BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 through 2015	)))))))	Case Nos.	12-2190-EL-POR 12-2191-EL-POR 12-2192-EL-POR

MEMORANDUM OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY CONTRA TO APPLICATIONS FOR REHEARING

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INTRODUCTION

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "Companies") submit their memorandum contra to the Applications for Rehearing ("AFRs") filed by the Office of the Ohio Consumers' Counsel ("OCC"); Environmental Law and Policy Center and Ohio Environmental Council ("ELPC/OEC"); Nucor Steel Marion, Inc. ("Nucor") and Industrial Energy Users-Ohio ("IEU-Ohio"). The Companies also respond to Nucor's Application for Clarification that raises the same issues as those set forth in the Application for Clarification filed by the Ohio Energy Group ("OEG") on April 5, 2013.

With the exception of the issue related to PJM bidding, which is the subject of a separate application for rehearing submitted by the Companies, the Commission appropriately found that the Companies' Energy Efficiency and Peak Demand Reduction Portfolio Plans for the years 2013 through 2015 (the "Approved Plans" or "Plans") meet the requirements of Section 4928.66, Ohio Revised Code, and the Commission's rules related thereto.[1] As the parties did during the evidentiary hearing in this case, they continue to complain about aspects of the Approved Plans. However, nowhere in any of their AFRs do these parties demonstrate that the Commission's decision was unreasonable or unlawful. Rather, the basis for most of the AFRs is simply the fact that the Commission did not agree with the parties' positions – positions which, in many instances, are unsupported by the evidentiary record. However, the fact that the Commission does not agree with a party's position has never been a basis for granting an AFR; nor should it

[1] See generally, Opinion and Order (Mar. 20, 2013) (hereinafter "Order").

be in this case. Accordingly, the AFRs of OCC and ELPC/OEC should be rejected in their entirety, and Nucor's AFR should be denied in most respects.[2]

ARGUMENT

I. THE COMMISSION SHOULD DENY OCC'S APPLICATION FOR REHEARING.

OCC argues that the Commission should have required the Companies to bid into the PJM 2016/2017 Base Residual Auction ("PJM BRA") 100% of their planned energy efficiency resources, rather than the 75% ordered by the Commission.[3] As will be explained below, OCC's position creates an even bigger gamble than that created by the Commission through its Order. OCC also claims that the Commission did not adequately define the resources to be bid,[4] and that the shared savings mechanism approved by the Commission is unreasonable.[5] As demonstrated below, OCC fails to demonstrate why the positions taken by the Commission on each of these issues are unreasonable or unlawful and, therefore, OCC's AFR should be rejected.

A. OCC's Proposal for PJM Bidding Is Unreasonable, Unlawful and Not Supported by the Evidentiary Record.

In its Order, the Commission ordered the Companies to bid 75% of their planned energy efficiency resources into the PJM BRA.[6] As the Companies explain in their AFR filed on April

[2] The Companies are not opposed to Nucor's request to calculate interruptible load using the definition of "Curtailable Load" included in Rider ELR to calculate credits payable to interruptible customers. Also, the Companies do not oppose IEU-Ohio's request to distinguish in the Companies' self-directed mercantile contracts between commitment and ownership of resources.

[3] OCC AFR, p. 16.

[4] *Id.*, pp. 16-17.

[5] *Id.*, pp. 3-14.

[6] Order, p. 20.

19, 2013, this directive is unlawful.[7] Indeed, OCC's position that the Companies should bid 100% of planned energy efficiency resources also is unreasonable for all of the same reasons included in the Companies' Memorandum in Support of its AFR challenging the Commission's authority to order that 75% of the resources be bid. The Companies demonstrated during the evidentiary hearing that their approach is prudent. The Commission should reject OCC's AFR on this issue and, instead, should grant the Companies' AFR and approve the Companies' strategy to bid only "eligible installed energy efficiency credits for which it has ownership rights at the time of the PJM auctions, provided that these credits are of scale, will meet PJM Measurement and Verification ("M&V") standards and are included in an M&V plan approved by PJM."[8]

While this should be dispositive of the issue, should the Commission disagree, it should, at a minimum, reject OCC's request in which it asks the Commission to entertain OCC's proposal to bid "all of [the Companies'] saved megawatts into the PJM base residual auction."[9] OCC's Memorandum in Support of its AFR does nothing more than reiterate its arguments made in brief[10] – arguments that the Commission acknowledged and rejected in its Order in favor of, in its view, striking a reasonable balance between potential benefits of bidding resources into PJM

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[7] Rather than reiterating the Companies' arguments on this point herein, the Companies incorporate by reference their arguments made in their Memorandum in Support of their AFR, which was filed on April 19, 2013.

[8] Company Exh. 1, Direct Testimony of John C. Dargie ("Dargie Testimony"), p. 15.

[9] OCC AFR, p. 14. OCC, as a fall back, also argues for the Commission to change the percentage from 75% to 85%. However, it fails to provide any justification for this recommendation, other than its unsupported assertion that bidding 85% of the resources will "attain a better risk-reward balance for customers." (OCC AFR, p. 16). Not only does this recommendation fail to support any finding of error by the Commission, but OCC's assertion is totally void of any record evidence to support such a claim and should, therefore, be summarily rejected.

[10] OCC AFR, pp. 15-16.

and the risks of potential penalties for bidding more than can be delivered.[11] Unlike the Companies in their AFR, nowhere does OCC argue that the Commission exceeded its authority, or abused its discretion. Instead, OCC simply does not like the result. This however, is not a basis upon which to grant rehearing.

OCC argues that "[f]oregoing the additional financial benefit that would accrue to customers from bidding the additional 25% of a portfolio's capacity value is too high of a price for an insurance policy for customers to pay. This is especially the situation since the three incremental auctions preceding the delivery year [allegedly] provide a significant risk mitigation mechanism."[12] Again, except for offering an assertion unsupported by the evidentiary record, this claim by OCC points to no error by the Commission. Indeed, the record supports an alternative finding. As Companies Witness Mikkelsen explained, "not knowing what future incremental auctions will clear at, to rely on that as a strategy for meeting an open future position creates a situation where the company may end up paying more for that resource than they were compensated for that resource in the BRA."[13] Further, as OCC recognized, for purposes of the ATSI zone, its conclusion was based on a "trend" of one auction in a constrained zone.[14] One auction does not a trend make, especially when there is no basis for assuming that the fundamental dynamics creating this "trend" will continue into the future.[15] This is consistent with Staff Witness Scheck's position, which was adopted in part by the Commission and which

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[11] Order, pp. 17-18, 20.

[12] OCC AFR, p. 16 (footnote omitted).

[13] Tr. Vol. VI, p. 1131.

[14] *See* Tr. Vol. IV, pp. 891-92 (OCC Witness Gonzalez acknowledging that he has no idea whether the price differential will continue in the future and noting that the "trend" he is relying upon does not apply to constrained zones).

[15] *See* Tr. Vol. III, pp. 534, 537-38.

recommended that the Commission **not** count on a future hedging strategy that relies on price separation between the incremental auctions and a BRA, because "there is no guarantee going forward that the incremental auction will always be lower than the BRA."[16] Betting on future incremental auctions to cover shortfalls in energy efficiency resources creates its own set of risks which are not controllable by the Companies,[17] – risks that are not addressed by OCC in support of its claim that the Commission created too large of an "insurance policy." Accordingly, OCC's AFR on the percentage of energy efficiency resources to be bid into the PJM BRA should be rejected.

B. "Planned Energy Efficiency Resources" Is Sufficiently Defined.

OCC also contends that the Commission should grant rehearing in order to clarify the meaning of "planned energy efficiency resources" because it fails to explain what that term is intended to include.[18] No such clarification is necessary. PJM Manual 18 defines an Energy Efficiency Resource.[19] An Energy Efficiency Resource may be bid into an auction if it is "existing", meaning that it has an approved Post-Installation M&V Report, or if it is "planned", in which case it must satisfy the following criteria:

- EE installation must be scheduled for completion prior to Delivery Year;

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[16] Tr. Vol. IV, p. 810.

[17] Company Exh. 23, Rebuttal Testimony of Eileen M. Mikkelsen ("Mikkelsen Rebuttal"), p. 5.

[18] OCC AFR, p. 16. Remarkably, OCC argues that the Companies should bid "all **potential** capacity reductions" into the BRA but fails to explain how this amorphous "potential" should be defined. OCC AFR, p. 15 (emphasis added).

[19] IEU-Ohio Exh. 2, PJM Manual 18 § 4.4. The time period of energy efficiency installations and their associated eligibility, in addition to the modeling of Energy Efficiency Resources in the PJM capacity market, is presented in PJM Manual 18B: Energy Efficiency Measurement &Verification. *See* IEU-Ohio, Exh. 3.

- EE installation is not reflected in peak load forecast posted for the BRA for the Delivery Year initially offered;
- EE installation exceeds relevant standards at time of installation as known at time of commitment;
- EE installation achieves load reduction during defined EE Performance Hours; and
- EE installation is not dispatchable.[20]

A planned resource must have an Initial M&V Plan submitted to PJM no later than thirty days before an auction and approved by PJM within ten days of receipt.[21] The Initial M&V Plan may cover multiple Energy Efficiency Resources but must clearly document the estimated value of each Energy Efficiency Resource covered in the plan.[22] Thus, under PJM's rules, energy efficiency resources that are not installed and verified prior to an auction must, at a minimum, have a documented energy efficiency value during the defined performance hours and be scheduled for completion prior to the applicable delivery year. In light of the above, there is no basis to grant rehearing to clarify a term that is not ambiguous. The Commission should reject OCC's AFR with regard to this request.

In sum, as evidenced by the foregoing, OCC raises nothing not already addressed and rejected by the Commission. It has failed to demonstrate Commission error and therefore, its AFR with regard to PJM bidding should be rejected.

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[20] IEU-Ohio Exh. 2, PJM Manual 18 § 4.4.

[21] IEU-Ohio Exh. 3, PJM Manual 18B § 5.1.1.

[22] IEU-Ohio Exh. 3, PJM Manual 18B § 2.1. A "nominated value" must be provided, which means "the expected average demand (MW) reduction during the defined EE Performance Hours in the Delivery Year", which must be at least 0.1 MW. IEU-Ohio Exh. 2, PJM Manual 18 § 4.4.1.

C. The Commission's Approval of the Companies' Shared Savings Mechanism Was Lawful and Reasonable, and OCC Has Not Demonstrated Otherwise.

OCC seeks rehearing with respect to the Commission's approval of the Companies' shared savings mechanism, claiming that the Commission's findings are unsupported by the evidentiary record, specifically with regard to (i) the shared savings tiers; (ii) the use of pre-tax dollars when calculating shared savings; (iii) the shared savings cap level; and (iv) the use of the Utility Cost Test ("UCT")[23] – a test for which only OCC advocated.[24] It further argues that the Commission's reliance on a settlement in an AEP Ohio case was improper.[25] For the reasons discussed below, the OCC's AFR on these issues should also be rejected.

OCC submits that the Commission erred in approving a shared savings mechanism different than that proposed by OCC. The fact that the Commission disagreed with OCC's position, however, is not a basis upon which to grant rehearing. In particular, OCC believes that the tiered incentive levels and cap on recoverable shared savings are too high and should be lowered to a level reflective of the incentive structure proposed by OCC.[26] While OCC indicates that its proposed structure is more in line with the incentive structures proposed by other intervenors in this case, OCC has not demonstrated that the Commission's decision against adopting those alternative structures (or its adoption of the terms proposed by the Companies) was in any way unreasonable or unlawful.

OCC alternatively suggests that the Commission did not provide sufficient explanation for its approval of the Companies' proposed terms. Yet the Commission did in fact provide an

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[23] OCC AFR, pp. 3-12.

[24] Tr. Vol. IV, pp. 855-57. *See* Co. Br., p. 23.

[25] OCC AFR, pp. 12-14.

[26] OCC AFR, pp. 5-8.

explanation for its decision,[27] noting that much of the Companies' proposal is consistent with the structure approved in the AEP Ohio case.[28] Given that all electric distribution utilities ("EDUs") are subject to the same statutory energy efficiency and peak demand reduction ("EEPDR") requirements set forth in R.C. 4928.66, it is reasonable for the Commission to try to incent all of the utilities in a similar way, absent distinctions that would warrant deviation. And when such distinctions existed, the Commission explained its rationale for modifying the shared savings structure.[29] The Commission's Order provides sufficient explanation with regard to shared savings and satisfies the requirements of Section 4903.09, Ohio Revised Code.

While OCC claims on the one hand that the Commission did not explain itself, it argues on the other that the Commission's rationale – reliance on the AEP Ohio shared savings structure – is improper because the stipulation in the AEP Ohio case included a provision that "prevent[s] the individual terms of the settlement agreement to be binding in a subsequent proceeding."[30] However, as the Commission recently observed in a proceeding in which it adopted a procedure for AEP Ohio which had originally been adopted for Duke Energy Ohio, "[w]e find no error in having noted that our decision in this case is consistent with our treatment of Duke. We have consistently held that, although parties may agree not to be bound by the provisions contained within a stipulation, these limitations do not extend to the Commission."[31] And, at least in this

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[27] *See* Order, pp. 12-16.

[28] Order, pp. 15-16.

[29] *See, e.g., id.* (The Companies collect distribution revenues while AEP Ohio incorporates a decoupling mechanism, and because of this decoupling mechanism, the savings caps are different). Hypothetically, the same rationale would apply to permit a shared savings mechanism for the Companies with higher savings tiers than approved for AEP Ohio if justified by the Companies' circumstances.

[30] OCC AFR, p. 12.

[31] *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Entry on Rehearing, p. 3 (April 24, 2013).

instance, as previously stated, absent distinctions among them, consistency with regard to how EDUs are rewarded for exceeding the statutory EEPDR benchmarks to which they all are subject is good policy. The shared savings mechanism proposed by the Companies was similar to the AEP Ohio mechanism,[32] so it is not surprising that the Commission approved an incentive mechanism similar to that in the AEP Ohio case, especially since the Companies' proposed mechanism is supported by the evidentiary record.[33]

In light of the foregoing, the Commission did not err when it adopted the Companies' proposal for a shared savings structure similar in certain respects to that approved in the AEP Ohio case.

II. THE COMMISSION SHOULD DENY ELPC/OEC'S APPLICATION FOR REHEARING.

ELPC/OEC's AFR suffers from the same deficiencies as that of OCC. ELPC/OEC argue that the Commission improperly allowed the Companies: (i) to rely on energy efficiency kits beyond those distributed in schools;[34] (ii) to discount standard T8 linear fluorescent lighting;[35] and (iii) to use the EISA standard as baselines for screw in light bulbs rather than CFLs.[36] Like OCC, however, ELPC/OEC's AFR is based on the fact that they do not like the result. Because

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[32] Company Exh. 5, Direct Testimony of Eren G. Demiray ("Demiray Testimony"), pp. 6-7 (noting that the Companies' proposed mechanism was influenced by Staff's recommendations in Case No. 09-1947-EL-POR, AEP Ohio's recently approved shared savings mechanism, and negotiations with interested parties).

[33] *Id.*, p. 10; Direct Testimony of Glenn Reed ("Reed Testimony"), p. 23; Tr. Vol. VI, pp. 851-55 and Company Exh. 17 (*Aligning Utility Incentives with Investment in Energy Efficiency*, National Action Plan for Energy Efficiency, November 2007, pages 6-1 and 6-2); ELPC/OEC Post-Hearing Brief, pp. 36-37 (supporting AEP Ohio incentive structure).

[34] ELPC/OEC AFR, pp. 4-6.

[35] *Id.*, pp. 6-8.

[36] *Id.*, pp. 9-10.

ELPC/OEC fail to demonstrate Commission error, their AFR also should be denied in its entirety.

A. The Commission's Approval of the Companies' Strategy in Utilizing Energy Efficiency Kits Is Reasonable and Supported by Record Evidence.

ELPC/OEC assert that the Order "improperly allows [the Companies] to rely on energy efficiency kits beyond those distributed in schools."[37] At a minimum, ELPC/OEC assert that the Commission should require the Companies to use a .70 or 70% installation rate for CFLs in the kits.[38] Citing to ELPC/OEC witness Crandall and to Sierra Club Witness Reed, they assert that the kits circumvent market channels and that the installation rates demonstrated by the Companies are not accurate.[39] Yet ELPC/OEC failed at hearing, and continue to fail here, to demonstrate that the Companies' strategy, and the Commission's approval thereof, is unreasonable or unlawful. The Companies' evidence presented at hearing demonstrates that energy efficiency kits are an effective program included in the Companies' Proposed Plans. In its Order, the Commission found that "the evidence in this case does not reflect an undue reliance by the Companies upon energy efficiency kits" and properly declined to modify the Companies' Portfolio Plans.[40]

1. Use of Energy Efficiency Kits is a reasonable strategy.

The Companies presented evidence at hearing demonstrating that the energy efficiency kits are a reasonable measure included in the Portfolio Plans. First, the Companies' Home Performance Program includes almost 326,000 opt-in energy efficiency kits for residential

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[37] *Id.*, p. 4.

[38] *Id.*, pp. 4, 6.

[39] *Id.*, p. 5.

[40] Order, p. 25, 23.

customers during the Plan Period, which represents less than 20% of the Companies' residential customer base.[41] Although the kits represent 36% of estimated savings from residential customers over the Plan Period, this level of savings cannot be equated to overreliance, given the results seen by the Companies' affiliates in Pennsylvania and Maryland.[42] Although ELPC/OEC point to Staff Witness Sheck's initial comment, when asked whether the Companies were over-relying on kits, that he did not "really have a response either way," they conveniently ignore that he continued on to agree that the kits did not have too many CFLs, that the CFLs would "produce a lot of savings", and that the installation rates for this opt-in program would be "pretty decent."[43]

Second, the kits are very cost effective while producing significant energy savings for residential customers.[44] Third, the kits provide customers with an opportunity to learn about energy efficiency in the home without the need to buy the various measures, something with which both Mr. Reed and Mr. Crandall agreed, and the kits provide promotion and awareness of other energy efficiency programs among customers.[45]

Fourth, contrary to the claims of ELPC/OEC, the kits should not circumvent normal retail channels, given the wide variety of other CFL types and LED lighting choices offered by

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[41] Company Exh. 21, Rebuttal Testimony of Edward C. Miller ("Miller Rebuttal"), p. 3.

[42] *See id.*

[43] Tr. Vol. IV, pp. 831-32.

[44] *Id.* As indicated in PUCO Table 7A-B, the Home Performance Program of which this sub-program is a part has a TRC value of 1.3. Proposed Plans, Appendix C-3.

[45] Tr. Vol. III, pp. 398-99, 649; Tr. Vol. V, p. 1027, 1041. *See also* Tr. Vol. III, p. 399 (Companies Witness Miller explaining that "[t]he intent of the kit is to create general awareness of the plan and energy efficiency. It is to promote programs on a whole, such as energy efficient products, and all the opportunities that are available to customers in the plan, as well as support or increase the adoption of the efficient measures that are provided as a component of the kit.")

retailers.[46] Moreover, the CFL bulbs included in the kit represent a small percentage of the potential opportunities found in the home, thus leaving significant potential for retail sales. On average, customers have installed six CFLs, while the average home has between 55 to 65 incandescent sockets.[47] Lastly, the chance of free ridership is relatively low because the kits are opt-in, thus requiring customers to take affirmative action in order to receive their kits. For all these reasons, the Commission did not err in approving the energy efficiency kits.

2. The Companies do not over-state energy savings from the kits.

ELPC/OEC argue that the Commission should require the Companies to utilize a 70% installation rate for CFLs in the kits rather than the 86% installation rate provided by the Ohio TRM. Yet the installation rate proposed by ELPC/OEC is the rate at which a preliminary survey showed Pennsylvania consumers were installing CFLs provided in kits after only two to three months.[48] The one-year installation rate in Pennsylvania was considerably higher,[49] and ELPC/OEC produced no evidence to suggest that Ohio's overall installation rates would be inconsistent with the draft TRM. Moreover, although ELPC/OEC rely on the testimony of Sierra Club Witness Reed,[50] he did not support the lower installation rate of 70% proposed now by ELPC/OEC but, instead, merely opined that "one could argue that maybe [81% is] a more appropriate number."[51]

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[46] Tr. Vol. I, pp. 648-649.

[47] Market Potential Study at 67; Tr. Vol. III, p. 413-414; see also Tr. Vol. IV, pp. 831-832. (By Staff Witness Scheck: "[l]ight bulbs produce a lot of savings and I think I counted up in my house . . . there's 50, 60 sockets, which I find is not an unusual number for an average household.").

[48] Tr. Vol. VI, p. 1072.

[49] *Id.*, pp. 1072-73; Tr. Vol. III, pp. 649-50 (82-84% installation rate).

[50] ELPC/OEC AFR, p. 5.

[51] Tr. Vol. III, pp. 664-65.

In modeling the savings for the energy efficiency kits, the Companies utilized the 86% installation rate identified in the draft Ohio TRM and conservatively included EISA impacts for all CFLs included in the kits for the entire Plan Period.[52] The savings estimate for kits modeled in the Proposed Plans is a constant value that represents the full reduction of savings for all CFLs for the Plan Period.[53] If ELPC/OEC disagree with these deemed values, then the time and place to voice their concerns was not in this proceeding, but rather in Case No. 09-512-GE-UNC,[54] or any other docket that involves changes to the TRM.

Based upon the foregoing, the projected savings levels for the energy efficiency kits are reasonable and supported by the evidentiary record. The Commission should deny ELPC/OEC's AFR on this issue.

B. The Commission's Order Allowing the Companies to Incent Standard T-8 Lighting Is Reasonable.

Without citing to any authority or record evidence, ELPC/OEC next argue that the Order "improperly allows the Companies to discount Standard T-8 linear fluorescent lighting" because programs "must be the driver for customers to make a purchase they would not otherwise make" and that "savings that would naturally occur regardless of the standards cannot count toward [the Companies'] goals.[55] At a minimum, and without giving any idea as to how the Companies would accomplish this, ELPC/OEC urge the Commission to require the Companies "to keep

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[52] Co. Br., p. 13. *See* Tr. Vol. II, p. 344; Miller Rebuttal, pp. 3-4.

[53] *Id*. As explained by Companies Witness Miller, EISA reduces the baseline for a 60W incandescent lamp to 43 watts effective January 1, 2014. Instead of using the higher wattage between January 1, 2013 and January 1, 2014, the Companies modeled the entire Plan Period using the 43W baseline. Miller Rebuttal, p. 4. Thus, the actual results, which would reflect the 60W baseline for 2013, should be higher than as reflected in the Companies' models. *Id.*

[54] *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC.

[55] ELPC/OEC AFR, p. 7.

track of the availability of T-12s."[56] Again, the Commission considered this argument and rejected it, finding that the Companies have taken all of these factors into consideration and have planned accordingly.[57]

As an initial matter, ELPC/OEC's argument that the Companies are incenting customers for items a customer would otherwise purchase is simply incorrect. As discussed at hearing, and in the Commission's Order,[58] the Commission supported the as-found condition for early retirement as the baseline for determining energy savings in Case No. 09-512-GE-UNC, which supports incenting a standard T-8 lighting installation replacing a T-12 lighting installation.[59] The law does not require the Companies to demonstrate otherwise.

Second, as the Commission recognized, absent any testimony to the contrary,[60] the Companies are proposing an incentive level for standard T-8 lighting that is less than that offered for higher efficiency lighting options.[61] The tiered incentives for various levels of T-8 lighting are reasonable.

Third, ELPC/OEC, again ignoring customers' cost concerns, assert that the $18 difference between high performance T-8 fixtures and standard T-8 fixtures is only 22%.[62] The Companies' program is based, however, on an understanding of Ohio's economic forces, not

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[56] ELPC/OEC AFR, p. 8.

[57] Order, p. 28.

[58] Order, p. 27.

[59] Miller Rebuttal, pp. 4-5.

[60] Remarkably, NRDC's and ELPC/OEC's witnesses could not describe the incentive levels being offered and did not know whether the Commission allows the Companies to count the energy savings from a switch to standard T-8 lighting. ELPC/OEC Exh. 1, Direct Testimony of Geoffrey C. Crandall, p. 11; Sierra Club Exh. 1, Direct Testimony of Jeffrey Loiter, p. 11; Tr. Vol. III, pp. 598-599.

[61] Proposed Plans, Appendix C-4; Miller Rebuttal, pp. 4-5.

[62] ELPC/OEC AFR, p. 7.

simply on a math calculation. When other measures may be cost prohibitive, the Companies are promoting an affordable alternative for cost-conscious customers that will generate greater customer participation in the program as well as significant energy savings.

Fourth, ELPC/OEC reiterate their failed argument that an Ohio utility "began eliminating" incentives for standard T-8s and that an Illinois utility "typically" provides incentives only for high performance T-8s.[63] However, ELPC/OEC fail to provide any details surrounding the terms associated with these efforts, and they fail to recognize that other utilities continue to provide lighting incentives for the early retirement of T-12 lighting with standard T-8 lighting.[64] As T-12 lighting remains in retail stock and customer inventory, it is not appropriate to remove the option for the Companies to incent customers for the early retirement of T-12 lighting installations with standard T-8 lighting. Lastly, ELPC/OEC does not know what types of technology will be available in the future. Utilizing a flexible rebate strategy will allow the Companies' to adapt their Proposed Plans to changes in standards and technologies over the Plan Period.

Therefore, the Commission appropriately rejected ELPC/OEC's criticism of the Companies' incentive for standard T-8 lighting, provided sufficient explanation for doing so, and relied on sufficient evidence of record in its findings.

C. The Commission Appropriately Approved the Companies' Use of the EISA Standard as a Baseline for Determining Savings.

As it did at hearing, ELPC/OEC argue that the Companies should not use the EISA standard as the baseline to determine energy savings for CFLs.[65] The Commission appropriately

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[63] ELPC/OEC AFR, p. 8.

[64] *See* Miller Rebuttal, p. 5.

[65] ELPC/OEC AFR, p. 9.

was "not persuaded by ELPC/OEC's recommendations" and pointed out that this issue was determined in the Oct. 15, 2009 Order in Case No. 09-512-GE-UNC (the "09-512 Order").[66] EM&V standards established in the 09-512 Order clearly direct that compliance will be determined based on gross savings and not net.[67] Although ELPC/OEC claim that the Commission's decision in the 09-512 Order conflicts with R.C. § 4928.6(A)(1)(a)'s directive that energy efficiency programs "achieve energy savings,"[68] the issue here is how to appropriately measure energy savings. The Commission's prior guidance in the 09-512 Order cannot be said to be an unreasonable approach to measuring savings under the circumstances presented here. ELPC/OEC's argument is misplaced and inappropriate in this proceeding, especially if the potential result is that the Companies may be held to a standard different from other Ohio EDUs. The Commission was correct in its determination.

Moreover, EISA standards are phased in over time.[69] The Companies do not have a crystal ball to predict what technologies will be available in the future. Given that this can only

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[66] Order at 29; 09-512 Order, para. 27.

[67] 09-512 Order, para. 16.

[68] ELPC/OEC AFR, p. 10.

[69] As the Companies pointed out in their post-hearing reply brief, EISA is a federal standard affecting the availability of certain standard incandescent bulbs that will be phased in over a number of years, and ELPC/OEC's description of the phase-in, as reflected in a chart on page 9 of its brief, is **again** incorrect. The EISA standards do not all become effective on January 1, 2012. Rather the correct information is as follows:

The law is being phased in over the next three years:

Today's Bulbs	After the Standard	Standard Effective Date
100 watt	≤ 72 watts	January 1, 2012
75 watt	≤ 53 watts	January 1, 2013
60 watt	≤ 43 watts	January 1, 2014
40 watt	≤ 29 watts	January 1, 2014

As this corrected chart demonstrates, the EISA standards, which prohibit only the ***manufacturing or import*** of certain bulbs greater than the standard, are phased in over time.

be known after EISA standards take effect and manufacturers build up capacity to replace the old bulbs, it is extremely unlikely that any other party in this proceeding, including ELPC/OEC, knows with any certainty either what will exist in the market, at what technical specifications, and at what prices. For all of those reasons, the Commission should deny ELPC/OEC's AFR.

III. THE COMMISSION SHOULD DENY, IN PART, NUCOR'S APPLICATION FOR REHEARING.

Nucor argues that the Commission incorrectly failed to rule on its recommendations for a cap on the Companies' DSE2 charge and for an alternative methodology to calculate the amount of PDR from Rider ELR interruptible load that the Companies may count toward meeting their annual PDR benchmarks.[70] Similar to OEG, Nucor also argues that the Commission should clarify that the Companies should bid into the PJM BRA peak demand savings that could result in future years if the ELR and OLR Riders are continued.[71] The Commission should deny Nucor's AFR, in part, and also deny its clarification request, because: (i) Nucor failed to demonstrate how the Commission's refusal to apply a cap is unreasonable or unlawful; (ii) a cap on the DSE2 rider charge is not supported by the evidence; and (iii) as discussed in the Companies' Memorandum Contra to OEG's Application for Clarification, there is no ambiguity with regard to ELR and OLR that needs to be clarified. As for Nucor's request for rehearing on calculating interruptible load, the Companies do not oppose rehearing on this issue.

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[70] Nucor AFR, pp. 3-8.

[71] Nucor AFR, pp. 9-10.

A. The Commission Reasonably Rejected Nucor's Proposal Related to the Existing DSE2 Charge.

Nucor recognizes that the Commission has discretion to "decline to adopt the cost cap recommendation here, and instead to address it in a future case."[72] Yet Nucor seeks rehearing to the extent the Commission implicitly adopted the Companies' argument that single-issue ratemaking is permitted only in ESP proceedings and not in EEPDR proceedings.[73] Because Nucor cannot show any prejudice from the Commission's determination – Nucor admits that the Commission may defer consideration of Nucor's arguments to a future proceeding – its AFR on this issue should be denied.

Nucor argues that the ESP II Stipulation in Case No. 10-388-EL-SSO "explicitly anticipates and allows for the consideration of alternative rate designs for the DSE2 charge in the first EE/PDR portfolio proceeding and subsequent portfolio proceedings such as the current proceeding."[74] However, the Commission, after citing the evidence presented by Nucor and OEG, specifically "decline[d] to adopt the recommendations by OEG and Nucor regarding the rate design for the DSE2 Rider" and found "that issues regarding rate design for existing riders are better addressed in the Companies' next standard service offer proceeding."[75] The Commission did not abuse its discretion in making this finding.[76]

The Companies' reference in its post-hearing reply brief to single-issue ratemaking was made in the context of Dr. Goins' testimony, which was limited to the DSE2 charge for GT

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[72] Nucor AFR, p. 5.

[73] Nucor AFR, p. 4.

[74] Nucor AFR, p. 5.

[75] Order, p. 42.

[76] Order, p. 42; Case No. 10-388-EL-SSO, Stipulation, p. 21, fn. 8 (March 23, 2010).

customers. Contrary to Nucor's claim that the "cost cap issue" has been fully litigated,[77] there is ample reason to believe that the ramifications on **all** customers of the changes proposed by Dr. Goins had not been fully thought through in this proceeding. The Companies' filing in this proceeding did not put at issue any rate design questions and did not propose any changes to the DSE2 charge.[78] Dr. Goins did not know what impact his proposed $10,000 monthly cap would have on Nucor, let alone what impact it would have on OEG members or generally on any GT customer.[79] He did not determine what the DSE2 charge would be under any of his alternative proposals.[80] And he did not perform an analysis of what the impact would have on GP and GSU customers of collecting amounts above the cap from all GP, GSU and GT customers.[81] Simply put, Nucor did not carry its burden of proving that the existing DSE2 charge is unreasonable.[82]

Although Nucor continues to complain the DSE2 charge for GT customers is "volatile",[83] the record in this proceeding was insufficient to determine the source of the volatility, let alone to reach a conclusion as to the best remedy for any alleged volatility. Dr. Goins had no opinion as to why the charge for GT customers had been volatile.[84] Dr. Goins also lacked an understanding of the magnitude of the problem and did not provide a billing analysis for the

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[77] Nucor AFR, p. 5.

[78] OEG/Nucor Exh. 1, Direct Testimony of Dr. Dennis W. Goins ("Goins Testimony"), p. 7; Tr. Vol. II, p. 243.

[79] Tr. Vol. II, pp. 244-45.

[80] Tr. Vol. II, p. 247.

[81] Tr. Vol. II, p. 245-46.

[82] Although Nucor suggests that the Companies or other parties could have submitted rebuttal testimony, these parties had no burden to rebut an opinion lacking in evidentiary support.

[83] Nucor AFR, p. 6.

[84] Tr. Vol. II, p. 244.

Commission's consideration.[85] Thus, the Commission properly determined that rate design issues would be better addressed in the Companies' next SSO proceeding.

B. The Commission's Order Related to PJM Bidding is Not Ambiguous. Nucor Unreasonably Demands that the Companies bid ELR Resources into the PJM BRA for Delivery Years when Rider ELR Is not in Effect.

Nucor argues that the Commission's Order is unclear whether Rider ELR interruptible load is included within the term "planned energy efficiency resources."[86] As discussed in the Companies' Memorandum Contra to OEG's Application for Clarification, the Commission should deny rehearing on this issue. There is no ambiguity. Besides the obvious fact that Rider ELR interruptible load is a demand resource and not an energy efficiency resource,[87] Rider ELR is only effective until May 31, 2016. Therefore, there is no interruptible load under tariff that the Companies can demonstrate ownership of at this time for the 2016/17 Delivery Year, which starts on June 1, 2016.

Moreover, under PJM's auction rules, only Existing and Planned Demand Resources may participate in a BRA.[88] Existing Demand Resources must be designated by the CSP offering the resource as being available in the future Delivery Year for which an auction is held. Planned Demand Resources are resources that are scheduled to be capable of providing demand reduction on or before the start of a delivery year.[89] Because Rider ELR terminates on May 31, 2016, any associated interruptible load is neither available to the Companies nor capable of being

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[85] Tr. Vol. II, pp. 281-83.

[86] Nucor AFR, p. 9. Nucor also references Rider OLR, but this rider has no customers. Thus, the discussion above will discuss Rider ELR only.

[87] *See* IEU-Ohio Exh. 2, PJM Manual 18, §§ 4.3 (defining load management products), 4.4 (defining energy efficiency products).

[88] IEU-Ohio Exh. 2, PJM Manual 18, § 4.3.3.

[89] *Id.*

scheduled by the Companies on or after June 1, 2016.[90] Customers currently taking service under Rider ELR are free to contract with a CSP to bid interruptible load into the May 2013, May 2014 or May 2015 PJM BRAs, and some customers already may have done so.[91] Because of the lack of a tariff or contract for these demand response resources, the Companies cannot bid the resources into the PJM BRA as either an Existing or Planned Demand Resource. Inasmuch as demand resources arising from Rider ELR do not currently qualify for inclusion in the PJM BRA for the 2016/2017 delivery year, and the Commission's Order addresses the level of bidding for this auction, there is no ambiguity that the Commission did not intend for the Companies to include demand resources from Rider ELR.

Accordingly, Nucor's and OEG's request for such clarification is unnecessary and should be rejected.

CONCLUSION

For the reasons set forth above, the Companies respectfully ask that the Commission deny OCC's and ELPC/OEC's Applications for Rehearing in their entirety and that, except for the narrow issue involving the amount of interruptible capability counted toward the Companies' PDR benchmarks, the Commission also deny Nucor's AFR.

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[90] Mikkelsen Rebuttal, pp. 7-8; Tr. Vol. II, pp. 258-59.

[91] Tr. Vol. II, pp. 259-60, 261-62; Tr. Vol. VI, pp. 1177, 1178-79; Mikkelsen Rebuttal, p. 9.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company Contra to Applications for Rehearing* was served this 29th day of April 2013, via e-mail, upon the parties below.

/s/ *Carrie M. Dunn*
One of the Attorneys for Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company

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