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 Plans for 2013 through 2015.	)	Case No. 12-2190-EL-POR Case No. 12-2191-EL-POR Case No. 12-2192-EL-POR

FINDING AND ORDER

The Commission finds:

(1) Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (TE) (collectively, FirstEnergy or Companies) are public utilities as defined in R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.

(2) On July 31, 2012, FirstEnergy filed an application for approval of the Companies' energy efficiency and peak demand reduction program portfolio plan for 2013 through 2015 pursuant to the Revised Code, Ohio Adm.Code 4901:1-39-04, 4901:1-39-05, 4901:1-39-06, and 4901:1-39-07, and the Commission's February 29, 2012 Entry in Case No. 12-814-EL-UNC. Thereafter, on March 20, 2013, the Commission issued an Opinion and Order approving the portfolio plan with modifications (Existing Plan).

(3) In May 2014, the General Assembly passed 2014 Sub.S.B. No. 310 (S.B. 310), which became effective on September 12, 2014. S.B. 310 amended Ohio's renewable energy, energy efficiency, and peak demand reduction requirements. Among other changes, S.B. 310 modified R.C. 4928.64 and 4928.66 such that the statutory renewable energy resource and energy savings benchmarks for 2014 will not increase, but will remain unchanged, for 2015 and 2016, for companies electing to file amended portfolio plans.

(4) Additionally, Section 6(A) of S.B. 310 provides that an electric distribution utility that has a portfolio plan in effect

on the effective date may seek an amendment to that portfolio plan, pursuant to Section 6(B) of S.B. 310. If an electric distribution utility chooses to seek an amendment, the Commission is then required to review the application and approve it, or modify and approve it, no later than 60 days after its filing.

(5) On September 24, 2014, FirstEnergy filed an application to amend its energy efficiency and peak demand reduction program portfolio plans for 2015 through 2016, pursuant to Section 6 of S.B. 310. In its application, FirstEnergy requested that, to the extent the Commission determines that a waiver of any provision of its rules is necessary, such a waiver be granted pursuant to Ohio Adm.Code 4901:1-39-02(B).

(6) By Entry issued September 29, 2014, a comment period was set. Timely comments were filed by Industrial Energy Users-Ohio (IEU-Ohio); Ohio Partners for Affordable Energy (OPAE); Ohio Hospital Association (OHA); Ohio Manufacturers' Association Energy Group (OMAEG); Ohio Consumers Counsel (OCC); Sierra Club, Environmental Law and Policy Center (ELPC), Natural Resources Defense Council, and Ohio Environmental Council (collectively, Environmental Groups); and Staff. Reply comments were filed by OMAEG, IEU-Ohio, OCC, OHA, FirstEnergy, the Environmental Groups, and OPAE.

(7) On October 10, 2014, OCC filed a memorandum contra FirstEnergy's request for a waiver of the Administrative Code, and ELPC and Sierra Club filed a joint memorandum contra FirstEnergy's application to amend its portfolio plans. Thereafter, on October 16, 2014, FirstEnergy filed a reply to the memoranda contra filed by OCC and ELPC/Sierra Club.

The Companies' Application

(8) In its application, FirstEnergy asserts that its proposed amended plan (Amended Plan) will be in effect from January 1, 2015, through December 31, 2016, and that, except as amended in the application, all programs previously approved by the Commission as part of the Existing Plan

will continue in effect through the Amended Plan period. Further, FirstEnergy asserts that the Amended Plan will meet or exceed the statutory requirements set forth in R.C. 4928.66 as amended by S.B. 310. (Application at 1.)

(9) More specifically, FirstEnergy asserts that the Companies intend to continue the following programs as part of the Amended Plan: (1) Low-income program authorized by the Commission in *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Order (July 18, 2012) (*ESP III Case*); (2) Mercantile customer program; (3) T&D Improvements Program authorized by R.C. 4928.66(A)(2)(d)(i)(IV); (4) Residential Direct Load Control Program authorized by the Existing Plan; (5) Demand Reduction Program authorized by the *ESP III Case* and the Existing Plan; (6) PJM Revenue Sharing Pilot Program approved by the *ESP III Case*; (7) Smart Grid Modernization Initiative authorized by R.C. 4928.66(A)(2)(d)(i)(I) and Case No. 09-1820-EL-ATA. FirstEnergy further requests to add two programs for the Amended Plan period including: (1) Customer Action Program as authorized under R.C. 4928.662(A) and (B), and (2) Experimental Company-Owned LED Lighting Program, if approved in pending Case No. 14-1027-EL-ATA. The Companies further request to suspend all other programs in Sections 2.0 and 3.0 of the Existing Plan, but to continue all administrative and cost-recovery mechanisms in Sections 4.0 through 7.0 of the Existing Plan and Rider DSE. (Application at 2-3.)

(10) FirstEnergy further requests to adjust its program mix during the term of the Amended Plan such as restarting suspended programs or requesting Commission approval of programs to modify or augment the Amended Plan, and requests that it retain authority to implement modifications in accordance with Ohio Adm.Code 4901:1-39-05(C)(2)(c). (Application at 2-3.)

Request for Waiver

(11) Initially, the Commission will address FirstEnergy's request in its application that the Commission waive any rules

pursuant to Ohio Adm.Code 4901:1-39-02(B) if the Commission determines such a waiver is necessary.

(12) In their memoranda contra FirstEnergy's request for a waiver, OCC and ELPC/Sierra Club argue that FirstEnergy is required to include certain information specified in the Commission's rules within its application because the language in S.B. 310 requires the Commission to review an application to amend a portfolio plan "in accordance with its rules as if the application were for a new portfolio plan." More specifically, OCC argues that the Commission should not approve the application without first requiring FirstEnergy to demonstrate what costs will be borne by customers and that its amended portfolio is cost-effective. ELPC/Sierra Club argue that FirstEnergy's application omits an assessment of efficiency potential; demonstration of cost-effectiveness; description of stakeholder participation in program planning efforts and development; and detailed information for new programs. OCC and ELPC/Sierra Club also contend that FirstEnergy has failed to demonstrate good cause for waiver of the filing requirements, as required by Ohio Adm.Code 4901:1-39-02(B). ELPC/Sierra Club request that the Commission dismiss FirstEnergy's application because, they allege, FirstEnergy failed to submit a complete application within 30 days of the effective date of S.B. 310. Alternately, ELPC/Sierra Club request that the Commission find that the 60-day period to review the application set forth in S.B. 310 does not begin until the Commission has received a complete application.

(13) In its reply to the memoranda contra, FirstEnergy initially argues that the memoranda contra are procedurally improper because they were not authorized by the September 29, 2014 procedural entry nor by the Commission's rules. Next, FirstEnergy contends that, contrary to ELPC/Sierra Club's request, the Commission has no authority under S.B. 310 to dismiss the application or to suspend the 60-day review period but that S.B. 310 expressly requires the Commission to approve the application as filed or modify and approve the application within 60 days of its filing, or to take no action, allowing the Amended Plan to automatically take effect on January 1, 2015.

(14) FirstEnergy next addresses arguments regarding the substance of the application, arguing that OCC's and ELPC/Sierra Club's arguments ignore the fact that the Amended Plan is an amendment to the Commission-approved Existing Plan, and that the record supports the Amended Plan. FirstEnergy asserts that the Commission's review of the Amended Plan must take into account the 60-day review period required by S.B. 310, which does not allow for the typical hearing process for new portfolio plans. Additionally, FirstEnergy asserts that the benchmarks are frozen for 2015 and 2016, and, as FirstEnergy met all benchmarks for 2014, it is indisputable that the Companies will satisfy the applicable benchmarks through 2016. Further, FirstEnergy points out that the Commission's review can rely on the record already in the docket for the Existing Plan, which the Commission already determined was cost-effective and appropriately budgeted. Next, FirstEnergy notes that the new Customer Action Program merely implements the statutory authorization granted under R.C. 4928.662(A) and (B) and that the Experimental Company-Owned LED Lighting Program is already under consideration in another docket, conditioned on Commission review and approval.

(15) The Commission finds that the arguments of OCC and ELPC/Sierra Club regarding the application should be denied, as FirstEnergy has provided further details regarding program budget and cost-effectiveness in its reply comments. The Commission finds that, for purposes of the review required by Section 6 of S.B. 310, the application is complete and contains sufficient information for our review pursuant to Section 6 of S.B. 310. Consequently, no waiver of the Commission's rules is necessary.

Programs in the Amended Plan

(16) In its application for approval of the Amended Plan, FirstEnergy requests to continue seven programs from the Existing Plan, including the Smart Grid Modernization Initiative. Additionally, FirstEnergy requests to include two new programs, the Customer Action Program and the Experimental Company-Owned LED Lighting Program.

(17) IEU-Ohio urges the Commission to approve promptly FirstEnergy's application on the basis that the application is authorized by S.B. 310 and will result in compliance with the applicable energy efficiency/peak demand reduction (EE/PDR) requirements. IEU-Ohio further argues that prompt approval is necessary so that energy intensive customers may opt out of the opportunity and ability to obtain direct benefits and pay the recovery mechanism associated with the Amended Plan on January 1, 2015, in accordance with S.B. 310. (IEU-Ohio at 4-5.)

(18) OHA asserts that its efforts to date have been enhanced by FirstEnergy's EE/PDR programs. Consequently, OHA urges the Commission to incent FirstEnergy to improve its performance rather than to limit the range of its programs as proposed in the application. OHA also asserts that FirstEnergy has created a conundrum for the Commission by filing an application based upon a series of unsupported assertions, while S.B. 310 requires the Commission to act upon the application within 60 days, which only provides for a cursory review of the data necessary to render a decision based upon the application. OHA concludes that the only reasonable option is for the Commission to modify the application to completely replicate the plan that is currently in place. At the very least, OHA contends that the Commission should require continuation of all current programs that have been deemed cost-effective under the Total Resource Cost (TRC) or Utility Cost Test (UCT). (OHA at 2-10.)

(19) In its comments, OPAE initially argues that the Commission should not approve the continuation of the Smart Grid Modernization Initiative on the basis that the application does not include sufficient information on this program. Additionally, OPAE comments that the Commission should not approve the proposed new Customer Action Program because the application lacks sufficient detail. (OPAE at 2-4; Reply at 1-2.) In its comments and reply comments, OMAEG echoes OPAE's concerns regarding lack of sufficient detail on the proposed Customer Action Plan, including budget, cost-effectiveness, what types of efficiency the program will capture, how FirstEnergy will capture the

savings, and how the savings will be measured and verified. Further, OMAEG asserts that EE/PDR are of value to customers, and, consequently, the transfer of ownership of attributes from these savings to a utility cannot occur without permission from and compensation to customers. (OMAEG at 2-4; Reply at 2-4.)

(20) Staff recommends that the Companies be permitted to implement the new programs proposed and to count the savings from these programs toward their benchmarks if the savings are verifiable (Staff at 3).

(21) In its reply comments, FirstEnergy asserts that the Companies reasonably determined that the programs OHA recommends be continued are unnecessary at this time for the Companies to achieve the statutory benchmarks. FirstEnergy asserts that mandating continuation of these programs could conflict with state policy expressed in S.B. 310. (FirstEnergy Reply at 3-4.) Similarly, in its reply comments, IEU-Ohio urges the Commission to reject OHA's recommendations, arguing that it would be tantamount to a denial of the application, which is not permitted under S.B. 310. IEU-Ohio further states that there is no reason for the Commission to adopt OHA's recommendation because FirstEnergy is already in full compliance with the 2014 requirements and will remain so in 2015 and 2016. (IEU-Ohio Reply at 6.)

(22) The Environmental Groups reply that the Commission should require FirstEnergy to adjust its baseline to reflect savings measured under the Customer Action Program in order that FirstEnergy cannot "double count" by including customer-initiated savings as part of its compliance with the benchmarks while at the same time reducing its EE/PDR benchmarks based on the same reductions (Environmental Groups Reply at 6).

(23) IEU-Ohio, in its reply comments, opposes OMAEG's comments and asserts that R.C. 4928.662 specifically allows an EDU to count, for compliance purposes, demand reductions associated with energy efficiency measures that are recognized by regional transmission organizations such

as PJM Interconnection, LLC. Further, IEU-Ohio asserts that the mere counting of customer-effectuated EE/PDR toward a compliance obligation is not ceding ownership. (IEU-Ohio Reply at 3-5.) In contrast, OPAE asserts in its reply comments that it agrees with OMAEG, and claims that, if the Commission allows FirstEnergy to count savings from the Customer Action Program, the Commission is allowing a taking in violation of the Fifth Amendment to the United States Constitution (OPAE Reply at 4-5).

(24) In its reply comments, FirstEnergy disputes the arguments by various commenters regarding the Customer Action Program, arguing that the program is reasonably designed to implement the statutory authorization under R.C. 4928.662(A) and (B). Additionally, FirstEnergy asserts that Section 6 of the Existing Plan, which provides an in-depth description of the Companies' evaluation, measurement, and verification (EM&V) activities, was incorporated into the Amended Plan, and asserts that the EM&V consultant will continue to use established EM&V processes. Further, FirstEnergy claims that any savings identified will be reported in the program portfolio status reports, which will be subject to review. Additionally, the Companies provide their estimate that costs for the Customer Action Program during the 2015 and 2016 program years will be $1,800,000, $3,500,000, and $1,400,000 for CEI, OE, and TE, respectively, and state that they will rely upon the approved budget in the Existing Plan. Next, the Companies state that, although they have not calculated cost-effectiveness for the program, they anticipate that the benefits as established through the EM&V processes and documented will exceed the program costs. FirstEnergy elaborates that various EM&V approaches will be used depending on the measure to support claimed savings, including independent evaluator surveys, obtaining specific information from commercial and industrial markets, on-site visits, and market data on the distribution of energy efficient products. (FirstEnergy Reply at 12-14.)

(25) In response to criticism regarding lack of detail for the Smart Grid Modernization Initiative, FirstEnergy asserts that the Companies do not plan to incur costs under the Amended

Plan for the Smart Grid Program; thus, cost-effectiveness is moot and the program's inclusion in the Amended Plan is reasonable (FirstEnergy Reply at 20).

(26) The Commission finds that FirstEnergy's request to include two new additional programs, the Customer Action Program and the Experimental Company-Owned LED Lighting Program in its Amended Plan, and to continue from the Existing Plan the seven programs listed in the application should be approved. As to the Customer Action Program, however, the Commission notes that FirstEnergy has included little information on the EM&V approaches that will be used to verify savings. Consequently, the Commission stresses that, although FirstEnergy may proceed with this new program, any savings resulting from the program may not be counted until it can be measured and verified, as FirstEnergy conceded in its comments. Additionally, the Commission directs FirstEnergy to work with its collaborative to develop more detailed information on how the Customer Action Program should be implemented.

Opt-Out Customers

(27) Staff opposes the Companies' counting the EE/PDR savings of opt-out customers toward the statutory benchmarks. Staff points out that R.C. 4928.66(A)(2)(a) provides that the baseline for EE/PDR shall not include the load and usage of customers who have opted out of the portfolio plan, effectively causing the customer not to exist. Staff asserts that there is no justification for allowing savings to be counted for customers that do not exist. Further, Staff points out that, as opt-out is voluntary and prohibits such a customer from obtaining benefits or participating in the portfolio plans in exchange for exemption from the EE/PDR rider, it would be inconsistent with this concept to allow FirstEnergy to count the savings of these customers. Staff also contends that R.C. 4928.662(A) does not authorize counting the savings of opt-out customers, but only addresses whether programs that comply with federal standards may be counted. Finally, Staff urges that, if the Commission allows such savings to be counted, the

Commission should require the Companies and/or customer to use an independent third-party evaluator to verify the savings, which should also be reviewable by the Commission's EM&V consultant. (Staff at 4-6.)

(28) In its reply comments, OCC agrees with Staff's position regarding opt-out customers (OCC Reply at 6-7). In contrast, in its reply comments, FirstEnergy disagrees with Staff's position regarding opt-out customers, asserting that such an outcome would directly conflict with the language of S.B. 310 in R.C. 4928.662, which requires the Commission to count all savings and peak demand reductions toward the benchmarks (FirstEnergy Reply at 4-7).

(29) The Commission finds that, for the reasons set forth in Staff's comments, FirstEnergy should not be permitted to count savings from customers who have elected to opt out toward meeting the statutory benchmarks. The Commission believes that R.C. 4928.66, when considered in its entirety, indicates that customers who elect to opt out are essentially excluded from consideration for purposes of EE/PDR programs and benchmarks. As argued by Staff, the Commission believes it would be inconsistent with the intent of the statute to allow FirstEnergy to count savings of these customers whose load and usage is not included in the baseline and who are not permitted to participate in the portfolio programs. Further, although R.C. 4928.662(A) provides that FirstEnergy may count EE/PDR achieved through customer actions that comply with federal standards, the Commission agrees with Staff that this does not require that savings be counted from opt-out customers whose load has been excluded from the baseline.

Budget

(30) OMAEG argues that FirstEnergy's approved program budget should be reduced in proportion to its reduced program offerings. More specifically, OMAEG points out that approved costs for FirstEnergy's 2015 programs under the Existing Plan were approximately $85.9 million, but that the costs for the programs FirstEnergy is proposing to continue in the Amended Plan are only $23.1 million.

OMAEG also notes that the Commission recently approved a transfer of nearly $7 million from OE's Demand Reduction Program, indicating that the likely annual budget for the programs FirstEnergy has proposed to continue is $16.1 million, or $32.3 million for both years of the Amended Plan. Consequently, OMAEG argues that FirstEnergy is proposing to over-collect $53.6 million from customers by maintaining the previously approved $85.9 million budget. (OMAEG at 5-6.) OCC also argues that FirstEnergy should not only be required to include with its application an estimate of the costs to consumers for its Amended Plan, but should also not be permitted to use the 2015 budget for the Existing Plan for the Amended Plan. Similar to OMAEG's argument, OCC asserts that, as FirstEnergy has proposed to suspend the majority of its programs, it is unclear why it would require the full 2015 budget. (OCC at 11-13.) In their reply comments, the Environmental Groups agree with OCC (Environmental Groups Reply at 8-9).

(31) In its reply comments, FirstEnergy claims that the budget for the Amended Plan reasonably corresponds to anticipated 2015 and 2016 costs in response to the commenters. FirstEnergy asserts that the commenters are correct that the total budget spend for the Amended Plan should be less than the total 2015 budget, given the reduced level of programming. However, the Companies point out that, simply because the budget is higher than the estimated spend does not mean that the Companies will over-collect, as collection is based on a forecast of the costs to be incurred over the six-month rider period, not the budget, and are subject to a true-up to actual costs. (FirstEnergy Reply at 18-19.) In its reply comments, IEU-Ohio echoes FirstEnergy's response (IEU-Ohio Reply at 5).

(32) The Commission finds that it is unnecessary to modify FirstEnergy's Existing Plan budget at this time as recommended by OMAEG and OCC because, as discussed by FirstEnergy and IEU-Ohio, regardless of the budget, collection is based on a forecast of the costs to be incurred over a six-month rider period, not on the budget, and are always subject to true-up to actual costs. Consequently, the Commission declines to modify the budget and stresses that,

as conceded by FirstEnergy, collection is subject to a true-up to actual prudently- incurred costs. The Commission notes, however, that it is our expectation that the next rider adjustment will reflect lower costs to customers resulting from the implementation of the Amended Portfolio.

Cost-Effectiveness

(33) OPAE comments that, although FirstEnergy contends that the Amended Plan will cost less than the Existing Plan, the Companies provide no data in support. Further, OPAE argues that there is no detail regarding the costs per customer class, estimates of monitoring or verification costs, or detail on the costs of reasonable arrangements. (OPAE at 4.)

(34) In its reply comments, FirstEnergy asserts that the Commission has already determined that the Existing Plan is cost-effective using the TRC test required by the Commission's rules. The Companies further point out that they do not plan to incur costs under the Amended Plan for the operation of the T&D Improvements Program or Smart Grid Modernization Initiative. The Companies further assert that the programs that will be continued under the Amended Plan have already been reviewed for cost-effectiveness, undergone the TRC test, and approved by the Commission. Additionally, the Companies state that the two new programs in the application do not require a cost-effectiveness test because the Experimental Company-Owned LED Lighting Program implements a separate tariff filing and the Customer Action Program implements a statutory mandate. Consequently, FirstEnergy concludes that the Amended Plan easily passes the Commission's TRC test. (FirstEnergy Reply at 19-20.)

(35) The Commission disagrees with FirstEnergy's argument that the Amended Plan is clearly cost-effective on the basis that the Commission has already determined that the Existing Plan is cost-effective using the TRC test. To the contrary, the Commission finds that FirstEnergy's alteration of the program mix may cause a different result. Further, the Commission disagrees that FirstEnergy does not need to

demonstrate cost-effectiveness for its Customer Action Program merely because such a plan is permissible under the statute. Although the statute permits FirstEnergy to count savings from such a program, nothing exempts FirstEnergy from the requirement that it demonstrate cost-effectiveness. Nevertheless, given the time constraints of this proceeding, the Commission finds that this program may be included in the Amended Plan, subject to the TRC test as part of future audits. Additionally, as more detailed steps with the Customer Action Program are developed, FirstEnergy should work with its collaborative to ensure that the overall portfolio remains cost-effective.

Shared Savings

(36) OPAE argues in its comments that FirstEnergy seeks to receive shared savings, but does not reveal in the application what it intends to include in its calculation of shared savings or whether such calculation will include customer activities in which FirstEnergy has no involvement (OPAE at 5-6).

(37) Staff also weighs in on shared savings and comments that, of the existing programs that the Companies propose continuing, only the Low-Income Program and the Residential Direct Load Control Program should be eligible for shared savings, as these are the only programs that require the Companies to actively influence customers (Staff at 3).

(38) OMAEG maintains that FirstEnergy should not be permitted to collect shared savings incentives under its proposed amended portfolio. In support, OMAEG argues that shared savings incentives were designed to encourage FirstEnergy to exceed the statutory annual benchmarks that existed at the time, which no longer apply for 2015 and 2016, and that, as the Amended Plan anticipates little to no additional savings, the Companies are not planning on meeting or exceeding the savings requirement that existed when the incentives were created. (OMAEG at 6-7.)

(39) OCC also argues that FirstEnergy should be prohibited from collecting shared savings from customers in 2015 and 2016

on the basis that FirstEnergy does not propose to keep programs in place during that time period that will generate sufficient savings to exceed the annual performance benchmark upon which the shared savings incentive was originally based. Further, OCC points out that the Commission found in its order approving the Existing Plan that savings emanating from self-direct mercantile projects should be excluded from the shared savings calculation. OCC argues that the Commission's holding should continue to be applicable here as to the Companies' proposed Customer Action Program, as it does not require the Companies' active generation of savings, and to the Companies' Smart Grid Modernization Initiative, as FirstEnergy has not demonstrated any savings will result from its proposal to study the smart grid. (OCC at 6-8.)

(40) Additionally, OCC urges the Commission to limit any charges to customers for shared savings to only those charges relating to efficiencies that exceed the annual statutory benchmarks as set forth in S.B. 221, as this was the provision under which the Commission originally approved the shared savings mechanism. More specifically, OCC argues that FirstEnergy should not receive any shared savings payments for exceeding the cumulative 4.2 percent benchmark under S.B. 310 unless it also exceeds the annual one percent benchmark under S.B. 221. Further, OCC recommends that customers should not have to pay shared savings for energy efficiency under the annual benchmark for 2015 and 2016, as it has been frozen and there is no reason to incent FirstEnergy to merely comply with the law. (OCC at 8-10.)

(41) Finally, OCC argues that the Commission should reduce the $10 million cap it previously placed on the shared savings FirstEnergy could collect from customers in light of FirstEnergy's proposal to suspend the majority of its energy efficiency programs. OCC asserts that the existing cap is inappropriate and excessive for the diminutive energy efficiency the Companies will actually achieve in 2015 and 2016, as shared savings is intended to encourage energy efficiency and reward exemplary performance. (OCC at 10-11.)

(42) In its reply comments, OMAEG asserts that Staff's recommendation that shared savings be awarded based on whether a program actively influences customers should only be applied after considering whether the Companies' savings have met performance criteria by exceeding a meaningful annual savings benchmark and whether the Companies have prudently managed the programs (OMAEG Reply at 5).

(43) In its reply comments, OPAE concurs with Staff and OCC that the Customer Action Program should not be eligible for shared savings incentives. Further, OPAE and OCC agree with comments that FirstEnergy should not be permitted to use banked savings to trigger shared savings (OCC Reply at 8), and OPAE agrees that shared savings should not be awarded if there is no active influence of retail customers to invest in or implement energy efficiency programs. (OPAE Reply at 1-2). In its reply comments, OCC agrees with Staff's comments on this issue (OCC Reply at 4-6).

(44) In their reply comments, the Environmental Groups agree with various commenters that FirstEnergy should only be permitted to collect shared savings consistent with the intent of the incentive mechanism approved for the Existing Plan. Additionally, the Environmental Groups assert that, if the Commission elects to extend the shared savings incentive to FirstEnergy's amended portfolio, it should limit the incentive to only the energy savings specifically tied to FirstEnergy's own performance, excluding the Customer Action Program. (Environmental Groups' Reply at 3-4.)

(45) In its reply comments, FirstEnergy asserts that continuing the shared savings incentive in the Amended Plan is reasonable. FirstEnergy explains that the Amended Plan does seek to continue the shared savings mechanism previously approved by the Commission in conjunction with the Existing Plan. The Companies clarify, however, that they will not seek adjusted net benefits produced by any of the programs identified to continue in the Amended Plan. The Companies explain that they have proposed a "smooth program suspension strategy" that will honor customer commitments made under the Existing Plan for projects that

will not be completed until 2015, leading FirstEnergy to expect significant savings in 2015 from those projects, for which the Companies seek to realize shared savings. Further, the Companies assert that, should they recommence any programs from the Existing Plan, those programs should also qualify for shared savings during the period of the Amended Plan. (FirstEnergy Reply at 8-10.)

(46) The Companies respond to various commenters opposing continuing the shared savings incentive by pointing out that the freezing of the benchmarks for 2015 and 2016 does not discount the value of the shared savings mechanism, and that the Companies would only qualify for shared savings if they exceed the cumulative benchmark for 2015 or 2016, 4.2 percent. Consequently, the Companies argue that the shared savings mechanism will still operate as an incentive to the Companies to exceed the benchmarks set by statute, and that OCC and OMAEG are incorrect that the Companies must exceed the annual benchmarks in former R.C. 4928.64(A)(1)(a), as those benchmarks are no longer law. Further, the Companies oppose OCC's comment that the Commission should reduce the $10 million annual cap on shared savings, arguing that OCC's proposal to solve an anticipated reduction in energy savings by reducing the Companies' incentive to achieve additional energy savings is counterintuitive. (FirstEnergy Reply at 10-11.)

(47) Initially, the Commission will address comments that FirstEnergy should not be permitted to collect any shared savings as part of its Amended Plan because it has chosen to file an application to amend its portfolio plan. The Commission finds that these arguments should be rejected. As pointed out by multiple commenters, the purpose of a shared savings mechanism is to encourage utilities to exceed benchmarks. As argued by FirstEnergy, the fact that S.B. 310 has frozen the benchmarks for 2015 and 2016 does not inhibit the shared savings mechanism from acting as an incentive for utilities to exceed the applicable benchmarks. Further, although several commenters urge the Commission to allow shared savings to be collected only if FirstEnergy exceeds the benchmarks in former R.C. 4928.64, the Commission does not find this to be appropriate. S.B. 310

modified the applicable statute and the benchmarks stand at 4.2 percent for 2015 and 2016; consequently, the Commission finds that FirstEnergy may collect shared savings for exceeding the 4.2 percent benchmark for 2015 and 2016.

(48) Next, the Commission notes that multiple commenters argued that FirstEnergy should not be permitted to count savings from certain programs for purposes of calculating shared savings. However, in its reply comments, FirstEnergy clarified that its application does not intend to seek adjusted net benefits for any of the programs to be continued in the Amended Plan, but only seeks to continue counting for shared savings purposes savings related to customer commitments made under the Existing Plan for projects that will not be completed until 2015. FirstEnergy seeks to count shared savings from these transitioning commitments for which the savings will not be realized until 2015. The Commission finds that it is reasonable for FirstEnergy to count toward shared savings the savings from these transitioning customer commitments for 2015.

(49) Next, the Commission addresses FirstEnergy's request that it be permitted to collect shared savings for any programs that the Companies recommence from the Existing Plan. The Commission finds that FirstEnergy's plan should be modified at this time to require Commission approval before any programs are recommenced; nevertheless, the Commission notes that Section 7(B) of S.B. 310 provides that "[p]rior to January 1, 2017, the Commission shall not take any action with regard to any portfolio plan or application regarding a portfolio plan, except those actions expressly authorized or required by Section 6 of this act and actions necessary to administer the implementation of existing portfolio plans." The Commission will defer ruling on the matter of whether S.B. 310 permits recommencement of suspended programs after approval of the Amended Plan until such a request to recommence programs is actually before the Commission. Further, we will defer ruling on the question of whether the Companies may collect shared savings for any programs that the Companies recommence from the Existing Plan until an application to recommence such programs is before the Commission. Finally, the

Commission finds that the reasoning behind the shared savings mechanism incentive does not necessitate OCC's recommendation that the $10 million cap be decreased.

Lost-Distribution Revenue

(50) OCC argues that the Commission should prohibit FirstEnergy from charging customers for lost-distribution revenues after June 1, 2016. OCC asserts that FirstEnergy is currently charging customers up to $19 million annually for lost-distribution revenues related to its Existing Plan, which the Commission authorized in the *ESP III Case*, with the caveat that the Commission would revisit the lost-distribution mechanism on June 1, 2016. OCC argues that, now that FirstEnergy seeks to suspend the majority of its programs, customers will no longer benefit from the resulting savings, but will continue to be required to pay lost-distribution revenue balances. (OCC at 13-14.) In its reply comments, OPAE agrees with OCC and adds that there is no justification for permitting recovery of lost-distribution revenues for programs that do not continue and do not result from FirstEnergy's affirmative actions (OPAE Reply at 3-4).

(51) In its reply comments, FirstEnergy asserts that the Companies' recovery of lost-distribution revenues is not at issue in this proceeding, as the Commission has approved the recovery of lost-distribution revenues as part of a separate proceeding, the Companies' current electric security plan (FirstEnergy Reply at 21).

(52) The Commission finds that the lost-distribution mechanism was not approved as part of FirstEnergy's Existing Plan in this case, but, as pointed out by FirstEnergy, was approved as part of the Companies' electric security plan in the *ESP III Case*. As such, the Commission finds that OCC's argument regarding lost-distribution revenues is not appropriately before the Commission in this proceeding. The Commission emphasizes that, in August 2014, FirstEnergy filed an application for a fourth electric security plan, which is currently under consideration. *See In re Application of FirstEnergy*, Case No. 14-1297-EL-SSO. Arguments

regarding lost-distribution revenues are more appropriately addressed in that proceeding.

Adjustment of Program Mix

(53) Regarding the Companies' proposal to have the ability to adjust their program mix during the term of the plan, Staff states that it is unopposed to the Companies retaining the ability to restart programs that were already approved in the Existing Plan; however, Staff asserts that the Companies should be required to retain any risk associated with such decisions, that the costs and benefits associated with the decisions should be reviewable by the Commission's EM&V consultant through the applicable review process, and that, if the Companies should attempt to completely eliminate all of their programs, Commission approval should be required. Finally, Staff notes that it is unclear whether FirstEnergy's proposal regarding adjustment during the term of the plan is authorized under S.B. 310, and Staff takes no position at this time on the legality of the Companies' proposal. (Staff at 6-7.)

(54) OMAEG also argues that FirstEnergy should not be permitted to adjust unilaterally its program mix, on the basis that this is not in the best interest of customers. OMAEG asserts that this start/stop management proposal could mean certain programs and measures would be available to some customers, but not others, could create additional costs, and could result in confusion among customers about whether programs are available. Finally, OMAEG points out that the Commission should have the ability to review the costs and cost-effectiveness of whatever new or restarted programs FirstEnergy seeks to implement. (OMAEG at 8-9.) OCC also joins the argument that FirstEnergy should not have the discretion to adjust its programs offered to customers on the basis that it is inconsistent with S.B. 310 and could result in increased costs for customers (OCC at 17-18; Reply at 3-4).

(55) FirstEnergy, in its reply comments, responds that it intends to adjust its program mix and implement modifications to the plan consistent with the Commission's rules, not

unilaterally. The Companies assert that any such action will take place in accordance with Ohio Adm.Code 4901:1-39-05(C)(2)(c), and that the Companies will seek written Staff or Commission approval for any reallocation of funds. (FirstEnergy Reply at 21.)

(56) Initially, the Commission reiterates its prior observation that Section 7(B) of S.B. 310 provides that "[p]rior to January 1, 2017, the Commission shall not take any action with regard to any portfolio plan or application regarding a portfolio plan, except those actions expressly authorized or required by Section 6 of this act and actions necessary to administer the implementation of existing portfolio plans." The Commission will defer ruling on the question of whether S.B. 310 permits the reallocation of funds and adjustment of the program mix after approval of the Amended Plan until such a request is before the Commission. Similarly, we do not need to address the question of whether the addition of new programs after the approval of the Amended Plan is authorized by Section 6 until such proposal is actually before the Commission. The Commission finds, however, that FirstEnergy must seek Commission approval prior to any reallocation of funds or adjustment of the program mix, and the Commission will consider the legality of such a request under S.B. 310 at the time the request is before the Commission.

PJM Bidding Strategy

(57) OMAEG argues that FirstEnergy should be required to bear the costs from any capacity shortfalls in PJM's capacity markets, as it has proposed to suspend programs in 2015 with associated demand reduction that the Commission ordered bid into the May 2013 PJM base residual auction (BRA) for the 2016/2017 delivery year. OMAEG points out that failure to deliver capacity resources in a delivery year could result in penalties from PJM on FirstEnergy, as well as higher capacity prices for FirstEnergy customers, and urges that any such costs be borne by FirstEnergy shareholders, not customers. (OMAEG at 7-8.)

(58) Similarly, OCC points out that FirstEnergy will no longer be able to bid any planned energy efficiency into the next two capacity auctions, as it has proposed to suspend the programs that would have generated those savings. OCC asserts that, consequently, FirstEnergy should be prohibited from passing any costs or capacity penalties to customers that potentially could result from its inability to meet its future BRA obligations due to resources not being available because its programs were suspended. (OCC at 14-17.)

(59) The Environmental Groups also point out that the application contains no information about the extent of FirstEnergy's obligation to PJM based on demand-side resources bid into various auctions, but that the Commission ordered FirstEnergy in its March 20, 2013 Opinion and Order in this case to bid into the May 2013 PJM BRA 75 percent of its planned energy efficiency resources for the 2016/2017 delivery years as part of its Existing Plan. The Environmental Groups also point out that, if these resources are eliminated by the pending application, customers may be subject to penalties to cover FirstEnergy's obligations. The Environmental Groups assert that the Commission must determine (1) what demand-side resources the Companies have bid into recent BRAs; (2) which bids cleared, imposing an obligation on FirstEnergy; and (3) to what extent the application will impair FirstEnergy's ability to deliver. (Environmental Groups at 11-18.)

(60) In its reply comments, OPAE agrees with OCC and the Environmental Groups that customers should not be required to insure FirstEnergy against penalties for noncompliance with its auction commitments when FirstEnergy is responsible for the program modifications that might give rise to the shortfall (OPAE Reply at 5-6).

(61) In its reply comments, FirstEnergy responds that the application does not seek to alter the balance established by the Commission regarding the bidding of energy efficiency resources into PJM capacity auctions, and that the Companies will continue to comply with that directive in the Commission's March 20, 2013 Opinion and Order. Additionally, the Companies state that they intend to meet a

substantial portion of their obligations to PJM for the 2016/2017 and 2017/2018 delivery years with energy efficiency programs that will have been implemented by the delivery years. The Companies represent that any potential penalty costs for shortfalls or replacement power will be more than offset by revenues received for obligations committed by the Companies. (FirstEnergy Reply at 15-18.)

(62) The Commission finds that, in order to account for potential further legislative modifications in the future, going forward, FirstEnergy should bid only installed energy efficiency resources into future PJM capacity auctions. Further, consistent with our ruling in the Opinion and Order issued in this proceeding, the Commission finds that FirstEnergy shall be entitled to recover from ratepayers the prudently incurred costs of any steps taken to eliminate any shortfalls.

Commission Decision

(63) Based upon the record in this proceeding, the Commission finds that the Companies' application for approval of the Amended Plan should be approved, subject to the modifications set forth herein.

It is, therefore,

ORDERED, That FirstEnergy's application to amend its portfolio plan is modified and approved as set forth in Finding (63). It is, further,

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

MWC/sc

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Barcy F. McNeal
Secretary