

Additionally, the Companies request approval of the Energy Efficient Buildings Program - Small, which is a continuation and consolidation of the C&I New Construction Program and C&I Audit Program. The consolidated program includes the following changes: targeted custom building offering for shell improvements and addition of energy efficiency kits. (App. at 7-8; Co. Exs. 12-14.)

The Companies next request approval of the C&I Energy Equipment Program - Large, which is a continuation and consolidation of the C&I Equipment Program - Large, C&I Equipment Program (Industrial Motors) - Large, Technical Assessment Umbrella Program, and C&I Equipment Program (Commercial Lighting) - Large, which provides financial incentives and support to customers for installing energy efficient equipment and products. The following changes to this program include: expansion of measures in the HVAC subprogram; expansion of measures to include LED, Halogen, and other EE lighting technologies in the Lighting Subprogram; and removal of rebates for motors up to and over 200 horsepower from the Customer Equipment Subprogram. (App. at 8; Co. Exs. 12-14.)

Additionally, the Companies request approval to continue, unchanged, the Energy Efficient Buildings Program - Large, which is a continuation and consolidation of the C&I Equipment Program - Large, and Technical Assessment Umbrella Program, which provides financial incentives and support to customers for making energy efficient custom building shell or building system improvements (App. at 8; Co. Exs. 12-14).

The Companies also request approval of the Government Tariff Lighting Program, which is a continuation of the LED Traffic Signals measure offered under the existing Government Lighting Program with the addition of an energy efficiency street lighting measure. The change to this previously implemented program involves added rebates for government customers who replace customer owned and maintained street lighting equipment served under the Companies' street lighting rate schedules with higher efficiency equipment. (App. at 9; Co. Exs. 12-14.)

The Companies next request approval of their Demand Reduction Program, which is a continuation of the existing C&I Interruptible Load Tariffs approved in the Companies' second electric security plan in Case No. 10-388-EL-SSO (*ESP 2 Case*), and continued through the Companies' third electric security plan in Case No. 12-1230-EL-SSO (*ESP 3 Case*), and contracted demand resources, which allows the Companies to contract for demand attributes with customers or with curtailment service providers doing business in the territory of PJM Interconnection LLC (PJM). This program has been revised to permit the Companies to count, for purposes of peak demand reduction compliance, demand resources participating in the PJM market for the applicable delivery year, without the need to contract for those resources separately. (App. at 9; Co. Exs. 12-14.)

The Companies also seek approval for a new program that studies conservation voltage reduction in order to determine if opportunities for voltage reduction on the Companies' systems exist (App. at 10; Co. Exs. 12-14).

The Companies also note that the proposed plans include several programs that have been approved in other dockets. Initially, the Companies discuss the Mercantile Customer Program, a continuation of the existing Mercantile Self-Direct Program, only with a different name, which incents customers to commit their programs implemented prior to the plan period, or incents them to invest in energy efficient programs during the plan period. (App. at 10; Co. Exs. 12-14.)

The Companies also discuss the Transmission & Distribution (T&D) Improvements Program, a continuation of the existing T&D Programs with a different name, which is addressed in a separate docket and has no costs included in the proposed plans (App. at 10; Co. Exs. 12-14).

Finally, the Companies' application discusses the Smart Grid Modernization Program, which was approved in Case No. 09-1820-EL-ATA, et al., and studies the impact of producing an integrated system of protection, performance, efficiency, and economy on the energy delivery system for multiple stakeholder benefits (App. at 11; Co. Exs. 12-14).

The Companies additionally request waivers in the event that the Commission would issue an order in which the final portfolio plan template differs from the presentation of information as set forth in the proposed plans of any informational requirements that are inconsistent with the presentation of information set forth in the proposed plans (App. at 11-12; Co. Exs. 12-14).

The Companies also seek permission to recover the costs of their proposed plans pursuant to Section 4928.66, Revised Code, noting that the structure and function of the Companies' cost-recovery mechanism – the Demand Side Management and Energy Efficiency Riders (Rider DSE) have already been approved by the Commission in the Companies' first ESP case. See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO (*ESP 1 Case*), Finding and Order (March 25, 2009) at 13. The Companies note that they are not seeking to modify Rider DSE in this proceeding; however, propose that the revenues received through the PJM capacity auctions and any shared savings resulting from the incentive mechanism included in the proposed plans would flow through Rider DSE. (App. at 12-13; Co. Exs. 12-14.)

IV. OBJECTIONS OF THE PARTIES

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

a. Meeting Benchmarks

In its brief, FirstEnergy contends that its proposed plans are designed to achieve the statutory energy efficiency and peak demand reduction targets during the plan period. More specifically, FirstEnergy argues that it has correctly calculated the cumulative benchmarks and cumulative savings, including its banked savings. FirstEnergy notes that NRDC claims that the proposed plans will not achieve the statutory energy efficiency targets, while Sierra Club claims that the estimated savings in certain instances are overstated. FirstEnergy asserts that NRDC witness Sullivan erroneously claimed that the proposed plans would not achieve the targets and admitted that none of his calculations took into account the level of the Companies' banked savings that could be drawn from in order to achieve incremental energy efficiency targets during the plan period. The Companies assert that FirstEnergy witness Demiray explained that surplus energy savings, banked savings, may be applied toward the Companies' benchmarks in subsequent years. (FirstEnergy at 10-11; NRDC Ex. 5 at 3; Tr. Vol. V. at 1010-1011; Co. Ex. 22 at 5.)

Further, the Companies argue that NRDC witness Sullivan's analysis of incremental savings is also flawed because the correct way to calculate the additional incremental annual baseline is to use the difference in yearly cumulative benchmarks, consistent with Section 4928.66(A)(1)(a), Revised Code. Next, FirstEnergy claims that NRDC witness Sullivan's analysis on cumulative energy efficiency savings is flawed, as it fails to take into account projected results at the end of 2012 when establishing the starting savings amounts for the new plan period, instead using levels of savings achieved for mercantile customer self-direct projects through September 18, 2012, and savings levels achieved through the other programs as of July 31, 2012. (FirstEnergy at 11-12; Tr. Vol. V at 1008-1009; Co. Ex. 22 at 3, 5-6.)

In their joint brief, NRDC, Sierra Club, and Citizen Power (jointly, Environmental Advocates) argue that FirstEnergy has failed to describe how the plan is designed to meet the benchmarks. The Environmental Advocates argue that a plain reading of Section 4928.66(A)(1)(a), Revised Code, suggests that utilities must achieve an additional amount of energy efficiency each year, which is measured each year by taking the specified percentage of prior three-year average sales, and that the annual efforts—when added—should exceed 22 percent of the prior three-year average load in

2025. The Environmental Advocates argue that the Companies' plan does not reveal the amount of additional energy savings required of the Companies and projected to be saved by the plan. On the contrary, the Environmental Advocates argue that the Companies only present benchmarks on a cumulative basis, or where each year's savings requirement is added to the previous year. Additionally, the Environmental Advocates criticize the Companies' use of banked savings in their portfolio plan, contending that such use will result in the installation of fewer energy saving measures. (Environmental Advocates at 14-18; Tr. Vol. V at 954.)

In its brief, EnerNOC notes that one of the resources through which the Companies propose to meet their benchmarks is demand response (DR) resources participating in the PJM market, which are established directly by customers or curtailment service providers. EnerNOC points out that the only change to the existing demand reduction program that the Companies propose is to eliminate incentives for the DR resources that are established directly by customers through curtailment service providers. EnerNOC argues that demand response has played a significant role in responding to the Commission's February 29, 2012, call for more resources in the PJM American Transmission System, Inc. (ATSI), region; that demand response resources had a significant, positive impact on the PJM market rates in the previous year; and that the policies established by FirstEnergy and the Commission in the past played a significant role in providing opportunities for demand response resources. EnerNOC concludes that the Commission should order the Companies to promote demand response resources. (EnerNOC at 4-9; Case No. 12-814-EL-UNC, Entry (February 29, 2012) at 1; EnerNOC Ex. 1; Tr. Vol. II at 318-319.)

In its reply brief, FirstEnergy states that the Environmental Advocates' proposition is an extra-statutory requirement that layers on top of the cumulative benchmarks provided by law an additional test of an incremental annual benchmark. FirstEnergy asserts that this proposal is unlawful and cannot be implemented as part of a portfolio case, as Ohio law is simple in providing a cumulative target of 22 percent by the end of 2025, with annual increases along the way. Additionally, the Companies note EnerNOC's discussion regarding the Companies' removal of incentives for DR resources established directly by customers through curtailment service providers, but emphasize the argument in their initial brief that the Companies' proposed revision to their demand response program merely prevents customers from receiving double compensation because the owners of those resources already will have been compensated for participation in the PJM market. (FirstEnergy at 36-37; FirstEnergy Reply at 5-6, 45.)

In their joint reply brief, the Environmental Advocates contend that, although the Companies have pointed out that the modifications proposed by other parties lack specific details, the Companies may not shift the burden of proof to the interveners, but must satisfy the evidentiary burden assigned to the Companies. Further, the Environmental Advocates reiterate their position that there is no plan before the Commission that meets all of the statutory and regulatory requirements. The Environmental Advocates also contend that NRDC witness Sullivan did not take "banked savings" into account because FirstEnergy's accounting of its performance is in a "disarray" that makes determining the amount of its banked savings difficult. (Environmental Advocates Reply at 5-7; Tr. Vol. V at 1012.)

In their joint reply brief, ELPC/OEC similarly argue that the Companies have criticized other parties' proposals on the basis that they lacked sufficient detail, but that this argument improperly shifts the burden from the Companies to the other parties (ELPC/OEC Reply at 2).

The Commission finds that Section 4928.66(A)(1)(a), Revised Code, is clearly worded to require calculation of the additional incremental annual baseline by using the difference in yearly cumulative benchmarks, as argued by the Companies. The Commission disagrees with the Environmental Advocates' argument that the statute requires utilities to achieve an additional amount of energy efficiency each year to be measured by adding the specified percentage of prior three-year average sales. Additionally, the Commission agrees with the Companies that utilities may apply surplus energy savings, or banked savings, toward the applicable benchmarks in subsequent years. Finally, the Commission finds that the Companies' decision to revise their demand response program to prevent customers from receiving double compensation is reasonable. Consequently, the Commission finds that the Companies' portfolio plans are designed to achieve the statutory energy efficiency and peak demand reduction targets during the plan period.

b. Soundness of Market Potential Study and Avoided Costs

FirstEnergy notes that Rule 4901:1-39-04(C)(1), O.A.C., requires the Companies to include in proposed plans an executive summary as well as a market potential study, and state that the Companies commissioned analyst Black & Veatch to prepare a market potential study for the period of 2012 through 2026. Additionally, FirstEnergy notes that NRDC witness Swisher criticized the approach utilized by Black & Veatch when preparing the market potential study. FirstEnergy points out that witness Swisher conceded, however, that the level of achievable potential during the plan period "doesn't matter." Further, the Companies note that NRDC witness Swisher testified that the avoided cost values utilized in the market potential study are too low, thus resulting in more measures that are cost effective. (FirstEnergy at 16-17; Tr. Vol. IV at 716-718, 726-727.)

In their joint brief, the Environmental Advocates argue that FirstEnergy's market potential study is flawed. More specifically, the Environmental Advocates argue that FirstEnergy's customers have little experience with well-run energy efficiency programs and cannot be expected to have an accurate view of their interest and ability to benefit from efficiency programs. Consequently, the Environmental Advocates criticize the methodology used by Black & Veatch, which inquired of customers their interest and intentions regarding end-specific energy efficiency programs. The Environmental Advocates argue that this methodology is unsupported and produces unrealistic results. The Environmental Advocates state that the Commission should not require the Companies to withdraw the plan and re-file a market potential study with a different methodology, but should require the Companies to use a different methodology for the next portfolio plan, which should involve input and approval from the Collaborative and Staff. (Environmental Advocates at 7-10; NRDC Ex. 1 at 5-9.)

In its reply brief, FirstEnergy responds to the Environmental Advocates' criticism by pointing out that, in addition to utilizing customer survey results, Black & Veatch incorporated factors such as customer usage data provided by the Companies, the California Deemed Energy Database (DEER), American Council for an Energy-Efficient Economy (ACEEE) Market Potential Study (MPS) for Ohio, Department of Energy Quick Energy Simulation Tool (eQUEST), the Black & Veatch Energy Efficiency Technology Database, and the draft Ohio Technical Reference Manual ("TRM"), as well as recent program results experienced by the Companies in Pennsylvania and by AEP-Ohio (FirstEnergy Reply at 7-11; Co. Exs. 12-14 at Appendix D, Market Potential Study at 3.2; Tr. Vol. II at 171, 173, 183).

The Environmental Advocates further argue that the Companies' analysis of avoided costs is flawed and results in exclusion of a substantial amount of cost-effective energy efficiency opportunities. The Environmental Advocates contend that the Companies underestimated the true avoided costs of electricity supply because the main components of the Companies' avoided costs are lower than should be expected under common-practice avoided cost analysis methods and assumptions; because some components are missing entirely; and because some estimates are internally inconsistent. Consequently, the Environmental Advocates argue that, although the Companies should not be required to withdraw the plan and re-file, the Commission should require the Companies to use common-practice calculated avoided costs in the next portfolio plan, which should involve input and approval from the Collaborative and Staff. (Environmental Advocates at 10-13; NRDC Ex. 1 at 22-26.)

Staff critiques FirstEnergy's avoided costs study on the basis that FirstEnergy repeatedly used T&D avoided costs of $20/kilowatt (kW)/year, but failed to provide any support for how these avoided costs assumptions were calculated. Staff states that reliable T&D costs must be used when designing portfolio programs because, if inaccurate or outdated T&D avoided costs are used in designing the portfolio, the total resource cost test calculation may be inaccurate as well. Consequently, Staff recommends that FirstEnergy perform an avoided T&D cost study from actual projects that it is relatively certain will be implemented over the next five years and modify the avoided cost based upon T&D avoided cost studies performed in the future. (Staff at 15-16; Staff Ex. 1 at 12-13.)

In their reply brief, the Companies note that both the Environmental Advocates and Staff made recommendations regarding how avoided cost values should be determined for purposes of the next plan cycle; however, the Companies emphasize that no party has recommended rejection of the market potential study or its results for the purposes of this proceeding. Further, the Companies argue that conditions change and market transparency and information will continue to evolve. Therefore, the Companies argue that it is premature for the Commission to dictate how the Companies should determine avoided costs in order to meet their burden of proof in the next portfolio case. (FirstEnergy Reply at 12-13; Tr. Vol. II at 203.)

The Commission finds that, concerning the market potential study, there is no credible evidence supporting the Environmental Advocates' assertion that FirstEnergy customers lack an accurate view of their interest and ability to benefit from efficiency programs. Consequently, the Commission is not persuaded that the methodology used by Black & Veatch was ineffective; particularly in light of the fact that Black & Veatch considered many other factors in the market potential study in addition to customer survey results.

The Commission also agrees with the Companies that the recommendations regarding avoided costs made by the Environmental Advocates and Staff do not call for rejection of the market potential study for purposes of this proceeding, but concern determination of avoided cost values for purposes of the next plan cycle. The Commission finds that, for the next plan cycle, the Companies shall implement Staff's recommendation and shall perform an avoided T&D cost study from actual projects that are relatively certain to be implemented over the following five years and modify the avoided cost based upon these studies.

B. Shared Savings

a. General

The Companies contend that, in its finding and order for the existing portfolio plan, the Commission urged the Companies to develop a shared savings mechanism, and, further, contend that their proposed shared savings plan is reasonable. *See* 09-1947-EL-POR (*Portfolio 1 Case*), Opinion and Order (March 23, 2011) at 15. The

Companies note that intervener witnesses generally supported a shared savings incentive mechanism, but proposed a wide variety of incentive levels. The Companies propose incentive tiers beginning with an incentive percentage of 5 percent for exceeding the benchmarks by up to 105 percent (meeting 100 percent of the benchmarks and exceeding them by up to an additional 5 percent), and gradually increase to a top tier of 13 percent for exceeding the benchmarks by greater than 115 percent, not subject to a cap. (FirstEnergy at 21-22, 26-27; Co. Ex. 5 at 10, 12.)

Staff states that it generally supports the shared savings mechanisms as proposed by the Companies, but believes that the top tier proposed by FirstEnergy is too high. Staff claims that the shared savings incentive should only be set marginally higher than the rate-of-return level that utilities could earn by investing in non-energy efficiency investment. Staff recommends that the incentive tiers should begin with an incentive percentage of 3 percent for exceeding the benchmarks by up to 110 percent, and gradually increase to a top tier of 10 percent for exceeding the benchmarks by greater than 125 percent. Additionally, Staff asserts that the historical self-direct mercantile consumption and associated savings should not be included in the shared savings calculation, because these savings reflect the independent decisions of these customers to make their facilities more energy efficient. Staff emphasizes that Section 4928.66(A)(2)(c), Revised Code, provides that the baseline for statutory benchmarks may be adjusted "[i]f a mercantile customer makes such existing or new demand-response, energy efficiency, * * * or peak demand reduction capability available to an electric distribution utility." Thus, Staff argues, FirstEnergy is permitted to count its mercantile customers' EE/PDR measures if these customers commit the measures to FirstEnergy, but that FirstEnergy has no statutory right to count self-directed efforts when the customer does not commit the measures to FirstEnergy. (Staff at 12-13; Staff Ex. 1 at 9-10; Staff Reply at 7-9.)

The Environmental Advocates contend that the Commission should reject the shared savings mechanism as proposed by the Companies on the basis that it is not tied to the Companies' performance in delivering energy efficiency programs, is overly generous to the Companies, and fails to include safeguards for customers. Instead, the Environmental Advocates propose that any shared savings mechanism should be triggered only when the Companies exceed an "adjusted benchmark" each year, which is calculated by subtracting mercantile self-direct customer load from the three-year average sales from which the annual energy efficiency benchmarks are determined and multiplying the result by the annual energy efficiency benchmarks in Section 4928.66(A)(1)(a), Revised Code. The Environmental Advocates further assert that the adjusted benchmark should exclude savings from T&D projects that do not represent incremental energy efficiency beyond business as usual levels, mercantile self-direct projects, and the results of the On-Line Audit program. Additionally, the Environmental Advocates urge that the incentive tiers should begin with an incentive percentage of 2 percent for exceeding the benchmarks by up to 105 percent, and gradually increase to a top tier of 10 percent for exceeding the benchmarks by greater than 130 percent, subject to a $10 million cap per year, split among the Companies. Further, the Environmental Advocates argue that FirstEnergy should not use the incentive mechanism approved in AEP-Ohio's recent case, because FirstEnergy uses a lost revenue recovery mechanism, while AEP does not. (Environmental Advocates at 60-63; Environmental Advocates Reply at 14-18; NRDC Ex. 4 at 18-20.)

OCC also urges the Commission to reject the incentive mechanisms as proposed by the Companies on the basis that OCC believes FirstEnergy should only receive an incentive for exceeding, not meeting, 100 percent of its EE/PDR benchmarks; that FirstEnergy should receive a lesser amount of shared savings than proposed over a modified tiered arrangement; that the Companies' savings should be capped at 8 percent of program spending; and, that the incentive should be calculated on a pre-tax basis. More specifically, OCC proposes an incentive structure with tiers beginning with an incentive percentage of 2 percent for exceeding the benchmarks by a percentage greater than 100 percent up to 105 percent, and gradually increase to a top tier of 8 percent for exceeding the benchmarks by greater than 115 percent. Further, OCC joins the Environmental Advocates' position that, in determining the shared savings calculation, savings from self-direct mercantile, T&D projects, and behavioral programs should be excluded. (OCC at 8-12, 14-16; OCC Reply at 2-7, 9-13; OCC Ex. 1 at 5, 13-14.)

OEG asserts that the Commission should reject the proposal for a shared savings mechanism altogether on the basis that the Companies have not explained why an incentive is necessary to achieve performance above the EE/PDR benchmarks, particularly because both CEI and TE exceeded the benchmarks in 2011, even with no incentive. OEG further argues that the proposed incentive has the potential to significantly increase EE/PDR-related costs for customers. Alternately, OEG contends that, if the Commission approves a shared savings mechanism, it should begin with an incentive percentage of 0 percent for exceeding the benchmarks by a percentage of 100 percent up to 105 percent, and gradually increase to a top tier of 6 percent for exceeding the benchmarks by greater than 115 percent. Finally, similar to the Environmental Advocates and OCC, OEG contends that the effects of all mercantile self-direct programs, T&D projects, and behavioral programs should be removed from the shared savings calculation. (OEG at 8-11; OEG/Nucor Ex. 1 at 5, 15-18.)

Nucor also asserts that the Commission should reject a shared savings incentive altogether, but recommends that, if the Commission approves a shared savings mechanism, it should adopt the tiered percentage levels recommended by OEG, excluding mercantile self-direct, T&D projects, and behavioral programs from the shared savings calculation. Finally, Nucor recommends a shared savings cap for each company of no more than 8 percent of prudent program spending. (Nucor at 18-20; Nucor Reply at 9-11; OEG/Nucor Ex. 1 at 15-18.)

ELPC/OEC assert that the shared savings mechanism should be approved with modifications and clarifications. More specifically, ELPC/OEC argue that the Companies should not be permitted to benefit from mercantile projects installed after March 23, 2011, and should not receive any shared savings for the T&D Improvement Program. (ELPC/OEC at 36-38; ELPC/OEC Reply at 9-11.)

OPAE urges the Commission to adopt the recommendations regarding the shared savings mechanisms as set forth by Staff, OCC, and the Environmental Advocates as far as they concern mercantile self-direct programs and T&D programs being excluded from calculations. Additionally, OPAE contends that the Commission should adopt Staff's recommended tiered incentive amounts and OCC's recommendation that shared savings should be calculated on a pre-tax basis. Finally, OPAE asserts that OCC and the Environmental Advocates are correct that a cap on shared savings is necessary to protect customers. (OPAE at 18-20; OPAE Reply at 5-6.)

The Commission notes that the record of this case indicates broad support for some type of shared savings mechanism for the Companies. However, the parties disagree on the details of such mechanisms. For example, the Companies propose a top tier incentive of 13 percent, without a hard cap (Co. Ex. 5 at 10, 12) while Staff recommends a top tier of 10 percent, after tax, and OCC advocates for a top tier of 8 percent (OCC Ex. 1 at 16-17). We note that the incentive tiers proposed by the Companies are consistent with tiers approved by the Commission in AEP-Ohio's most recent portfolio proceeding (Co. Ex. 5 at 10). See *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of their Program Portfolio Plan and Request for Expedited Consideration*, Case Nos. 11-5568-EL-POR et al., Opinion and Order (March 21, 2012) (*AEP-Portfolio Case*) at 8. We reject the Environmental Advocates' contention that AEP-Ohio merits higher incentive levels because FirstEnergy collects lost distribution mechanism while AEP-Ohio does not collect lost distribution revenue from residential and small commercial customers. Pursuant to the stipulation approved by the Commission in its last distribution rate case, AEP-Ohio has agreed to implement a throughput balancing adjustment rider on a pilot basis for residential and small commercial customers. *In re Columbus Southern Power Company and Ohio Power Company,* Case Nos. 11-351-El-AIR et al., Opinion and Order (December 14, 2011) at 7, 9-10. Although this rider may be the Environmental Advocates' preferred mechanism for decoupling distribution revenue from usage and removing any disincentive to the utility to promote energy efficiency programs, the rider also effectively negates any need for the collection of lost distribution revenue.

Accordingly, based upon our review of the evidence in this proceeding, we will adopt the shared savings mechanism proposed by the Companies, subject to certain modifications. Moreover, consistent with the *AEP-Portfolio Case*, the Companies have proposed that historical self-direct mercantile customer energy savings be excluded from the savings calculation (Co. Ex. 5 at 10; Staff Ex. 1 at 9) and that savings from transmission and distribution investments be excluded from the shared savings mechanism (Co. Ex. 5 at 10; Staff Ex. 1 at 10). However, the Commission finds that, consistent with the *AEP-Portfolio Case*, the Companies' proposal should be modified such that the tiered incentive levels will be calculated on an after-tax basis. Additionally, the Commission finds that banked savings shall only be counted toward shared savings in the year it is banked.

Finally, the Commission is mindful that multiple parties support a cap on shared savings. The Commission finds that a $10 million cap on the amount of shared savings that may be collected is appropriate. However, the Commission finds that, should FirstEnergy decouple distribution revenue from usage in the future, the cap on the amount of shared savings that may be collected shall increase to $20 million, which is the amount of the cap the Commission approved in the *AEP-Portfolio Case*. *AEP-Portfolio Case*, Opinion and Order (March 21, 2012) at 8. The Commission acknowledges that the initial $10 million cap on shared savings differs from the cap approved in the *AEP-Portfolio Case*, but finds the situations to be distinguishable because AEP-Ohio has agreed to implement a throughput balancing adjustment rider on a pilot basis, while FirstEnergy collects lost distribution revenue.

b. Utility Cost Test v. Total Resource Cost

The Companies state that they determined the amount of shared savings in their proposed plan by calculating the net benefits gained using the utility cost test (UCT) for generating savings in excess of their benchmarks. The Companies assert that the advantages of the UCT over the total resource cost (TRC) is that the UCT includes only those costs and benefits that inure to ratepayers and the UCT provides the Companies with an inducement to make sure that incentive payments are not higher than they need to be to encourage participation. (FirstEnergy at 23; Co. Ex. 5 at 4-6; Tr. Vol. IV at 856-857.)

OCC also urges the Commission to reject FirstEnergy's proposal to use the UCT to determine shared savings on the basis that the UCT captures only the benefits of the programs to the utility and ignores individual customers' costs as a whole. Instead, OCC recommends that the Commission require use of the TRC on the basis that it accounts for all of the costs and benefits of an energy efficiency program. (OCC at 12-13; OCC Reply at 7-8; OCC Ex. 1 at 12-13.)

In its reply brief, OPAE states that it would be willing to support the use of the UCT for determining incentives, as proposed by the Companies, as long as customers were protected by a cap on shared savings incentives (OPAE Reply at 6).

The Commission finds that the UCT should be used to determine the net shared savings in the shared savings calculation. We agree with the testimony of Staff witness Scheck that use of the UCT will encourage the Companies to keep administrative costs low and that it is appropriate to encourage electric utilities to minimize the costs of their EE/PDR programs while still achieving full compliance with their statutory mandates (Staff Ex. 1 at 10). In addition, the Commission notes that use of the UCT is consistent with our decision in AEP-Ohio's most recent portfolio proceeding, where the Commission approved a stipulation which provided for use of the UCT in the shared savings calculation. *AEP-Portfolio Case*, Opinion and Order (Mar. 21, 2012) at 7-8.

C. PJM Bidding Strategy

The Companies state that they intend to bid into the PJM annual base residual auction (BRA) and PJM incremental auctions all eligible, installed energy efficiency resources for which they have ownership rights at the time of the auction, provided that such resources are of sufficient scale, meet the PJM measurement and verification (M&V) standards, and are included in an M&V plan approved by PJM. Further, the Companies note that, as directed by the Commission, they have amended their terms and conditions for programs included in the proposed plans to ensure that customers knowingly tender to the Companies ownership of energy efficiency resources as a condition of participation. *See ESP 3 Case*, Opinion and Order (July 18, 2012) at 38. The Companies contend that this bidding strategy prudently manages risk to the Companies and their customers. (FirstEnergy at 28-33; FirstEnergy Reply at 55-68; Co. Ex. 1 at 15-17; Co. Ex. 23 at 3; Tr. Vol. I at 44, 95; Tr. Vol. VI at 1149-50.)

OCC contends that the Commission should reject the Companies' PJM bidding strategy. Instead, OCC proposes that FirstEnergy should be required to bid all of its saved megawatts (MW) projected in its portfolio and approved by PJM into the PJM BRA. Further, OCC argues that the Companies should secure the property rights of their programs' capacity savings and perform the necessary measurement and verification to assure PJM acceptance prior to the upcoming BRA. OCC proposes that any risks from this proposed strategy could be mitigated by purchasing program capacity shortages from the PJM incremental auctions. OCC argues that its proposed strategy would provide customers the benefits from the EE/PDR resources and protect the Companies from risks associated with a more aggressive bidding requirement. Finally, OCC states that the PJM rules allow the Companies to bid planned resources, in contrast to the Companies' argument that they should only be required to bid resources that have been installed and that they own into the BRA. (OCC at 17-25.)

The Environmental Advocates argue that the Commission should reject FirstEnergy's PJM bidding strategy and should require the Companies to bid all eligible efficiency resources into future BRAs. Additionally, the Environmental Advocates argue that the Companies should submit a bidding plan to the Commission for approval at least ninety days prior to the deadline for submitting bidding prerequisites to PJM. Further, in order to exclude any expected efficiency savings from its bids, the Environmental Advocates contend that FirstEnergy should be required to present compelling evidence that the financial cost or risk would exceed the likely benefits. The Environmental Advocates argue that this strategy should be utilized because there is a significant value in bidding these resources into auctions for customers. (Environmental Advocates at 57-58.)

Similarly, ELPC/OEC argue that the Commission should require all Ohio utilities to bid anticipated eligible savings into the BRA. ELPC/OEC contend that the bidding of anticipated eligible savings from the plans into the BRA furthers the purpose of the BRA. Additionally, ELPC/OEC argue that FirstEnergy has not demonstrated that the risks of bidding anticipated savings into the BRA outweigh the substantial benefits to ratepayers. ELPC/OEC also assert that the Companies could mitigate any risk by conservatively estimating the amount to bid into the BRA; by modifying the resources used to meet commitments made through the BRA; or by supplementing savings from their EE/PDR programs by purchasing additional capacity in incremental auctions. (ELPC/OEC at 4-18; IEU-Ohio Ex. 2, PJM Manual 18, at 3-5, 91-92; Co. Ex. 1 at 25; Staff Ex. 1 at 12; Sierra Club Ex. 1 at 6; Tr. Vol. IV at 882.)

OEG contends that the Commission should require FirstEnergy to bid its Rider ELR interruptible load into the capacity auctions. Further, OEG proffers that, if there is concern that any of that interruptible load may not be available three years later, the Commission could find that the Companies have acted prudently and may recover reasonable costs associated with any PJM penalties or shortfalls incurred in order to minimize or eliminate financial risk to the Companies and ELR customers. Additionally, OEG urges the Commission to require FirstEnergy to use the definition of curtailable load in Rider ELR in estimating the PDR value of its ELR program in order to more accurately reflect the level of PDR benefit that Rider ELR actually provides. (OEG at 11-14; OEG/Nucor Ex. 1 at 19, 22-23.)

Nucor joins the position of several other parties and argues that FirstEnergy should bid more energy efficiency into the PJM capacity auctions than is proposed in the plans and should bid current ELR interruptible load into the capacity markets. Nucor contends that such a strategy would provide potentially significant cost savings to customers while exposing the Companies to a minimal amount of financial risk. Additionally, similar to OEG's argument, Nucor contends that the Companies should use curtailable load to measure the PDR value of Rider ELR interruptible load. (Nucor at 20-27; OEG/Nucor Ex. 1 at 19, 22-23.) Several more parties, including OMAEG and OPAE, urge the Commission to require FirstEnergy to bid more energy efficiency resources into the PJM market than proposed in the application (OMAEG at 4; OPAE at 20-26). Staff also recommends that the Commission order FirstEnergy to bid any potential capacity reductions obtained from its planned EE and PDR programs into future PJM auctions. Staff argues that requiring FirstEnergy to bid potential capacity reductions into the PJM auctions will benefit customers by reducing Rider DSE costs, and that FirstEnergy can mitigate risks associated with bidding planned resources by bidding into the auction the price of zero and by bidding 75 percent of its projected capacity reduction into the auction. *See ESP 3 Case*, Opinion and Order (July 18, 2012) at 38. (Staff at 8-11; OCC Ex. 1 at 17-21, 23; Staff Ex. 1 at 11-12; Tr. Vol. I at 92-93; Tr. Vol. III at 543-544; Tr. Vol. VI at 1154.)

AEEO disputes FirstEnergy's interpretation of the Commission's Order in the *ESP 3 Case*, as it relates to the acquisition of ownership of energy efficiency rights to be bid into the PJM BRA. *See ESP 3 Case*, Opinion and Order (July 18, 2012) at 38. AEEO argues that the Commission should clarify its order to extend the requirement that customers commit ownership rights to energy efficiency attributes to the Companies only to those customers who take part in a FirstEnergy-directed program. (AEEO at 2-5.)

In its reply brief, FirstEnergy renews its argument that the Commission should reject the various parties' objections to the Companies' bidding proposal. The Companies counter OCC's argument that forecasted and saved resources should be bid into the PJM auction by pointing out that, under PJM's rules, energy resources that are not installed and verified prior to an auction must, at minimum, have a documented efficiency value during the defined performance hours and be scheduled for completion prior to the applicable delivery year. Additionally, FirstEnergy emphasizes that, although the Environmental Advocates argue that benefits outweigh any potential financial risks, the deficiency charge for future auctions is unknown. Additionally, the Companies contend that they cannot mitigate risk by conservatively estimating the amount to bid into the BRA because they do not have an estimate and will not have an estimate in advance of each BRA of the amount of contracted demand resources they will acquire three and four years into the future. The Companies also contend that, despite OCC's and ELPC/OEC's suggestions, risks may not necessarily be mitigated by purchasing capacity from PJM incremental auctions to cover shortfalls because there is no guarantee that incremental auctions will be lower than the BRA, and could result in customers paying more for that resource. Finally, FirstEnergy argues that OCC's recommendation that customers could assume any of the Companies' PJM penalties for capacity obligations cleared in the PJM BRA, but not delivered, also does not mitigate risk because this would involve an after-the-fact audit and prudency review process that is uncertain. (FirstEnergy Reply at 57-58, 62-65; IEU-Ohio Ex. 3; Co. Ex. 23 at 5-6; Tr. Vol. II at 320-323; Tr. Vol. III at 534, 537-538, 577-578; Tr. Vol. IV at 810, 891-892; Tr. Vol. VI at 1131.)

FirstEnergy further argues that Nucor's and OEG's demand that the Companies bid ELR resources into the PJM BRA for delivery year 2016/2017 is unreasonable because Rider ELR is only effective until May 2016, and there is no interruptible load under tariff for which the Companies can demonstrate ownership for the 2016/2017 delivery year. Further, the Companies oppose Nucor's alternative argument that the Companies make a "representation" that they will offer Rider ELR in the next ESP, arguing that the Companies may not want or need to continue Rider ELR beyond May 2016. Additionally, FirstEnergy acknowledges Nucor's and OEG's argument that the amount of interruptible capability counted toward the Companies' PDR benchmarks should be calculated using the definition of curtailable load included in Rider ELR, and responds that the Companies are unopposed to counting curtailable load, as defined in Rider ELR, toward their PDR benchmarks if the Commission so orders. (FirstEnergy Reply at 46, 66-67; Tr. Vol. VI at 1181.)

Finally, FirstEnergy addresses various parties' arguments regarding transfer of ownership of demand resources. The Companies argue that they are requiring a transfer of ownership because the Commission directed them to do so, despite their concerns regarding any effect this required transfer might have on customer participation in the Mercantile Customer Program. The Companies argue that they would not object to distinguishing in their self-directed mercantile contracts between commitment and ownership of resources, should the Commission make clear that obtaining ownership of these resources is not required. (FirstEnergy Reply at 68-69; Co. Ex. 1 at 15-18; Tr. Vol. IV at 769-771.)

The Commission is mindful of the uncertainty of future PJM BRAs, including resources planned, but not yet installed, unknown clearing prices for capacity in incremental auctions, risk of PJM penalties for obligations cleared, but not delivered, and uncertainty whether Riders ELR and OLR will expire. However, the Commission also finds that requiring the Companies to bid all planned savings into future PJM BRAs could substantially benefit ratepayers by lowering capacity auction prices and reducing Rider DSE costs. In order to create a reasonable balance between the uncertainty and potentially substantial benefits, the Commission finds it appropriate to adopt a portion of Staff's recommendation. The Commission will require the Companies to bid into the upcoming May 2013 PJM BRA 75 percent of the planned energy efficiency resources for the 2016/2017 planning year under their program portfolio. Thereafter, the Commission may issue an order addressing the Companies' bids for the remaining two planning years. The Commission finds that this balance will appropriately mitigate the Companies' risk while benefitting ratepayers. *See ESP 3 Case*, Opinion and Order (July 18, 2012) at 38. (Staff Ex. 1 at 11-12; OCC Ex. 1 at 17-21; Tr. Vol. I at 92-93; Tr. Vol. III at 543-544; Tr. Vol. VI at 1154.)

D. Annualized Savings v. Pro Rata Methodology

FirstEnergy notes that it requested a waiver in its plan of a Commission directive related to the use of pro rata methodology for determining savings. FirstEnergy states that, under the pro rata methodology, only the savings from the time a measure is implemented until the end of the year in which a measure is first installed can count toward a utility's statutory energy efficiency benchmarks during that initial year. The Companies argue that, as FirstEnergy witness Fitzpatrick testified, pro rata methodology should not be required because it is more costly than annualized savings methodology because it requires acceleration of costs necessary to implement additional programs to overcome any deficit created by only allowing savings for a portion of the year; that it is more costly because it requires vendors to customize evaluation, measurement, and verification (EM&V) and reporting protocols to accommodate a methodology that isn't used in many other states; that it creates an impression of accuracy that does not exist because it involves estimates and assumptions; that it does not properly track costs with benefits; and, because the Commission recently authorized the use of annualized savings methodology in the AEP portfolio plan case. *See In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case No. 11-5568-EL-POR, Opinion and Order (Mar. 21, 2012) at 17. Finally, FirstEnergy notes that Staff witness Scheck testified that calculating savings on an annualized basis is easier and less costly from an accounting standpoint to track energy efficiency savings, and that the only party to submit testimony challenging the Companies' waiver request was ELPC/OEC witness Crandall, whom the Companies assert provided little evidence to support his opinion. (FirstEnergy at 44, 46-47; Co. Ex. 1 at 13-14; Co. Ex. 3 at 10-12; Staff Ex. 1 at 2; ELPC/OEC Ex. 1 at 13-14; Tr. Vol. V at 1036-1037.)

In their joint brief, ELPC/OEC argue that the Commission should deny the Companies' request for a waiver of the pro rata reporting requirement on the basis that the pro rata standard is more accurate than the annualized methodology. Additionally, ELPC/OEC cite the testimony of ELPC/OEC witness Crandall that the annualized methodology creates a potential disincentive for the utility to diligently implement an energy efficiency program, and could result in an energy efficiency measure that is installed in December being given credit as if it had been installed in January of the reporting year. ELPC/OEC also criticize FirstEnergy witness Fitzpatrick's testimony that the use of pro rata methodology increased costs during the current plan by approximately $51.2 million, arguing that this amount represented a one-time program startup issue that is irrelevant to the current plans. (ELPC/OEC at 38-39; 41; ELPC/OEC Ex. 1 at 14; Co. Ex. 3 at 11)

In its reply brief, FirstEnergy again urges the Commission to grant the Companies' request for a waiver of the use of annualized methodology, pointing out that only ELPC/OEC recommended against the granting of the waiver, and that Staff expressly recommended that the waiver be granted. Further, FirstEnergy contends that ELPC/OEC's argument fails to recognize that the statutory benchmarks continue to increase and that the additional programs that must be included under the pro rata methodology will eventually be put into place, even under the annualized approach. (FirstEnergy Reply at 75-77; Staff Ex. 1 at 2-3; Co. Ex. 3 at 12-13.)

The Commission acknowledges the testimony of FirstEnergy witness Fitzpatrick and Staff witness Scheck that calculating savings on an annualized basis is easier and less costly from an accounting standpoint to track energy efficiency savings. Further, as the Companies point out, the Commission approved a waiver of the pro rata methodology in the AEP portfolio plan case. Consequently, the Commission finds that the Companies' request to use annualized accounting should be granted. In so finding, the Commission is mindful of ELPC/OEC's argument that annualized accounting could result in an energy efficiency measure installed mid-year being given credit for the entire reporting year; however, the Commission emphasizes that such a measure must be viewed on a going forward basis, as it will continue to benefit ratepayers over the life of the project. *See In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case No. 11-5568-EL-POR, Opinion and Order (Mar. 21, 2012) at 12, 17. (Co. Ex. 3 at 10-12; Staff Ex. 1 at 2-3; ELPC/OEC Ex. 1 at 14.)

E. Programs

a. General

The Environmental Advocates criticize the Companies' residential sector plan in general, stating that the proposed plan attains 88 percent of its savings from appliance recycling, efficiency kits, and retail lighting. The Environmental Advocates argue that some of the budget for these three programs should be reallocated for in-home audit efforts and HVAC and domestic hot water rebates. Further, the Environmental Advocates argue that, as a whole, the programs should be revised to better define certain measure eligibility to minimize free ridership, which occurs when savings are counted for measures that would have been installed without utility intervention and the payment of rebates or incentives. Finally, the Environmental Advocates argue that the Commission should encourage FirstEnergy to move quickly to joint implementation for any programs that entail significant trade ally engagement to reduce program implementation costs and remove unnecessary impediments. (Environmental Advocates at 29-30.)

FirstEnergy replies that, while some of the recommendations by the Environmental Advocates, ELPC/OEC, and other interveners might be explored for inclusion in future plans, the Companies have developed and presented a comprehensive portfolio of programs that will meet or exceed the benchmark requirements and that satisfies all rules and statutory requirements. Additionally, for the reasons set forth below, FirstEnergy contends that the number of efficiency kits proposed in the plan is appropriate, and that the budget for the efficiency kit program should not be modified or reallocated to the programs recommended by the Environmental Advocates. Further, the Companies note that the Environmental Advocates have not provided specific alternatives, specific program recommendations or projections, a TRC analysis, or a market potential analysis in support of their recommendations. (FirstEnergy Reply at 16-18, 25.)

Also in their reply brief, the Companies contend that the Commission should reject the Environmental Advocates' recommendation that all of the Ohio utilities engage in joint implementation of energy efficiency programs on the basis that Sierra Club witness Reed testified that he did not know if other Ohio utilities would be receptive to joint implementation with the Companies, and, further, on the basis that back office, tracking, and reporting systems would have to be integrated, and joint implementation may cause an electric distribution utility to lose control of its programs as it tries to achieve statutory targets through joint efforts. Finally, FirstEnergy responds to the Environmental Advocates' and ELPC/OEC's arguments that the proposed plans do not adequately address free ridership. The Companies assert that they regularly evaluate participation levels, rebate levels, and customer motivations to participate in the programs, adjusting the programs as conditions warrant. (FirstEnergy Reply at 29-31; Tr. Vol. I at 50-51; Tr. Vol. II at 370-372; Tr. Vol. III at 407-409, 657.)

The Commission declines to modify the Companies' plan as proposed by the Environmental Advocates, finding that the Companies' proposed budget allocations in the plan are appropriate and that the Companies have reasonably addressed free ridership. However, as the Companies have acknowledged, the recommendations for modifying the allocation of the budget, joint implementation, and additional prevention of free ridership may be explored for inclusion in future plans and the Environmental Advocates are free to bring these issues and any proposals to address these issues before the collaborative.

b. Energy Efficiency Kit Program

The Companies state that, in modeling the savings for the energy efficiency kit program, they utilized the 86 percent installation rate identified in the draft Ohio TRM, and conservatively included the standards established by the Energy Independence and Security Act of 2007 (EISA) impacts for all CFLs included with the kits for the entire plan period. Further, the Companies elaborate that the savings estimate is a constant value that represents the full reduction of savings for all CFLs in the plan period and that the 86 percent installation rate closely resembles the results achieved by the Companies' sister utilities in other jurisdictions. (FirstEnergy at 13; Co. Ex. 21 at 3-4; Tr. Vol. II at 344-345.)

The Environmental Advocates contend that the Companies should eliminate, or significantly reduce, reliance on efficiency kits. In support, the Environmental Advocates contend that the kits represent a disproportionate 36 percent of the residential sector's portfolio savings. The Environmental Advocates further argue that the Companies' savings estimates from the kits appear to be overstated and should be reviewed and revised. With the reallocated kit budget, the Environmental Advocates argue that the Companies should develop a more robust retail market for efficient products, increased existing home retrofit participation, and increased all-electric and comprehensive audits. (Environmental Advocates at 29.)

ELPC/OEC also criticize the Companies' use of energy efficiency kits in the plan, arguing that energy efficiency kits have low installation rates and provide little benefits. For example, ELPC/OEC contend that the free CFLs in the kits generate most of the projected savings, and that the Companies have failed to demonstrate that customers would not purchase those CFLs if they were not provided for free in the kits. ELPC/OEC claim that the Companies' reliance on these kits prevents them from taking advantage of more successful and effective programs that alleviate free-rider concerns, generate long-term savings, and more effectively transform the market. (ELPC/OEC at 26-28; Sierra Club Ex. 2 at 5; Tr. Vol. IV at 761.)

In their reply brief, the Companies maintain that their strategy in utilizing energy efficiency kits is appropriate and supported by record evidence. More specifically, the Companies point out that the kits do no solely contain CFLs, but a combination of energy efficiency measures; that the kits are cost effective while producing major energy savings for customers; that the kits provide customers with the opportunity to learn about energy efficiency without the need to purchase anything; that the kits should not circumvent normal retail channels, given the wide variety of CFL and LED lighting choices offered by retailers; and, that the chance of free ridership is relatively low because the kits are opt-in. Further, the Companies assert that, in modeling the savings for the kits, the Companies utilized the draft Ohio TRM and EISA impacts for all CFLs, and that ELPC/OEC have offered no credible alternative installation rate for the Commission to consider (FirstEnergy Reply at 19-23; Co. Exs. 12-14 at Section 3.2, Appendix C-3; Co. Ex. 21 at 3-4; Tr. Vol. II at 344; Tr. Vol. III at 427-428, 651, 832.)

In reply, the Environmental Advocates emphasize the testimony of NRDC witness Reed that programs offered by a utility should employ existing market channels (Environmental Advocates Reply at 10; Tr. Vol. III at 661). Additionally, in its reply brief, OCC joins the Environmental Advocates' recommendation that the utilities should reduce their use of efficiency kits in the program (OCC Reply at 20-21). In their reply brief, ELPC/OEC continue their criticism of the kits, claiming that the Companies should not have utilized the 0.86 installation rate for modeling savings from the TRM, because that installation rate applies to CFLs purchased by customers at retail rather than free bulbs mailed to the customer (ELPC/OEC Reply at 6-7).

The Commission finds that the evidence in this case does not reflect an undue reliance by the Companies upon energy efficiency kits. Testimony at the hearing indicates that, because the kits are offered on an opt-in basis, the likelihood of free ridership is low (Tr. Vol. II at 344; Tr. Vol. III at 427-428). Further, Staff witness Scheck did not agree that the Companies' proposed use of kits was excessive or that there were an excessive number of CFL light bulbs in the kits (Tr. Vol. IV at 631-632).

c. Low-Income Energy Efficiency Program

OPAE points out that the Companies are proposing no change in the current level of funding for low-income energy efficiency programs, and contends that the funding should be increased in this proceeding. In support, OPAE argues that the need for low-income programs has increased since the time that funding was first established for the low-income program because the costs of the programs and poverty rates have increased. Further, OPAE argues that the amount FirstEnergy proposes is based on historic data, which is inaccurate because it reflected production characteristics during the period when the American Reinvestment and Recovery Act funding was available, which is no longer the case. Consequently, OPAE argues that the funding for the low-income program should be increased over the amounts proposed by FirstEnergy by \$3 million, \$4 million, and \$5 million, in 2013, 2014, and 2015, respectively. Additionally, OPAE proposes that the extra funding be provided to the program through the DSM rider. (OPAE at 2-7; OPAE Reply at 4-5.)

In their reply brief, the Companies note that the proposed plans have allocated \$5 million per year in the aggregate, or \$15 million over the span of the plan period, for the low-income program. *See ESP 3 Case*, Opinion and Order (July 18, 2012) at 13. The Companies contend that there is no evidence in the record to demonstrate that the collaborative group approved OPAE's recommended \$12 million budget increase and that the statistics provided by OPAE are unsupported by the record and irrelevant for purposes of this issue. (FirstEnergy Reply at 31-32; Co. Ex. 4 at 9-10.)

The Commission is not persuaded that the evidence in this proceeding demonstrates that funding for the low-income program should be increased by $12 million. The Commission finds that the Companies' proposal to continue funding of the low-income program at the current rate of $5 million per year, or $15 million over the span of the plan period, is appropriate and supported by the record (Co. Ex. 4 at 9-10).

d. Retro-Commissioning Program

The Environmental Advocates argue that FirstEnergy's plan should be modified to include retro-commissioning, or the diagnosis and correction of operational problems in a building's energy systems and equipment to ensure that it operates according to its intended design. More specifically, the Environmental Advocates assert that the Companies should implement a retro-commissioning program for large C&I customers, as well as a "lite" retro-commissioning program for smaller C&I programs. The Environmental Advocates argue that, to fund a retro-commissioning program, the Commission should require the Companies to increase the plan budget by $3.5 million. (Environmental Advocates at 47-49; NRDC Ex. 1 at 15, 17.)

The Companies claim that they have included incentives for retro-commissioning in the custom buildings component of the C&I Energy Efficient Buildings Program - Large, and have allocated appropriate funding to this program based on market potential. FirstEnergy argues that this approach is consistent with the draft TRM, which provides no way to measure savings from a standalone retro-commissioning program. Consequently, FirstEnergy urges the Commission to reject the Environmental Advocates' recommendation regarding a retro-commissioning program, further explaining that it contains no specific design or budget. (FirstEnergy Reply at 36-37; Tr. Vol. IV at 722-723.)

The Commission finds that the Environmental Advocates' recommendation to include retro-commissioning is adequately addressed by the Companies' inclusion of incentives for retro-commissioning within the custom buildings component of the C&I Energy Efficient Building Program - Large, which already has funding allocated under the proposed plan and is an approach consistent with the draft TRM. Consequently, the Commission finds that it is unnecessary to implement and separately fund a retro-commissioning program as proposed by the Environmental Advocates.

e. Lighting Programs

i. Standard T-8 Fixtures

The Environmental Advocates state that, in June 2012, a provision in the 2007 EISA went into effect, prohibiting the manufacturing or importation of T-12 and standard T-8 fluorescent lamps. The Environmental Advocates claim that, due to this provision, the T-8 lamps will soon be disappearing from business installations without any influence on the part of the Companies, and, consequently, criticize the Companies for incenting standard T-8 lighting installations that provide for the early retirement of T-12 lighting installations. The Environmental Advocates argue that, to provide a consistent message to the market, maximize the impact of customer engagement, and ensure incentive dollars are not wasted, the Commission should not permit the Companies to provide incentives for T-12 to T-8 retrofits. (Environmental Advocates at 55-56; Co. Ex. 21 at 4; Sierra Club Ex. 1 at 11-12.) ELPC/OEC also make this argument, asserting that, due to the new standards, manufacturers will cease producing new T-12 fixtures, limiting the number remaining available for purchase. Consequently, ELPC/OEC contend that, due to this change in market circumstances, the standard T-8 will be the least efficient fixture on the market once the T-12 fixtures are phased out, and FirstEnergy should start discounts and rebates with the high performance T-8 fixtures, so as not to incent the least efficient fixture on the market. (ELPC/OEC at 23-25; Sierra Club Ex. 1 at 12; ELPC/OEC Ex. 1 at 11-12.)

FirstEnergy responds to the Environmental Advocates' and ELPC/OEC's arguments by noting that the Commission has supported the as-found condition for early retirement as the baseline for determining energy savings in *In re the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC (*EM&V Case*), Finding and Order (Oct. 15, 2009), which supports incenting a standard T-8 lighting installation to replace a T-12 lighting installation. The Companies assert that EISA has prohibited the manufacturing or import of T-12 fixtures as of July 14, 2012, and that, as T-12 fixtures will likely remain in retail stock or customer inventory for a period of time, there will be opportunities to incent replacement of T-12 fixtures with standard T-8 fixtures. Further, the Companies point out that there is a 22 percent price differential between high performance T-8 fixtures and standard T-8 fixtures, and contend that the proposed program is an affordable alternative for customers that will generate greater customer participation in the program as well as significant energy savings where other measures may be cost prohibitive for a customer. Finally, the Companies argue that the Environmental Advocates and ELPC/OEC cannot predict what types of technology will be available in the future, and that a flexible rebate strategy will allow the Companies to adapt their proposed plans appropriately over the course of the plan period. (FirstEnergy Reply at 40-42; Co. Ex. 21 at 4-5.) In its reply brief, IEU-Ohio also disputes the Environmental Advocates' and ELPC/OEC's arguments, contending that prohibiting incentives for upgrading lighting would ignore for compliance purposes the actual energy savings that result from upgrading to higher efficiency light fixtures (IEU-Ohio Reply at 8-9).

In their joint reply brief, ELPC/OEC reiterate their argument that the Companies should not discount standard T-8 fixtures, contending that FirstEnergy witness Miller did not cite any market data to support his claim that T-12s will remain on the market; that customers will remain free to choose standard T-8s, but that this purchase should not be subsidized; and that the EISA standards have eliminated T-12 fixtures from the market, making standard T-8 fixtures the least efficient product available, which should not be incentivized. (ELPC/OEC Reply at 5-6.) In its reply brief, OPAE echoes ELPC/OEC's argument, contending that the Commission should require the Companies to modify their proposed program to eliminate marginal measures such as standard bulbs from programs, and to increase rebates for high performance technologies (OPAE Reply at 2-3).

The Commission finds that, despite EISA's prohibition of manufacturing or import of T-12 fixtures as of July 14, 2012, the T-12 fixtures will likely remain in retail stock or customer inventory for a period of time, during which, as FirstEnergy and IEU-Ohio point out, there will be opportunities for actual energy savings by incenting standard T-8 fixtures (Co. Ex. 21 at 4-5). Further, the Commission finds that the Companies have taken into consideration the varying efficiencies available on the market, and have planned accordingly to incent standard T-8 fixtures at a lower amount than more efficient fixtures.

ii. EISA Standards

ELPC/ OEC contend that the Companies should not use the EISA standards as the baseline to determine energy savings for CFLs and LEDs. ELPC/OEC contend that using these standards vastly overstates the savings generated by FirstEnergy's lighting program, because FirstEnergy witness Miller acknowledged that the Companies do not know whether EISA-compliant bulbs between the 43-watt EISA standard and 15-watt CFLs will be on the market. If such bulbs are very few, or not on the market at all, ELPC/OEC argue that the Companies should not be permitted to take credit for generating savings from the program, because the program discount did not actually generate the savings. Consequently, ELPC/OEC recommend that the baseline for determining savings should not be the EISA minimum, but should be the energy used by EISA-compliant CFLs. (ELPC/OEC at 21-23; Tr. Vol. VI at 1069-1071.)

In its reply brief, FirstEnergy counters the arguments of ELPC/OEC, by arguing that the availability of such fixtures in the market can only be known after the EISA standards take effect and manufacturers build up the capacity to replace the old bulbs. Thus, the Companies contend that no party can predict with certainty what will exist in the market at what specifications and prices in the future. Additionally, FirstEnergy notes that EISA is a federal standard as the baseline to determine energy savings for CFLs and LED, and that the draft TRM and EM&V standards established by the Commission in the *EM&V Case* direct that the EISA standards should be used as a baseline. *See EM&V Case*, Finding and Order (Oct. 15, 2009) at 9. (FirstEnergy Reply at 27-28.)

In their reply brief, ELPC/OEC contend that the Commission should order the Companies to recalculate their savings estimates for screw-in energy efficient bulbs in light of the new EISA standards and evidence in the record regarding the market in FirstEnergy's territory over the next three years, and that the baseline should not be set by the EISA standard, but by what will actually be available to customers in the market. More specifically, ELPC/OEC contend that EISA will reduce the baseline for a 60-watt incandescent lamp to 43 watts effective January 1, 2014, and that in 2014 and 2015, the EISA standard should not be the new baseline. (ELPC/OEC Reply at 3-4.)

The Commission found in the *EM&V Case*, Finding and Order (Oct. 15, 2009) at 9, that, "[f]or purposes of calculating compliance with statutory benchmarks for programs other than those targeting early retirement of functioning equipment, the baseline should be set at the higher of federal or state minimum efficiency standards, or, if data is readily available for the measures at issue on the Department of Energy's Energy Information Administrator (DOE EIA) website's efficiency levels for current market practices for those measures." Consequently, the Commission finds that FirstEnergy's use of the EISA standards as the baseline to determine energy savings for CFLs and LEDs is reasonable and is not persuaded by ELPC/OEC's recommendations.

iii. LED Technology and Street-Lighting Program

ELPC/OEC argue that the Companies should include efficient LED lighting technologies in their street-lighting services and tariffs on the basis that the lack of an LED street-lighting program represents a failure to take advantage of a simple and important efficiency opportunity that would generate savings at no cost to the Companies' customers. (ELPC/OEC at 25; ELPC/OEC Ex. 1 at 9-11.)

The Companies respond that ELPC/OEC's suggestion is outside the scope of this proceeding because it requests that the Companies modify part of their existing distribution system. Further, the Companies contend that there is no evidence in the record that the Companies' existing facilities could accommodate those types of fixtures and that there is no evidence in the record as to the rates associated with owning, installing, and maintaining this type of equipment. (FirstEnergy Reply at 42.)

The Commission is not persuaded that the evidence in this proceeding demonstrates that the Companies should include efficient LED lighting technologies in their street-lighting services and tariffs. Further, the Commission agrees with the Companies that, to the extent ELPC/OEC's recommendation requests the Companies modify part of their existing distribution system, it is beyond the scope of this proceeding.

f. Residential New Construction Program

The Environmental Advocates propose that the Residential New Construction Program be revised to make ENERGY STAR version 3.0 an option, not a requirement, and to develop a tiered incentive structure. The Environmental Advocates argue that this would lower the barrier for builder participation and would provide incentive for savings beyond ENERGY STAR. (Environmental Advocates at 29.)

In its reply brief, the Companies contend that, consistent with the program currently in effect, the proposed program has attempted to minimize free ridership by requiring ENERGY STAR version 3.0, which is above Ohio's standard residential building code (FirstEnergy Reply at 29; Tr. Vol. III at 655).

The Commission finds that the Companies' proposed Residential New Construction Program is reasonable and is not persuaded that the evidence in the record demonstrates a need to make ENERGY STAR version 3.0 an option instead of a requirement or to develop a tiered incentive structure. Conversely, the Commission agrees with the Companies that the barrier for participation proposed by the Companies appropriately minimizes free ridership.

g. Administration of Residential Programs

The Environmental Advocates contend that the Companies have been unwilling to dedicate sufficient management attention and ingenuity to energy efficiency programs and, consequently, recommend that the Commission devolve administration and implementation of the residential portfolio to a board. Specifically, the Environmental Advocates propose that the Commission assign a board the task of administering the residential programs, issuing and managing requests for proposals (RFPs), monitoring program progress, making mid-stream adjustments to programs, contracting for evaluation, measurement, and verification, and reporting to the Commission. The Environmental Advocates recommend that the proposed board be comprised of OCC, a representative of the Environmental Advocates, a representative of low-income groups or the community action agencies intervening in this case, a representative of home performance/HVAC contractors, and a representative of municipal governments in the Companies' service territory. Additionally, the Environmental Advocates propose that Staff and a representative of the Companies should participate in the proposed board in non-voting roles. (Environmental Advocates at 63-65; NRDC Ex. 4 at 6, 8, 22-24.) In its reply brief, OCC joins the Environmental Advocates' recommendation that the Commission appoint a third party administrator to design and implement the Companies' residential programs (OCC Reply at 21-22).

FirstEnergy responds that the recommendation that the Commission assign a board with the task of administering residential programs is unlawful, as Ohio law requires that "an electric distribution utility shall implement energy efficiency programs" and "an electric distribution utility shall implement peak demand reduction programs." *See* Section 4928.66(A(1)(a),(b), Revised Code. FirstEnergy argues that the Commission's jurisdiction extends only to EE/PDR program design and implementation by the electric distribution utilities and does not include *ad hoc* boards. Further, FirstEnergy disputes the Environmental Advocates' assertion that the Companies have failed to be attentive to energy efficiency programs, arguing that, since the statutory energy efficiency targets were established, all of the Companies have achieved their peak demand reduction targets each year, with the exception of Ohio Edison in 2010 and 2011 (FirstEnergy Reply at 72-74; Tr. Vol. I at 96-97.)

The Commission declines to finds that the evidence in the record demonstrates that the Companies have been unwilling to dedicate appropriate attention and ingenuity to their energy efficiency programs. Conversely, as FirstEnergy pointed out, the Companies have achieved their peak demand reduction targets each year since the statutory targets were established, with the exception of Ohio Edison during two years. Consequently, the Commission finds that there is no demonstrable need for the board proposed by the Environmental Advocates at this time.

h. Data Center Subprogram

The Environmental Advocates argue that the Companies' plan should be modified to include a stand-alone data center program, as the Companies' plan currently directs no program activity specifically at data centers and servers. The Environmental Advocates argue that the Commission should specifically require the Companies to increase the plan budget by $4.2 million for a dedicated data center program; hire an implementation vendor with experience in designing information technology systems; implement a facility assessment to identify server room and data center efficiency opportunities; and, provide payment at standard incentive levels for server room and data center efficiency projects. (Environmental Advocates at 45-47; NRDC Ex. 1 at 9, 11-13.) ELPC/OEC also argue that the Companies should expand their proposed data center subprogram, on the basis that, according to ELPC/OEC witness Crandall, such a program is a prime opportunity for energy efficiency. ELPC/OEC note that FirstEnergy witness Miller testified on rebuttal that the Companies would commit to develop a subprogram to specifically target data center participation. ELPC/OEC further assert that the Commission should ensure that the Companies address the need for specialized knowledge by requiring that FirstEnergy address the need for more specialized information technology work. (ELPC/OEC at 30; ELPC/OEC Ex. 1 at 7; Co. Ex. 21 at 8.)

In their reply brief, the Companies state that, as described by FirstEnergy witness Miller, the new data center subprogram will be a component of, and supported from, the existing budget of the C&I Efficient Equipment Program - Small and Large. The Companies argue that the Environmental Advocates' argument that the overall budget of the data center subprogram should be increased by $4.2 million is unexplained and unnecessary. Further, the Companies argue that the Environmental Advocates' suggested measures for the data center subprogram provide few details and are not specific. Consequently, the Companies state that they will work with interested stakeholders on the implementation of the data center subprogram, but argue that the Commission should reject the changes proposed by NRDC and ELPC/OEC. (FirstEnergy Reply at 35-36; Co. Ex. 21 at 8; Tr. Vol. IV at 720; Tr. Vol. VI at 1059-1060.)

The Commission finds that there is no demonstrable need to include a stand-alone data center program given the Companies' inclusion of a new data center subprogram as a component of the C&I Efficient Equipment Program - Small and Large, which is already funded under the proposed plan (Co. Ex. 21 at 8). Consequently, the Commission finds that it is unnecessary to implement and separately fund a stand-alone data center program as proposed by the Environmental Advocates and ELPC/OEC.

i. T&D Improvement Program and Mercantile Customer Program

i. T&D Improvement Program

ELPC/OEC contend that the Commission should not allow FirstEnergy to count savings from its T&D Improvement Program in the plan. In support, ELPC/OEC point out that Rule 4901:1-39-07(A)(1), O.A.C., only permits companies to count savings from T&D improvements if the improvements are undertaken primarily for energy efficiency or demand reduction purposes, but that FirstEnergy witness Miller testified that the Companies' T&D Improvement Program would be primarily undertaken for ensuring reliable load-serving capabilities. Further, ELPC/OEC claim that FirstEnergy failed to conduct an assessment of potential energy savings and peak-demand reduction from adoption of energy efficiency and demand response measures as required by Rule

4901:1-39-03, O.A.C. (ELPC/OEC at 31-32; Co. Exs. 12-14 at Appendix D, Market Potential Study at 12; Tr. Vol. III at 432.)

In their reply brief, the Companies emphasize that the T&D Improvement Program is a continuation of the existing program. Further, the Companies respond to ELPC/OEC's argument by noting that Rule 4901:1-39-07(A)(1). O.A.C., relied upon by ELPC/OEC, does not relate to the counting of T&D projects for purposes of benchmark compliance, but pertains to allocation of T&D project costs for purpose of cost recovery. Additionally, the Companies contend that Section 4928.66(A)(2)(d), Revised Code, expressly authorizes electric distribution utilities to satisfy the statutory benchmarks by using, in part, "transmission and distribution infrastructure improvements that reduce line losses," in contrast to ELPC/OEC's argument that only those projects undertaken primarily for energy efficiency or demand reduction purposes may be counted. Consequently, the Companies conclude that ELPC/OEC's arguments are based on misinterpretations of Ohio law and should be rejected. (FirstEnergy Reply at 14-15.)

The Commission finds that the Companies have correctly interpreted Section 4928.66(A)(2)(d), Revised Code, and may count T&D projects that reduce line losses for purpose of compliance with statutory benchmarks.

ii. "As Found" Savings

ELPC/OEC argue that the Commission should not permit FirstEnergy to include "as found" savings in its calculations. ELPC/OEC note that 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. In so arguing, ELPC/OEC admit that the Commission has allowed such savings in *In the Matter of the Mercantile Customer Pilot Program for Integration of Customer Energy Efficiency or Peak Demand Reduction Programs*, Case No. 10-834-EL-POR (*Pilot Program Case*), but contend that the Commission's ruling in that case was erroneous and that the "as found" method conflicts with the Commission's own regulations, including Rule 4901:1-39-05(F), O.A.C. (ELPC/OEC at 33-34.)

In its reply brief, FirstEnergy disputes ELPC/OEC's contention that "as found" savings should not be included as part of the Mercantile Customer program, arguing that whether "as found" savings will continue to be authorized is a question that will be resolved in the pilot program proceeding, and not in this portfolio case. Additionally, FirstEnergy notes that the Commission has determined that "as found" savings methodology is preferable because it reasonably, practically, and expeditiously assists in the implementation of energy efficiency and peak demand reduction mandates. (FirstEnergy Reply at 15-16; *Pilot Program Case*, Sixth Entry on Rehearing (Oct. 31, 2012) at 4.) In its reply brief, IEU-Ohio also urges the Commission to reject ELPC/OEC's proposal to disallow "as found" savings, arguing that the Commission has previously found that the "as found" method is lawful and supports policy goals (IEU-Ohio Reply at 6-8; *Pilot Program Case*, Second Entry on Rehearing (May 25, 2011) at 4, Sixth Entry on Rehearing (October 31, 2012)). Additionally, in its reply brief, OEG asserts that it supports the continued use of the "as found" method, and argues that such issues are more appropriately addressed in the pending *Pilot Program Case* (OEG Reply at 2).

The Commission finds that the issue of whether "as found" savings methodology may continue to be used is more appropriate for resolution in the pending *Pilot Program Case*; and, consequently, we will not address the issue in this proceeding.

j. C&I Energy Efficient Programs

In its initial brief, Staff contends that the Companies should improve their proposed Energy Efficient programs for large C&I customers by increasing the budgets for OE and CEI and implementing a detailed system of tracking rebates. More specifically, Staff argues that, during its initial portfolio, OE and CEI needed to reallocate funds on a number of occasions in order to properly fund their large C&I commercial lighting program. In its proposed plan, Staff argues that FirstEnergy's current budgets still do not appear to properly align with the number of large C&I customers in each operating company's territory, in that TE's budget exceeds OE and CEI's budgets, despite TE having fewer customers that use less electricity. Staff recommends that, accordingly, FirstEnergy should increase the amount allocated to OE's and CEI's large C&I customers by basing its budgets on the square-footage of large C&I customers within each service territory and the amount of megawatt-hour (MWh) sales to these customers. (Staff at 3-5; Staff Ex. 1 at 4-5; Tr. Vol. III at 446, 507-511; Tr. Vol. IV at 785-787.)

In its reply brief, FirstEnergy contends that it has carefully developed its budgets for the proposed programs based on participation projections that take into account historical performance of the program, customer make up, and feedback from implementation vendors. Further, the Companies point out that Staff witness Scheck stated he has no reason to believe that the Companies' projections are incorrect. (FirstEnergy Reply at 43-44; Tr. Vol. III at 441-446; Tr. Vol. IV at 783.)

Despite Staff's assertion that FirstEnergy's budgeting does not appear to properly align with the number of applicable customers in each territory, the Commission finds that FirstEnergy has offered a reasonable explanation of its budget allocation based upon historical performance, customer make up, and feedback. Consequently, the Commission does not find it necessary to adopt Staff's recommendations at this time; however, the Commission notes that it could order such reallocation at a later time. Additionally, the Commission finds that, given Staff's concerns, FirstEnergy should file a report in this docket one year following the issue of this Opinion and Order. In its report, the Companies shall detail how the Companies' participation projections have compared to actual participation in the programs. Further, to the extent participation has been inconsistent with projections, the Companies shall propose reallocation consistent with actual participation. (Staff Ex. 1 at 4-5.)

k. C&I Continuous Improvement Program

The Environmental Advocates recommend that the Companies' plan be modified to include a continuous improvement program for large C&I customers, on the basis that such a program would help targeted, interested large customers establish energy teams, develop a baseline and reduction goal, and progress toward that goal using assistance provided by the Companies' implementation vendor. The Environmental Advocates contend that the Commission should require the Companies to increase the plan budget by $9 million for a dedicated continuous energy improvement program; engage an implementation vendor experienced in delivering continuous energy improvement programs in the manufacturing sector; target interested customers within the Companies' "top 100" customers; and, model the program on the AEP-Ohio program. (Environmental Advocates at 51-54; NRDC Ex. 1 at 17.)

The Companies claim that a budget increase of $9 million is unnecessary for a continuous improvement program, citing the testimony of FirstEnergy witness Miller that the Companies will be able to engage their largest customers to promote energy efficiency through their implementation vendors and customer service representatives without the added costs of a continuous energy improvement program. Additionally, the Companies assert that the Environmental Advocates have failed to support their suggestion with any analysis of market potential, cost effectiveness, or savings projections. (FirstEnergy Reply at 37-38; Co. Ex. 21 at 8-9.)

The Commission is not persuaded that the evidence in this proceeding demonstrates a need for a C&I continuous energy improvement program at this time, given that testimony indicated the Companies would be able to engage their largest customers through implementation vendors and customer service representatives without a dedicated continuous energy improvement program (Co. Ex. 21 at 8-9). Therefore, the Commission declines to modify the plan as proposed by the Environmental Advocates at this time.

l. C&I New Construction Program

The Environmental Advocates argue that the Companies' plan fails to include any program activity directed at new construction of large C&I customer facilities, and, consequently, contend that the Companies should develop a program that engages an implementation vendor with experience successfully delivering new construction programs; is available to both large and small C&I customers; offers direct design assistance and financial incentives to cover the cost of additional high-efficiency system design and engineering; and allows customers to receive incentives for installed energy efficiency measures using the Companies' existing rebate structure (Environmental Advocates at 49-51).

In their reply brief, the Companies note that, while NRDC witness Swisher criticized the projected savings of the Companies' new construction program, the Environmental Advocates failed to analyze what the savings projections should be and did not propose an alternative program. Consequently, the Companies argue that the Commission should reject the Environmental Advocates' proposal. (FirstEnergy Reply at 38; Tr. Vol. IV at 726.)

The Commission does not find that a need has been demonstrated for a construction program for large C&I customers at this time. However, as previously stated, the Environmental Advocates are free to bring a proposal for such a program before the collaborative in order to explore it for inclusion in future plans.

m. Small Business Direct Install Program

The Environmental Advocates argue that the Companies' plan should be modified to include a small business direct install program, which would utilize high incentives with simple program requirements and prescriptive measures. The Environmental Advocates contend that a portion of the energy efficiency kit budget should be reallocated for a small business direct install program. (Environmental Advocates at 54-55; Sierra Club Ex. 1 at 10.)

The Companies reply that, despite their recommendation, the Environmental Advocates have conducted no analysis of a plan for a direct install program, have not proposed a specific budget, and have adduced no TRC value or savings. Consequently, the Companies state that there is no basis in the record to support the Environmental Advocates' proposed separate direct install program. (FirstEnergy Reply at 39; Tr. Vol. III at 589.)

The Commission finds that no need has been demonstrated for a small business direct install program at this time. However, as repeatedly stated, the Environmental Advocates may bring such a proposal before the collaborative.

n. Rebate Process Tracking and Customer Surveys

Staff recommends that FirstEnergy improve its large and small C&I programs by closely tracking when applications are received and accepted and when rebates are paid. Staff mentions that FirstEnergy previously had issues with its commercial lighting program, which could have been rectified by closely monitoring the number of approved applications and the total rebates paid. In order to avoid these issues in the proposed plan, Staff recommends that FirstEnergy implement a detailed tracking system that should include date stamping of all applications received; written notification to applicants of any deficiencies in the application and explanation of how the deficiency may be remedied; and, completion of review and submission of rebates within 45 days of receipt of an approved application. Staff further recommends that the Companies report this information to Staff or the collaborative on a quarterly basis. Finally, Staff proposes that the Companies perform a customer survey after each particular customer receives a rebate in order to provide the Companies with feedback regarding particular problems or issues that arose during the application and rebate process. (Staff at 6-7; Staff Ex. 1 at 6-7; Tr. Vol. IV at 780-781, 788-789.)

OPAE also addresses the rebate process, proposing that the Companies move from paper-based rebate applications to online rebate applications that could reduce error and accelerate rebate processing (OPAE Reply at 3).

In its reply brief, FirstEnergy states that it will work with Staff on the rebate process and, consequently, it is unnecessary for the Commission to order specific rebate procedures (FirstEnergy Reply at 44).

The Commission finds that Staff's recommendations for improvements in rebate process tracking and for customer surveys are reasonable and should be adopted (Staff Ex. 1 at 6-7; Tr. Vol. IV at 786-788, 789-791). Accordingly, the Companies are directed to work with Staff on the details of the implementation of these recommendations.

o. "Track and Tune" Program for Manufacturers

OMAEG argues that more program offerings are needed that accommodate a manufacturer's unique energy opportunities. OMAEG proposes that, to alleviate constrained capital funding for manufacturers that limits opportunities for equipment replacement, the Companies should implement a "track and tune" program. OMAEG specifies that a "track and tune" program would incent manufacturers to optimize the sequence of operations and control-logic of their industrial process and ancillary supporting equipment. OMAEG emphasizes that OMAEG witness Seryak's testimony was specific to manufacturers, not the commercial sector. Further, OMAEG contends that it would be far less costly and more effective for FirstEnergy to create a stand-alone track and tune program, rather than serving these needs as custom measures not warranting their own program. Further, OMAEG contends that, although OMAEG witness Seryak's testimony did not offer a specific program design, FirstEnergy could look to AEP-Ohio's Continuous Improvement Program, or other national programs like Bonneville Power Authority's Track and Tune, to determine a program budget and design. (OMAEG at 2-3; OMAEG Reply at 1-4.)

In its reply brief, FirstEnergy asserts that OMAEG witness Seryak lacked an opinion regarding the appropriate design or budget of a track and tune program, and agreed that a large percentage of manufacturing customers' energy efficiency programs are specific to their premises and require customized solutions. FirstEnergy argues that this characteristic of most manufacturing customers supports the Companies' plan to offer this program as a custom measure. (FirstEnergy Reply at 37; OMAEG Ex. 101 at 4; Tr. Vol. IV at 750.)

The Commission agrees with FirstEnergy that, until questions regarding program design and budget can be addressed, OMAEG's proposal for a "track and tune" program is better addressed as a custom measure (Tr. Vol. IV at 745-746). However, the Commission expects that FirstEnergy will gather information based upon its experience and will work with the collaborative to determine if a "track and tune" program should be specifically offered as part of its next program portfolio filing.

p. Prescriptive Measures for Manufacturers

OMAEG argues that the Companies' prescriptive measures are largely targeted at commercial loads, which increases the burden of custom analysis on industry. OMAEG proposes that, as recommended by OMAEG witness Seryak, the Companies should develop a pilot program of three industry-specific prescriptive measures and should cover a fraction of the development cost at a $0.01/kWh commission on such projects. OMAEG recommends that the projects include industrial insulation, cogged V-belts, and venturi compressed air nozzles. (OMAEG at 4-5.)

In their reply brief, the Companies assert that OMAEG fails to provide meaningful detail on its proposed program. Further, the Companies contend that the recommended programs are not appropriate as they require custom designs based on the customer application, and are otherwise eligible as a custom measure in the Companies' plans. (FirstEnergy Reply at 43; Tr. Vol. IV at 749-750.)

The Commission agrees with FirstEnergy that OMAEG's recommendation for prescriptive measures for manufacturers lacks sufficient detail to be adopted at this time (Tr. Vol. IV at 749-750). However, the Commission directs the Companies to work with OMAEG and Staff, through the collaborative process, to develop a recommended program in the Companies' next program portfolio filing.

q. ENERGY STAR Portfolio Manager Benchmarking Program

OHA proffers that FirstEnergy's plan would benefit from an ENERGY STAR portfolio manager benchmarking program within the suite of large and small C&I programs. In support, OHA claims that, as testified to by OHA witness Lanning, the benchmarking program would be a simple and efficient way to alert customers that their energy consumption might be out of line with other customers of like size and industry, informing them that they should seek out the benefits of specific EE/PDR programs offered by FirstEnergy. Additionally, OHA remarks that, through the rebuttal testimony of FirstEnergy witness Miller, the Companies responded favorably to OHA's recommendations and agreed to earmark an additional $50,000 over the term of the plan to enable OHA to conduct ENERGY STAR portfolio manager benchmarking for OHA member hospitals served by FirstEnergy. (OHA at 4-5; OHA Reply at 1-2; OHA Ex. 1 at 4; Co. Ex. 21 at 6.)

In their reply brief, the Companies note that they agreed to earmark an additional $50,000 over the term of the proposed plans to enable OHA to conduct ENERGY STAR portfolio manager benchmarking for OHA member hospitals served by the Companies (FirstEnergy Reply at 35).

The Commission finds that the agreed upon recommendation should be adopted (Co. Ex. 21 at 6).

r. Energy Audit Program

OHA contends that the Energy Audit Program, as currently exists, can be improved. More specifically, OHA notes that, although the audit program has been available since May 2012, it has not yielded any applications, which OHA witness Lanning testified is evidence that the current audit program is inadequate. OHA proposes that FirstEnergy increase funding for audits up to 50 percent of the cost of the study, with different caps set by the customer segment; provide for customer-specific flexibility as to the type of the audit depending on the particular circumstances of the customers; and require customers to pay the out-of-pocket expenses of the audit, with reimbursement coming from a portion of the savings generated from the implementation of audit recommendations. OHA further notes that, through the rebuttal testimony of FirstEnergy witness Miller, the Companies indicated that they will earmark funds to offset all or a portion of the cost of a health audit, and recommended that the funds be paid through OHA in an amount not to exceed the lesser of $5,000 or 50 percent of the cost of the audit. (OHA at 5-6; OHA Reply at 1-2; OHA Ex. 1 at 5-7; Co. Ex. 21 at 6.)

OMAEG contends that the Commission should require the Companies to include technical assistance for manufacturers within the plan on the basis that the largest electrical loads typically require custom-measure analysis, imposing an additional cost to the manufacturer to participate in a program. OMAEG points out that the only available technical assistance for a level II energy audit is $4,000, and argues that the cap should be $4,000 for facilities using less than $3,000 per year in energy, and should be increased to $1.50 per MWh for facilities that use more than 3,000 MWh/year. (OMAEG at 3.)

Staff recommends that FirstEnergy increase the audit payment amount for its small C&I customers from $4,000 to $5,000. Further, Staff recommends that FirstEnergy allow customers to reduce the overall costs of the audit by installing recommended prescriptive measures that result from the audit. Further, Staff recommends that, for larger customers, the Companies should pay 50 percent of the audit cost because the audits can cost substantially more than $5,000. Staff also recommends that large customers be permitted to reduce 50 percent of the audit cost by installing recommended prescriptive measures. Finally, Staff asserts that the Companies should require customers that fail to install the recommended prescriptive measures within six months of the audit to pay for the cost of the audit in order to better invest customers in meeting the audit report recommendations. (Staff at 13-14; Staff Ex. 1 at 7-8, 10; Tr. Vol. IV at 792.)

In their reply brief, the Companies acknowledge Staff and OMAEG's recommendations that the Companies increase the caps for audits, but argue that neither provides any specific details other than the caps proposed. Nevertheless, the Companies propose to work with Staff and OMAEG in implementing the audit program. (FirstEnergy Reply at 35.)

The Commission finds that the recommendations set forth by OHA and Staff are reasonable and appear to be consistent with FirstEnergy's intent in its application. Consequently, the Commission finds that FirstEnergy should move forward with its agreement with OHA to earmark funds to offset all or a portion of the cost of a health audit in an amount not to exceed $5,000 or 50 percent of the cost of the audit, whichever is less (Co. Ex. 21 at 5-6). Additionally, the Commission finds that the Companies should implement Staff's recommendation to increase the audit payment amount for small C&I customers from $4,000 to $5,000; allow customers to reduce the overall costs of the audit by installing recommended prescriptive measures that result from the audit; for larger customers, pay 50 percent of the audit cost, and allow large customers to reduce 50 percent of the audit cost by installing recommended prescriptive measures; and require customers that fail to install the recommended measures within six months of the audit to pay for the cost of the audit (Staff Ex. 1 at 7-8, 10; Tr. Vol. IV at 791-794).

Finally, the Commission finds that the concerns presented by OMAEG will be partially addressed by the adoption of Staff's recommendations; but finds that OMAEG's request to increase technical assistance to a certain dollar amount per megawatt hour is unnecessary.

s. Rider DSE2

IEU-Ohio argues that FirstEnergy's proposal to modify the mercantile customer commitment agreement, through which mercantile customers commit their customer-sited capabilities for integration with the portfolio plan in return for an exemption from the demand side energy (DSE2) Rider, should be rejected. IEU-Ohio argues that, contrary to FirstEnergy's argument, such modification could decrease the economic viability of mercantile self-funded projects and negatively impact the total amount of mercantile projects completed as well as the amount of energy efficiency resources bid into future PJM auctions. (IEU-Ohio at 1-2.)

Nucor asserts that the DSE2 charge, which is adjusted on a semi-annual basis, subjects GT customers to highly volatile and high DSE2 charges. For example, Nucor states that the DSE2 charge has increased by as much as 625 percent from one rate adjustment period to the next. Additionally, Nucor argues that, because the DSE2 charge is a per kWh charge, the very largest industrial customers pay a disproportionate share of FirstEnergy's EE/PDR program costs. In order to create a more equitable distribution of cost responsibility for the portfolio costs, Nucor claims that FirstEnergy should be required to allocate mercantile sector program costs among rate schedules General Service - Primary (GP), General Service - Subtransmission (GSU), and General Service - Transmission (GT) based on distribution revenue or a reasonable forecast of program usage by those rate schedules. Additionally, Nucor contends that FirstEnergy should apply a reasonable cap on the level of DSE2 charge that a GT customer has to pay in a given month in the amount of $10,000 per month, consistent with the testimony of OEG/Nucor witness Goins. Finally, Nucor contends that a declining block rate, customer charge, or a higher cap would be reasonable alternatives with the same result of equitably distributing costs. (Nucor at 4-5, 12-14; Nucor Reply at 3-4; OEG/Nucor Ex. 1 at 10-13.)

OEG also contends that the Companies' DSE2 charge is volatile and suggests that the Commission reduce the volatility by initially allocating costs among large enterprise customers based upon projected program expenditures by rate schedule, and not kWh usage. Further, OEG recommends that, to remedy the potential for disproportionately high DSE2 charges to individual large GT customers, the Commission should establish an individual customer cost cap of no more than $500,000 per year. OEG states that this amount is equal to the maximum amount of rebate those customers could receive under the Mercantile Self Direct Program. (OEG at 2-8; OEG Reply at 2; OEG/Nucor Ex. 1 at 7-14.)

In its reply brief, FirstEnergy argues that Nucor and OEG's criticism of the existing DSE2 charge does not justify amendments to the proposed plans because the Companies' filing in this proceeding has not put at issue any rate design questions and no evidentiary support was presented to support Nucor and/or OEG's positions (FirstEnergy Reply at 69-70; OEG/Nucor Ex. 1 at 7; Tr. Vol. II at 243).

The Commission finds that FirstEnergy's proposal to modify the commitment agreement should be approved. This modification will allow the Companies to obtain ownership of the energy efficiency attributes, as a condition of for receiving an exemption from the DSE2 Rider and bid such savings into the appropriate base residual auction. The Commission notes that the plain language of Section 4928.66(A)(2)(c), Revised Code, states that the Commission "may exempt" mercantile customers from the cost recovery rider for EE/PDR programs; therefore, there is no statutory prohibition against conditioning such exemption on the transfer of the energy savings attributes. Further, as noted above, bidding the energy efficiency attributes into the base residual auctions will provide funds to offset the cost of the EE/DR programs, lowering the costs for all customers, and will help reduce the cost of capacity in the Companies service territories.

Moreover, the Commission will decline to adopt the recommendations by OEG and Nucor regarding the rate design for the DSE2 Rider. The Commission finds that issues regarding rate design for existing riders are better addressed in the Companies' next standard service offer proceeding.

F. Collaborative Process

ELPC/OEC argue that the collaborative process, as it currently exists, is ineffective and should be changed. More specifically, ELPC/OEC contend that the collaborative meetings are held infrequently and irregularly, and that, when the meetings do occur, the Companies do not provide materials to collaborative members with sufficient time for meaningful review. ELPC/OEC recommend that the Commission require the Companies to provide meeting materials at least one week in advance of collaborative meetings and, additionally, to hold quarterly collaborative meetings. (ELPC/OEC at 42-43; ELPC/OEC Ex. 1 at 15.)

The Companies argue in their reply brief that the collaborative process is effective and does not provide a basis for rejection of the proposed plans. More specifically, the Companies state that they have attempted to provide materials at least one week in advance of meetings when the circumstances allow and that FirstEnergy's Vice President of Energy Efficiency committed to the collaborative to attempt to accommodate this request for every meeting going forward. Further, the Companies state that they already hold meetings quarterly, and that none of the suggested changes to or criticisms of the proposed plan were raised in the collaborative by any member. (FirstEnergy Reply at 52-55; Co. Ex. 1 at 8-9; Tr. Vol. III at 475-476, 560; Tr. Vol. V at 1028, 1038.)

The Commission finds that both recommendations to improve the collaborative process should be adopted. ELPC's request for regular quarterly meetings of the collaborative is reasonable and should improve communications among the collaborative members. Likewise, ELPC's recommendation that meeting materials be provided at least one week in advance is reasonable and should ensure that time spent in the collaborative is more productive.

## V. COMMISSION DECISION

Based upon the testimony and evidence in the record of this proceeding, the Commission finds that the Companies' EE/PDR program portfolio plans should be approved, subject to the modifications discussed above.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW:

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

(2) On August 31, 2012, FirstEnergy filed an application for approval of the Companies' energy efficiency and peak demand reduction portfolio plans for 2013 through 2015.

(3) The hearing in these proceedings commenced on October 23, 2012, and continued through October 30, 2012.

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

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

It is, therefore,

ORDERED, That FirstEnergy's application for approval of its energy efficiency and peak demand reduction program portfolio plans for 2013 through 2015 be approved as modified herein. It is, further,

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

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter w/concurring

Lynn Slaby

M. Beth Trombold

MWC/GAP/sc

Entered in the Journal

MAR 20 2013

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CONCURRING OPINION OF COMMISSIONER LYNN SLABY AND COMMISSIONER ANDRE T. PORTER

We concur with the majority; however, we have concerns on the long range financial impact to both the company and the consumers regarding bidding planned energy efficiency into the BRA. We recognize that bidding in planned energy efficiency may reduce capacity costs in the future. However, this brings in a future risk of unknown costs of energy efficiency that may end up a burden born by consumers, the company or both. Due to rapid changes taking place in today's market place, a plan today to bid unknown energy efficiency resources might not be met in the future without additional costs having to be absorbed by someone. It is because of this uncertainty that we concur but have reservations about this requirement.

Lynn Slaby

Andre T. Porter

LS/ATP/sc

Entered in the Journal
MAR 2 0 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary