

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**COMMENTS OF THE SIERRA CLUB, ENVIRONMENTAL LAW AND POLICY
CENTER, NATURAL RESOURCES DEFENSE COUNCIL, AND OHIO
ENVIRONMENTAL COUNCIL
ON
FIRSTENERGY’S APPLICATION FOR APPROVAL OF AMENDED ENERGY
EFFICIENCY AND PEAK DEMAND REDUCTION PLANS FOR 2015
THROUGH 2016**

Pursuant to the September 29, 2014 Entry by the Public Utilities Commission of Ohio (“Commission”) in the above-captioned dockets, the Sierra Club, ELPC, NRDC, and OEC (collectively the “Environmental Advocates”) as parties to these cases initiated by Cleveland Electric Illuminating Company, the Toledo Edison Company and the Ohio Edison Company (collectively “FirstEnergy”) respectfully submit these Comments on FirstEnergy’s application for approval of its amended energy efficiency (“EE”) and peak demand reduction (“PDR”) plans for 2015 and 2016. FirstEnergy submitted this application pursuant to Section 6(A)(2) of Senate Bill (“S.B.”) 310, which permits utilities to apply to the Commission to eliminate all or part of its energy efficiency and peak demand reduction plans.

First, as noted in Sierra Club and ELPC’s memorandum contra FirstEnergy’s application,¹ that application is inadequate under Section 6(B)(1) of S.B. 310 because it omits key information about FirstEnergy’s proposed programs. That information is required by the applicable Commission rules for new portfolio plans and is necessary for the Commission to determine whether the portfolio plan will meet the statutory EE and PDR benchmarks and satisfy other regulatory criteria. The Commission should therefore reject FirstEnergy’s application as incomplete, as requested in Sierra Club and ELPC’s memorandum.

FirstEnergy asserts in reply to the memorandum that the Commission has no choice under S.B. 310 but to accept its amended plan.² This essentially relegates the Commission to the role of rubber-stamping its application, since FirstEnergy has not even provided the information that would be necessary to determine if the proposed programs will in fact satisfy the applicable statutory and regulatory criteria. Moreover, it disregards the Commission’s authority under the plain language of S.B. 310. The statute states that “an electric distribution utility that seeks to amend its portfolio plan under division (A)(2) of this section shall file an application with the Commission to amend the plan not later than thirty days after the effective date of this section.” S.B. 310, Section 6(B)(1). To the extent FirstEnergy’s inadequate submission does not constitute an “application” compliant with the Commission regulations governing a new portfolio plan (which S.B. 310 designates as the applicable procedure rules), the Commission is well

¹ Memorandum Contra FirstEnergy’s Application for Approval of Amended Energy Efficiency and Peak Demand Reduction Plans for 2015 Through 2016 by ELPC and Sierra Club at 1-2 (Oct. 9, 2014).

² FirstEnergy Reply at 3 (Oct. 16, 2014).

within its authority to deem FirstEnergy's submission invalid, just as it could if FirstEnergy had submitted an application after the 30-day statutory deadline.

Alternatively, to the extent FirstEnergy has not justified its choice to eliminate certain programs under the applicable statutory and regulatory standards, S.B. 310 recognizes the Commission's authority to modify FirstEnergy's proposed plan by reinstating those programs.³

Additionally, in the event the Commission declines to dismiss FirstEnergy's application outright, but rather exercises its authority to order its modification, Environmental Advocates ask that the Commission require FirstEnergy to address whether cancellation of its EE and PDR programs will cause it to fall short of meeting its PJM capacity obligations. Such a shortage could result in PJM penalties and other costs, as well as eliminate a revenue stream that has provided significant benefit to ratepayers. Yet FirstEnergy's application offers no indication that it has considered those potential costs or how they should affect FirstEnergy's decision-making regarding its portfolio plan. If FirstEnergy does not provide this information regarding the consequences of eliminating the programs underlying its PJM bids from the portfolio plan, the Commission will not be able to judge whether FirstEnergy's proposal is reasonable, and should therefore modify the plan to leave those programs in place.

The Environmental Advocates appreciate the opportunity to submit these Comments and urge the Commission to consider the following issues while evaluating FirstEnergy's application.

³ S.B. 310 Section 6(B)(1) ("The Commission shall review and approve, or modify and approve, the application not later than sixty days after the date that the application is filed.").

I. BACKGROUND

In 2009, Ohio enacted Senate Bill 221, the state's landmark energy efficiency resource standards for its load-serving utilities. Pursuant to that law, FirstEnergy submitted its initial portfolio plan application in 2009.⁴ That plan, which was approved by the Commission, was designed to generate Total Discounted Lifetime Benefits across the three FirstEnergy companies of approximately \$720.8 million.⁵ FirstEnergy's annual status reports on the initial portfolio confirmed that it achieved cost-effective energy savings for customers.⁶

On July 31, 2012, the FirstEnergy companies collectively filed applications for approval of the energy efficiency and peak demand reduction portfolio of programs for the years 2013 to 2015. Those applications were approved, with some modifications discussed further below, on March 20, 2013. The approved plans were to provide 13.3 million net lifetime MWh savings.⁷

However, in April 2014, the Ohio General Assembly enacted S.B. 310, which froze the existing energy efficiency standards and allowed utilities to file applications to amend their EE and PDR portfolio plans accordingly. FirstEnergy has now submitted an application pursuant to Section 6(A)(2) of Senate Bill 310 that proposes to eliminate most

⁴ See *In the Matter of the [Companies] Three-Year Energy Efficiency & Peak Demand Reduction Plans and Initial Benchmark Reports*, Case No. 09-1947-EL-POR, 09-1948-EL-POR and 09-1949, Application (December 15, 2009).

⁵ *Id.* at 3.

⁶ *Energy Efficiency and Peak Demand Reduction Program Portfolio Status Reports to the Public Utilities Commission of Ohio*, Case Nos. 13-1185-EL-EEC, *et al.* (2012), 12-1533-EL-EEC, *et al.* (2011), 11-2956-EL-EEC, *et al.* (2010), and 10-227-EL-EEC, *et al.* (2009). FirstEnergy managed to achieve its three-year benchmarks even though it began program implementation a year late.

⁷ See Appendix C-3, PUCO 4, of Attachments A-C to FirstEnergy's Application filed July 31, 2012, Case No. 12-2190-EL-POR.

of the energy efficiency and peak demand reduction programs approved as part of FirstEnergy's existing portfolio plan.

I. DISCUSSION

A. FirstEnergy has not submitted information necessary to allow the Commission, commenters, and the public to fully evaluate its proposed portfolio plan.

If an electric distribution utility seeks to amend its portfolio plan pursuant to section 6 of S.B. 310, then the Ohio General Assembly has mandated that the utility “file an application with the Commission to amend the plan not later than thirty days after the effective date of this section” and that the Commission “review the application in accordance with its rules *as if the application were for a new portfolio plan*” (emphasis added). Despite filing under this provision of S.B. 310, FirstEnergy asserts that the Commission should simply approve its proposal based on the original filings on the docket for its existing plan, without providing the information the Commission has deemed necessary to facilitate review of a “new portfolio plan.” Thus, FirstEnergy defies S.B. 310's explicit legislative directive and essentially requests that it be exempt from any substantive Commission review of its application.⁸

FirstEnergy's reply to the memorandum contra suggests that “[t]he Commission's review can rely fully upon the extensive record previously developed in this docket, including the detailed evidence regarding compliance with each of the [applicable Commission] rules.”⁹ Even putting aside the fact that it is FirstEnergy's obligation to

⁸ FirstEnergy even suggests that the Commission should not apply *any* of the Energy Efficiency Program Rules in Chapter 4901:1-39, begging the question of what purpose the Commission's review would then serve. FirstEnergy Reply at 7.

⁹ FirstEnergy Reply at 4-5.

present information in support of its application, not the Commission's or commenters' task to dig it out of the "extensive record," the information in this docket is not sufficient to remedy the omissions in the pending application.

For example, FirstEnergy has never offered the Commission – in this or any other docket – the information required for new programs under OAC 4901:1-39-04(C)(5) with respect to its proposed Customer Action Program or Experimental Company Owned LED Lighting Program. That information is not a formality; items such as a "description of the program implementation approach to be employed," OAC 4901:1-39-04(C)(5)(h), and a "description of the plan for preparing reports that document the electric utility's evaluation, measurement, and verification of the energy savings and/or peak-demand reduction resulting from each program and the process evaluations conducted by the electric utility," OAC 4901:1-39-04(C)(5)(l), are important to determine how a utility intends to implement and measure the results of a given program and whether any modifications are warranted to improve that implementation. Nor has FirstEnergy met the requirement of OAC 4901:1-39-04(B) to "demonstrate that its program portfolio plan is cost-effective on a portfolio basis" – an obligation that is newly relevant now that FirstEnergy proposes to alter the composition of its portfolio. Unless and until FirstEnergy provides such information, the Commission cannot effectively review the proposed amended portfolio plan "in accordance with its rules as if the application were for a new portfolio plan," and FirstEnergy has failed to meet its burden under OAC 4901:1-39-04(E) "to prove that the proposed program portfolio plan is consistent with the policy of the state of Ohio as set forth in section 4928.02 of the Revised Code, and meets the requirements of section 4928.66 of the Revised Code."

FirstEnergy wants to have it both ways – indicating at one point in its reply to the memorandum contra that “[t]he Commission’s review also must take into account that *the Application does not propose a new portfolio plan* but, instead, relies heavily upon the Existing Plan previously approved by the Commission in this docket . . .”¹⁰ while just one page later claiming that the Commission may “*review the Amended Plan as if it were for a new portfolio plan.*”¹¹ Only the latter is consistent with the language of S.B. 310.

More fundamentally, FirstEnergy has omitted any explanation of how it chose the particular suite of programs it has proposed to meet the new EE and PDR benchmarks. Without such an explanation, the Commission will not be able to determine whether, as required by OAC 4901:1-39-04(E), the plan is consistent with the policies in R.C. § 4928.02, including “[e]nsur[ing] the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service” and “[e]ncourag[ing] innovation and market access for cost-effective supply-and demand-side retail electric service. . . .”¹² Similarly, the Commission has no evidence before it that, in deciding which programs to include in its amended portfolio plan and which to discontinue, FirstEnergy complied with the mandate in OAC 4901:1-39-03(B) to consider a variety of program design criteria “[w]hen developing programs for inclusion in its program portfolio plan,” such as “[r]elative cost-effectiveness,” “[b]enefit to all members of a customer class, including nonparticipants,” and “[n]onenergy

¹⁰ *Id.* at 4 (emphasis added).

¹¹ *Id.* at 5 (emphasis added).

¹² R.C. § 4928.02(1), (4).

benefits.”¹³ The Commission has explained that its regulations under OAC 4901:1-39 regarding the contents of “a full portfolio application” allow it “to ensure that the portfolio continues to be built upon the best information available about technologically, economically, and market achievable measures.”¹⁴ Given FirstEnergy’s failure to include the information required under those regulations, let alone *any* discussion regarding the rationale underlying the chosen components of its portfolio plan, the Commission cannot effectively review the application to ensure it meets that standard.

One concrete example of this deficiency is FirstEnergy’s choice to continue its Residential Direct Load Control Program as the only program broadly available to all residential customers. Looking to the central issue of cost-effectiveness, FirstEnergy’s original 2013-2015 portfolio plan filed in this case indicates that the Residential Direct Load Control Program is not cost-effective under the Total Resource Cost (“TRC”) test.¹⁵ Meanwhile, FirstEnergy has proposed to cancel its other residential programs – the Appliance Turn-In Program, Energy Efficient Product Program, and Home Performance Program – despite having rated them as cost-effective under the TRC test. While cost-effectiveness is not the only relevant criterion, the Commission cannot approve this as a reasonable choice, or FirstEnergy’s proposal to cancel other valuable EE and PDR programs, absent *any* indication that FirstEnergy has made these decisions based on *some* of the applicable statutory policies and regulatory criteria.

¹³ OAC 4901:1-39-03(B)(1), (2), (5).

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Pub. Util. Comm. No. 11-4393-EL-RDR, 2012 Ohio PUC LEXIS 748, 13 (Aug. 15, 2012) (emphasis added).

¹⁵ *See also* FirstEnergy Reply at 5 n.11.

FirstEnergy’s failure to provide a comprehensive application in compliance with the Commission’s regulations is particularly concerning because of the expedited timeline imposed by section 6(B)(1) of S.B. 310 for the review of its proposed amended plan – a mere 60 days from the filing of FirstEnergy’s application. This accelerated review has already compelled the Commission to adopt a procedural schedule that omits the discovery and hearing process usually applicable to review of a portfolio plan under OAC 4901:1-39-04(D) and (E).¹⁶ The Commission emphasized the importance of this process in ensuring “stakeholder involvement and the transparent review of these programs” when it originally promulgated OAC 4901:1-39-04.¹⁷ With the elimination of these procedures as called for under OAC 4901:1-39-04, it is even more vital for FirstEnergy to carry its burden to provide sufficient information to support the adequacy of its portfolio plan.

B. The Environmental Advocates recommend that the Commission modify the application to retain any EE and PDR programs corresponding to FirstEnergy’s PJM capacity obligations.

While reducing the EE and PDR benchmarks for 2015 and 2016, S.B. 310 did nothing to alter the general requirement for FirstEnergy to act reasonably in deciding whether and how to amend its portfolio plan.¹⁸ FirstEnergy has failed to carry out this obligation because its application does not address a key issue affecting its customers: the potential consequences of eliminating significant portions of its portfolio plan given that

¹⁶ See also FirstEnergy Reply at 5 n.11.

¹⁷ *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928.66, Revised Code, as Amended by Amended Substitute Senate Bill No. 221*, Case No. 08-888-EL-ORD, 2009 Ohio PUC LEXIS 282 (Apr. 15, 2009), Opinion and Order at 28-29.

¹⁸ See R.C. 4905.22.

it has previously bid the demand-side resources generated by that portfolio into the PJM capacity auctions covering 2015 and 2016. The Environmental Advocates therefore ask the Commission to require FirstEnergy to submit information regarding what demand-side resources it has bid into the 2012, 2013 and 2014 capacity auctions, which bids cleared and for how much, and whether the programs being eliminated by this application were part of those cleared bids. Without that information, the Commission cannot assess whether FirstEnergy's proposed amendment of its portfolio plan will result in penalties and costs and, absent such information, should amend the proposed amended plan to retain all programs underlying FirstEnergy's PJM bids to avoid imposing potentially imprudent cost on FirstEnergy's customers.

1. FirstEnergy is required to bid available EE and PDR resources into PJM's capacity auctions.

In the last few years, this Commission has issued several orders describing how customers would benefit from FirstEnergy bidding demand-side resources into PJM's annual capacity auctions ("base residual auctions" or "BRAs").¹⁹ These auctions are held each May, three years prior to the actual delivery date (the year in which the committed capacity resource must be available), and are designed to ensure that adequate resources will be available to serve each zone of the PJM system. Whereas generators are required to bid a portion of their capacity into the auction, owners of demand-side resources such as energy efficiency and demand response are permitted, but not required, to bid those resources in. PJM allows owners of demand-side resources to bid into the capacity

¹⁹ PJM is the Regional Transmission Organization that serves Ohio.

auction for energy savings occurring within four years of the delivery year.²⁰ The costs of these resource commitments are then allocated to load serving entities through a locational reliability charge. The more resources bid into the auction for a particular zone, the lower the ultimate clearing price that customers must pay.²¹

FirstEnergy has voluntarily bid demand-side resources into at least one capacity auction, and been ordered by the Commission to do so on another occasion. Yet this application contains no information about the extent of FirstEnergy's obligation to PJM based on demand-side resources bid into the various auctions. However, some information is available from previous filings before the Commission:

In its 2012 Electric Security Plan filing, FirstEnergy sought approval to bid into the May 2012 auction up to 65 megawatts of efficiency and demand response resources based on its lighting programs.²² This was only a small fraction of the efficiency resources generated by the Companies' programs.²³ The Commission urged the companies to take necessary steps to bid more efficiency resources in the auction going forward.²⁴

²⁰ Demand-side measures implemented prior to four years before the beginning of the capacity obligation period are accounted for in the demand forecasts on which the capacity need is based. See Comments by Ohio Consumer and Environmental Advocates, Case No. 12-814-EL-UNC at 10.

²¹ See Direct Testimony of William R. Ridman, Case No. 12-1230-EL-SSO, at 18 (discussing benefits to customers of FirstEnergy being permitted to bid in EE and DR resources).

²⁴ *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.* Pub. Util. Comm. No. 12-1230-EL-SSO, at 38.

In approving FirstEnergy’s proposed portfolio plan filed in 2012, the Commission found that bidding in a substantial percentage of the Companies’ demand-side resources would benefit customers, not only by generating a revenue stream from the demand-side asset held by each company (which customers had already funded), but also by lowering the clearing price in the auction and thereby the cost to FirstEnergy’s consumers of acquiring the needed capacity.²⁵ Thus, the Commission ordered the Company “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.”²⁶ The Commission concluded that requiring FirstEnergy to bid just 75% of the planned energy efficiency resources struck an appropriate balance between benefiting ratepayers and mitigating the Companies’ risk.²⁷ Although the Commission required this 75% bid only for the 2016/2017 planning year, it stated that “[t]hereafter, the Commission may issue an order addressing the Companies’ bids for the remaining two planning years.”²⁸

In an Entry on Rehearing, the Commission also noted that the Companies must ensure the prudent treatment of energy efficiency resources:

The energy efficiency resources generated by the Companies' energy efficiency resources are a valuable asset managed by the Companies on behalf of ratepayers. The Companies are required to manage such assets prudently in order to minimize the costs of the energy efficiency programs. **If the Companies were to fail to**

²⁵ *In the Matter of the Application of the Cleveland Electric Illuminating Company*, Pub. Util. Comm. No. 12-2190-EL-POR, Opinion and Order at 20 (March 2, 2013) (bidding EE resources would “substantially benefit ratepayers by lowering capacity auction prices and reducing Rider DSE costs”).

²⁶ *In the Matter of the Application of the Cleveland Electric Illuminating Company*, Pub. Util. Comm. No. 12-2190-EL-POR, Opinion and Order at 20 (March 2, 2013) (emphasis added).

²⁷ *Id.* at 20-21.

²⁸ *Id.* at 20-21.

prudently manage such assets by neglecting to bid the assets into the BRA, the Commission would be required to consider such failure in determining whether the Companies may obtain full recovery of the costs of the energy efficiency programs required to meet the Companies' statutory mandates in Section 4928.66, Revised Code.²⁹

Thus, the Commission has stated that the prudent management of demand-side assets, including their use in the Companies' BRA bid, is a factor that it will review when determining cost recovery for the energy efficiency programs. Just as the Commission considered the potential benefits to be gained from bidding into PJM capacity auctions in reviewing FirstEnergy's previous portfolio plan filings, so too must it consider the potential costs of approving FirstEnergy's proposal to cut the programs underlying those bids.

2. The Commission must determine whether FirstEnergy's proposed elimination of many of its EE and PDR programs is reasonable in light of its PJM capacity obligations tied to those programs.

One of the most glaring pieces of information missing from FirstEnergy's application is how the amendments will affect FirstEnergy's obligations to PJM, insofar as FirstEnergy has bid energy efficiency and peak demand reductions into PJM's capacity markets for the years 2015 through 2018. The Commission ordered FirstEnergy to submit such bids in 2013, recognizing that doing so was required for prudent management of the efficiency and peak demand reduction resources the Company held. Assuming that the Company adhered to the Commission's orders, some EE and PDR resources have been committed to PJM. If those resources are eliminated by FirstEnergy's pending application, then FirstEnergy's customers may be subject to

²⁹ *Id.* at 6 (emphasis added).

penalties or costs to cover FirstEnergy's obligations in the incremental auctions. The risk of such additional expenses is relevant to the Commission's determination of whether FirstEnergy's application is in the public interest, as incurring such penalties due to the elimination of cost-effective programs would be imprudent.

FirstEnergy has bid some amount of its EE and PDR resources into PJM's 2012, 2013, and possibly 2014 BRAs. FirstEnergy bid 65 MWs into the 2012 BRA, and the Commission's 2013 orders in this case imposed an obligation on FirstEnergy to bid 75% of its anticipated EE and PDR resources into the 2013 BRA. While the Commission did not expressly order FirstEnergy to bid EE and PDR resources into the 2014 auction, the principles it set out regarding prudent management of EE&PDR resources would have applied equally to future auctions.

However, information about whether and how much demand-side resource FirstEnergy bid into the 2013 and 2014 auctions, and how much cleared, has never been made available to the public, not even within the state's energy efficiency collaborative.³⁰ Any EE and PDR resources that FirstEnergy bid into that 2013 auction would need to be available for capacity purposes from June 1, 2016-May 31, 2017.³¹ Because only demand-side resources installed within four years of the delivery year are eligible,

³⁰ ELPC and the Ohio Environmental Council have asked this Commission on several occasions to lift the confidentiality designation of information shared within the collaborative. See Motions filed in this docket on July 17 and September 23.

³¹ Finally, while the Commission only ordered FirstEnergy to submit a bid during the 2016-2017 BRA, the principles set out in the Commission's order—that bidding of demand-side resources into the market would be highly beneficial to customers—are generally applicable on an ongoing basis—so long as FirstEnergy implements demand-side management programs that generate savings, it will have a valuable asset that should be bid into these markets in order to benefit FirstEnergy customers. Likewise, the pilot program to share auction revenues gives FirstEnergy an additional incentive to bid in available EE&PDR resources. Thus, it is possible that FirstEnergy bid in some portion of its available EE&PDR resources into the May 2014 auction, creating obligations for the 2017/2018 period.

FirstEnergy would have bid in resources anticipated to be installed between May 31, 2012 and May 31, 2016, including those installed during the 2013 to 2015 plan that FirstEnergy now seeks to amend.

In its application, FirstEnergy proposes to suspend, effective January 1, 2015, “all other programs in Section 2.0 and 3.0 of the Existing Plan.”³² Thus, the programs to be eliminated will include:

- Residential appliance turn-in programs
- Residential Energy Efficiency Products program (includes residential CFL and LED programs)
- Residential Home Performance Program
- Small and Large Enterprise C&I Energy Efficient Equipment Program (including commercial lighting)
- Small and Large Enterprise Energy Efficient Buildings Program
- Mercantile Demand Reduction Program
- Government Tariff Lighting Program

For Ohio Edison Company, the eliminated programs represented 78.6% of the portfolio and total lifetime MWh savings.³³ For Cleveland Electric Illuminating, the eliminated programs represented 82.2% of the portfolio and total lifetime MWh

³² Application at 3.

³³ See *Ohio Edison Company Energy Efficiency & Peak Demand Reduction Program Portfolio* (filed July 31, 2012), Appendix C-3, PUCO 4: Program Summaries. The vast majority of the remaining savings in the proposed amended portfolio come from the Mercantile Customer Program, with only 0.3% coming from the low-income residential programs.

savings.³⁴ For Toledo Edison Company, the eliminated programs represented 81.1% of the portfolio and total lifetime MWh savings.³⁵ In light of the requirement that these Companies bid 75 percent of their eligible, planned savings into the 2013 BRA, the elimination of EE programs expected to account for between 78 and 82 percent of their 2013-2015 portfolio savings is extremely concerning. The risk to customers is obvious even without knowing specifically which EE programs underlie the PJM obligations: FirstEnergy is eliminating most of the programs that would have been implemented in 2015, providing savings both in 2015 and beyond. Elimination of these programs undermines FirstEnergy's ability to perform its obligations to PJM in the 2015/2016 and 2016/2017 delivery years, and exposes customers to potential penalties or increased costs resulting from the need to cover these shortfalls through purchases in incremental capacity auctions.

With respect to FirstEnergy's 2012 BRA bid, it is certain that the companies are eliminating programs responsible for generating the resources underlying the companies' bid. FirstEnergy witness William S. Ridman has testified that the companies' 2012 bid was for 65 MW of anticipated savings from its residential and commercial and industrial

³⁴ See *Cleveland Electric Luminating Energy Efficiency & Peak Demand Reduction Program Portfolio* (filed July 31, 2012), Appendix C-3, PUCO 4: Program Summaries. The vast majority of the remaining savings in the proposed amended portfolio come from the Mercantile Customer Program, with only 0.6% coming from the low-income residential programs.

³⁵ See *Toledo Edison Company Energy Efficiency & Peak Demand Reduction Program Portfolio* (filed July 31, 2012), Appendix C-3, PUCO 4: Program Summaries. The vast majority of the remaining savings in the proposed amended portfolio come from the Mercantile Customer Program, with only 0.2% coming from the low-income residential programs.

lighting programs,³⁶ which constituted the “vast majority of energy efficiency savings achieved” as of May 2012.³⁷ FirstEnergy’s application indicates its intent to eliminate all of these lighting programs. The bid into the 2012 auction was for resources to be delivered from June 1, 2015 to May 31, 2016, and efficiency resources installed after June 1, 2011 would qualify. Thus, elimination of the lighting programs for 2015 will mean that FirstEnergy is deficient on its obligations to PJM from January 1 to May 31 of that year. Despite these risks, FirstEnergy has not disclosed as part of the pending application the extent to which it is eliminating programs that were anticipated to generate the demand savings corresponding to accepted bids in the 2012, 2013 and 2014 BRAs.

To understand the magnitude of the risks to FirstEnergy customers of the Companies not following through on PJM obligations, the Commission must determine (1) what demand-side resources FirstEnergy has bid into recent base residual auctions; (2) which of those bids cleared, thereby imposing an obligation on FirstEnergy; and (3) to what extent the pending application will impair FirstEnergy’s ability to make good on its obligations. The Commission has authority to investigate such issues. Revised Code 4928.02 gives the Commission broad authority to interpret its rules and statutes to protect customers from high capacity prices. Additionally, the Commission has statutory authority to ensure availability of reasonably priced retail electric service,³⁸ protect at-risk

³⁶ See Supplemental Testimony of William S. Ridman, Case No. 12-1230-EL-SSO at 2, lines 20-21 (noting the 15 MW of savings were from the residential lighting program and 50 MW from C&I programs).

³⁷ FirstEnergy Response to SC Set 1 – INT-1(h).

³⁸ R.C. 4928.02(A).

populations,³⁹ and determine whether any service provided by a utility is unjust, unreasonable, or unlawful.⁴⁰ Specifically, when it comes to utilities' bids into the PJM auctions the Commission has previously held that it has the statutory authority to require an electric distribution utility to bid energy efficiency resources into the PJM auctions.⁴¹ Further, the Commission has also held that it has the authority to review and pre-approve a utility's bid structure.⁴² Requiring FirstEnergy to submit information regarding its PJM bids will serve all of these purposes by allowing the Commission to determine whether FirstEnergy's proposed amendments will result in higher capacity prices for Ohioans on the PJM market, PJM penalties or other costs that might be borne by FirstEnergy's ratepayers, loss of anticipated revenue from the sale of capacity resources,⁴³ or other significant consequences.

In order for this inquiry to yield useful information with sufficient time to allow FirstEnergy to modify its application, the Commission should immediately commence this investigation, and require FirstEnergy to provide the information and analysis within ten business days. All of this information should be readily available to FirstEnergy, so an accelerated time frame should not pose difficulties for the Companies.

³⁹ R.C. 4928.02(L).

⁴⁰ R.C. 4905.26.

⁴¹ *In the Matter of the Commission's Review of the Participation of The Cleveland Electric Illuminating Company in the May 2012 PJM Reliability Pricing Model Auction*, Pub. Util. Comm. No. 12-814-EL-UNC, Entry (February 29, 2012) at 1-2.

⁴² *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*. Pub. Util. Comm. No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 38.

⁴³ FirstEnergy has proposed to extend the PJM Revenue Sharing Pilot Program under which customers would receive 80% of the auction revenues, and the companies would receive a 20% share of that dwindling resource stream.

FirstEnergy should also supplement its application with an evaluation of the increased costs that its customers will face as a result of the elimination of programs underlying its BRA bids (which may be relevant to a TRC evaluation of the overall cost-effectiveness of an amended plan). As FirstEnergy noted in its report filed March 29, 2012 in Case No. 12-814, there would be costs to customers should the EE and PDR resources committed to the auction not materialize. These costs take three forms: (1) penalties imposed by PJM on FirstEnergy for failing to provide the obligated capacity resources, (2) costs incurred by FirstEnergy to acquire cover capacity resources through the incremental auctions, and (3) lost revenues to customers. FirstEnergy should evaluate these costs to customers under a range of scenarios, since the cost of acquiring cover capacity resources through the incremental auctions can vary significantly. As part of this analysis, FirstEnergy should disclose any possible benefit to its generation affiliates created by the last-minute purchase of capacity resources through the incremental auctions.

S.B. 310 allows utilities to reduce their EE and PDR programs, but it does not hold the utilities and their shareholders harmless for any repercussions of eliminating those programs. S.B. 310 does not mandate elimination of existing programs, so FirstEnergy's decision to pursue this course places responsibility for any collateral costs incurred through abandonment of those programs squarely on the utility. The Commission's prerogative to protect utility ratepayers, with respect to these types of penalties or unanticipated and unnecessary costs, is not eliminated by S.B. 310. If FirstEnergy does not supply the information necessary for the Commission to ensure that ratepayers are not being unreasonably subjected to costs through FirstEnergy's

elimination of EE and PDR programs, the Commission has authority to, and should, order FirstEnergy to modify its application to continue all energy efficiency and peak demand reduction programs that are needed to fulfill its obligations to PJM.

Alternatively, the Environmental Advocates ask that the Commission determine that eliminating the programs underlying the PJM bids is imprudent, and therefore that FirstEnergy should be denied cost recovery for those programs, along with being denied recovery for any costs resulting from FirstEnergy's failure on its commitments to PJM.

III. CONCLUSION

The Environmental Advocates appreciate the opportunity to submit these Comments, and urge the Commission to require FirstEnergy to demonstrate the reasonableness of all aspects of its proposed portfolio plan under the Commission regulations regarding new portfolio plans, consistent with the mandate of S.B. 310.

Dated: October 20, 2014

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments on FirstEnergy's Application for Approval of Amended Energy Efficiency and Peak Demand Reduction Plans for 2015 through 2016 has been electronically filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on October 20, 2014.

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Summary: Comments COMMENTS OF THE SIERRA CLUB, ENVIRONMENTAL LAW AND POLICY CENTER, NATURAL RESOURCES DEFENSE COUNCIL, AND OHIO ENVIRONMENTAL COUNCIL ON FIRST ENERGY'S APPLICATION FOR APPROVAL OF AMENDED ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PLANS FOR 2015 THROUGH 2016

electronically filed by Mr. Trent A Dougherty on behalf of Ohio Environmental Council and Sierra Club and Environmental Law and Policy Center and Natural Resources Defense Fund