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 2017 through 2019.	)))))))	Case No. 16-743-EL-POR

OBJECTION TO ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAM PORTFOLIO PLANS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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OBJECTION[1] TO ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAM PORTFOLIO PLANS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

A well-designed energy efficiency and peak demand reduction ("EE/PDR") portfolio should be cost effective, should maximize customer benefits from EE/PDR programs, and should minimize customer costs, among other things. FirstEnergy's[2] proposed EE/PDR portfolio (the "2017-2019 Portfolio" or the "Portfolio") is not well designed. It suffers from numerous material defects under Ohio laws and regulations, and the Public Utilities Commission of Ohio (the "PUCO") cannot approve it without substantial modification to improve outcomes for customers.

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[1] The Office of the Ohio Consumers' Counsel (the "Consumers' Counsel") files this objection under Ohio Administrative Code ("OAC") 4901:1-39-04(D). OAC 4901:1-39-04(D) provides: "Unless otherwise ordered by the commission, any person may file objections within sixty days after the filing of an electric utility's program portfolio plan. Any person filing objections shall specify the basis for all objections, including any proposed additional or alternative programs, or modifications to the electric utility's proposed program portfolio plan." *See also* Entry ¶ 10(a), Case No. 16-743-EL-POR (May 23, 2016) (setting procedural schedule in this case).

[2] FirstEnergy consists of three separate electric distribution utilities in the state of Ohio: Ohio Edison Company ("OE"), the Cleveland Electric Illuminating Company ("CEI"), and the Toledo Edison Company ("TE," and together with OE and CEI, the "Companies" or "FirstEnergy").

In 2009, FirstEnergy filed its first EE/PDR portfolio in Ohio in response to Ohio Senate Bill 221 ("SB 221").[3] SB 221 required Ohio electric distribution utilities to achieve certain cumulative and annual amounts of energy savings and peak demand reduction (generally referred to as the "statutory benchmarks"). FirstEnergy's inability to design and implement effective programs is apparent. In 2010, for example, OE fell short of its annual energy savings statutory benchmark by nearly 20%.[4]

The Ohio General Assembly passed Senate Bill 310 ("SB 310")[5] in 2014, which "froze" the annual statutory benchmarks for 2015 and 2016 and gave utilities the option of either continuing their EE/PDR programs or modifying them to account for the freeze.[6] FirstEnergy immediately cancelled nearly all of its EE/PDR programs.[7] In contrast, all other Ohio electric distribution utilities continued their EE/PDR programs.

Around the same time, FirstEnergy filed its most recent electric security plan case (the "ESP IV Case").[8] The ESP IV Case revolves around "power purchase agreements" ("PPAs") under which FirstEnergy seeks to charge all retail customers for profits and costs related to certain deregulated power plants. The PPAs have nothing to do with energy efficiency, peak demand reduction, or FirstEnergy's EE/PDR portfolio. Yet in the

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[3] SB 221 is available at http://archives.legislature.state.oh.us/BillText127/127_SB_221_EN_N.pdf.

[4] *See* Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company, Energy Efficiency & Peak Demand Reduction Program Portfolio Status Report for the Period January 1, 2010 through December 31, 2010 at 5, Case No. 11-2956-EL-EEC (May 23, 2011) (statutory benchmark of 197,959 MWh but actual energy savings of 164,365 MWh).

[5] SB 310 is available at http://archives.legislature.state.oh.us/BillText130/130_SB_310_EN_N.pdf.

[6] *See* SB 310 §6.

[7] *See* Verified Application for Approval of Amended Energy Efficiency and Peak Demand Reduction Plans for 2015 through 2016 ¶ 3, Case No. 12-2190-EL-POR (Sept. 24, 2014) (the "Program Cancellation Application").

[8] Case No. 14-1297 (filed Aug. 4, 2014).

ESP IV Case, FirstEnergy signed a stipulation[9] with certain parties in which those parties agreed to support FirstEnergy's PPAs in exchange for FirstEnergy's promise to resurrect (and substantially increase the scope of) the EE/PDR programs that it had just cancelled. The PUCO entered an opinion and order approving the PPAs in the ESP IV Case on March 31, 2016,[10] and two weeks later, FirstEnergy filed its application to approve the 2017-2019 Portfolio (the "Application").[11]

To summarize: FirstEnergy started its EE/PDR efforts in 2010 by failing to achieve the amount of energy savings required by statute. As soon as SB 310 was passed in 2014, FirstEnergy cancelled nearly all of its EE/PDR programs, while all other Ohio electric distribution utilities continued their programs for the benefit of customers. FirstEnergy then used its decision to cancel these programs as a bargaining chip in its unrelated PPA case. FirstEnergy signed a stipulation in the PPA case that required it to substantially increase the scope of its EE/PDR programs, but only if FirstEnergy's profits (paid by all customers, not the parties to the stipulation) would increase by 150% from $10 million a year to $25 million a year[12] (after taxes[13]).

FirstEnergy uses EE/PDR programs as a vehicle for increasing utility profits and garnering support for unrelated settlements that are demonstrably bad for consumers generally but good for the Companies and their unregulated affiliates. It is little surprise,

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[9] *See* Third Supplemental Stipulation and Recommendation, Case No. 14-1297-EL-SSO (Dec. 1 2015) (the "Third ESP IV Stipulation").

[10] *See* Opinion and Order, Case No. 14-1297-EL-SSO (Mar. 31, 2016).

[11] *See* Application, Case No. 16-743-EL-POR (Apr. 15, 2016).

[12] *See* Third ESP IV Stipulation at 11-12 (FirstEnergy will "strive to achieve over 800,000 MWh of energy savings annually . . . . The after-tax annual shared savings cap shall be increased from $10 million to $25 million . . .").

[13] Based on an estimated 36% tax rate for FirstEnergy, customers will actually pay around $39 million per year in profits to FirstEnergy, a total of $117 million during the term of the 2017-2019 Portfolio.

therefore, that the 2017-2019 Portfolio suffers from the following material defects, among others:

- Customers pay excessive profits to FirstEnergy under the 2017-2019 Portfolio. The Shared Savings Mechanism[14] in the Portfolio is seriously flawed because (i) it requires FirstEnergy to reach only the statutory minimum energy savings, and not the amount of savings required by the Third ESP IV Stipulation, before customers are required to pay additional profits to FirstEnergy, (ii) it violates basic principles of class equity, (iii) it rewards FirstEnergy for performance that is far short of the exemplary performance typically required for shared savings, (iv) it manipulates the calculation of profits to increase utility profits based on programs that harm customers, (v) it requires customers to pay profits to FirstEnergy as a result of energy savings that the customers achieve outside of FirstEnergy's EE/PDR programs and with no assistance whatsoever from FirstEnergy, (vi) it relies heavily on behavioral programs that do not result in persistent energy savings, (vii) it unjustifiably increases the amount of profits that customers pay from $10 million to $25 million per year, (viii) it violates the basic principles of corporate separateness, (ix) it underestimates the number of low-income customers, and (x) it fails to accurately forecast peak demands to account for weather.

- Over $100 million of the program budget is spent on programs that are not cost-effective, which violates the Ohio Administrative Code ("OAC").

- Customers are required to pay costs that FirstEnergy incurs to restart the EE/PDR programs that FirstEnergy unilaterally cancelled for 2015 and 2016 and then promised to restart as part of the Third ESP IV Stipulation.

- FirstEnergy violated the OAC by making final, material decisions on the Portfolio without any input from its collaborative members.

- FirstEnergy violated the OAC by agreeing to restart programs and substantially increase their scope before its market potential study ("MPS") was complete.

[14] Capitalized terms not otherwise defined in this objection have the meaning given to them in the Application.

- Programs for low income customers receive a disproportionately low percentage of the program budget and experience very low participation rates.

As submitted, the Portfolio harms customers, violates the law, and cannot be approved. If the Portfolio is approved as submitted, customers could pay over $440 million dollars in program costs, profits, and lost distribution revenues for programs that are not designed to maximize customer benefits. The PUCO should order FirstEnergy to substantially and materially modify the Portfolio, consistent with the Consumers' Counsel's following objections and recommendations.

I. FIRSTENERGY'S "SHARED SAVINGS MECHANISM" DOES NOT RESULT IN "SHARING" OR "SAVINGS" FOR CUSTOMERS. IT RESULTS IN INCREASED PROFITS FOR THE COMPANIES WITHOUT INCENTING THEM TO RUN PROGRAMS THAT BENEFIT CUSTOMERS.

"Shared savings," as FirstEnergy uses that phrase in its 2017-2019 Portfolio, is a misnomer. The phrase "shared savings" suggests that as the utility increases the amount of savings for customers, the utility and the customer share the additional savings, and both the utility and the customer are better off. It is possible to design a utility incentive mechanism that properly incents the utility to reduce energy usage and save customers money. And in the past, FirstEnergy has agreed that a shared savings mechanism should incent the utility to maximize customer benefits:

- "A shared savings mechanism provides added encouragement for the Companies to exceed the EE&PDR benchmarks, further supporting the Companies' prudent and cost effective decisions that maximize net benefits to the extent possible . . ." *See* Direct Testimony of Eren G. Demiray on Behalf of FirstEnergy, Case No. 12-2190-EL-POR (July 31, 2012) (emphasis added).

- "Shared Savings are an incentive for the Companies to exceed the benchmarks set by statute to the extent net benefits can be gained, thereby providing additional benefits to customers. . . . The shared savings component of Rider DSE is a reasonable mechanism for

> incenting the Companies to achieve energy efficiency benefits for consumers." *See* Post-Hearing Brief of FirstEnergy in Support of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Initial Benchmark Reports at 23-24, Case No. 09-1947-EL-POR (Mar. 29, 2010) (emphasis added).

FirstEnergy's proposed Shared Savings Mechanism, however, is flawed. FirstEnergy has carefully designed every aspect of the Shared Savings Mechanism to increase the amount of profits that customers pay to the Companies, even in the absence of increased net benefits for customers.

The calculation of utility profits under the Shared Savings Mechanism includes four primary inputs: (i) the incentive tiers and savings target, (ii) the net benefits calculation, (iii) the energy savings calculation, and (iv) the profit cap. Each input is purposefully designed in a way that benefits the Companies by increasing profits and harms customers by reducing the amount of benefit they derive from the EE/PDR programs.

First, the Companies' incentive table,[15] which provides for increased profits as the Companies achieve additional energy savings, is designed to virtually guarantee that the Companies will reach the highest incentive percentage because the highest tier is significantly below the Companies' 800,000 MWh annual savings target. The incentive table also violates the core principle of class equity because the tiers are calculated only on a Company-by-Company basis, and not a class-by-class basis. This means that residential customers could pay higher profits to the Companies based on savings achieved by the Portfolio's commercial and industrial programs.

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[15] *See* Application § 7.1.

Second, the Companies manipulate the net benefits calculation by excluding non-cost-effective programs from the calculation. They count the net benefits from cost effective programs and use those benefits to increase profits, but they do not count the net costs of non-cost-effective programs, which would decrease profits. This gives the Companies an incentive to include non-cost-effective programs — which the Companies in fact have done at a cost of over $100 million to customers. The Companies also improperly include the benefits of the Customer Action Program, Energy Special Improvement District program, and Mercantile Self-Direct program, even though the Companies play no part whatsoever in achieving those benefits.

Third, the Companies compound the harm by including savings from non-cost-effective programs in the energy savings calculation. The Companies want it both ways. They want credit for the savings achieved through non-cost-effective programs, but they do not want the net cost of these programs held against them when calculating the total net benefits of the portfolio because this would decrease profits.

Fourth, the Companies have not done anything to deserve an increase in their shared savings cap to $25 million. Moreover, a single cap for all three Companies in the aggregate violates the principles of corporate separateness because customers of one Company could pay higher profits based on the performance of one of the other Company's programs.

Each of these material defects in the Shared Savings Mechanism, and others, must be corrected to avoid customers paying excessive profits to the Companies. The problems with the Shared Savings Mechanism are described in more detail below and should be corrected as proposed by the Consumers' Counsel.

A. The Shared Savings Mechanism should be based on a target of 800,000 MWh because FirstEnergy is contractually committed to pursue that amount of savings.

FirstEnergy states that its shared savings mechanism is intended to "encourage the Companies, through financial incentives, to exceed their statutorily mandated EE/PDR goals."[16] In the past, the Commission has approved tiered shared savings mechanisms that give the utility an increased percentage of the net benefits from EE/PDR programs if the programs achieve savings above the statutory minimums.[17] FirstEnergy proposes a similar tiered mechanism in this case.[18] The logic behind this structure is that without a chance for additional profits, the utility has an incentive to reach the statutory minimum (to avoid a penalty[19]), but not to go above and beyond.[20]

In this case, however, that logic does not apply. FirstEnergy signed a stipulation in its most recent electric security plan case that requires FirstEnergy to "strive to achieve over 800,000 MWh of energy savings annually."[21] This is a binding contractual commitment. *See State v. Smith*, 2009-Ohio-3154, ¶ 7 (Ohio Ct. App. 2009) ("stipulations are voluntary agreements between opposing parties, and thus are subject to principles of contract law"). Thus, if FirstEnergy fails to adequately pursue 800,000 MWh of annual energy savings in its 2017-2019 Portfolio, the other parties to the Third

[16] *See* Application, Attachment A § 7.1. Attachment A to the Application shall be referred to in this objection as the "Portfolio Plan."

[17] *See, e.g.,* Case No. 12-2190-EL-POR; Case No. 11-5569-EL-POR.

[18] *See* Portfolio Plan § 7.1.

[19] *See* OAC 4901:1-39-06(B) ("If staff finds that an electric utility has not demonstrated compliance with the approved program portfolio plan or annual sales or peak-demand reductions required by division (A) of section 4926.66 of the Revised Code, staff may recommend remedial action and/or the assessment of a forfeiture.").

[20] *See* Portfolio Plan § 7.1 (the Shared Savings Mechanism "encourages the Companies, through financial incentives, to exceed their statutorily mandated EE/PDR goals").

[21] *See* Third ESP IV Stipulation at 11-12.

ESP IV Stipulation can sue FirstEnergy for breach of contract and pursue damages or other remedies.

FirstEnergy is contractually required to pursue 800,000 MWh of annual energy savings in its 2017-2019 Portfolio. FirstEnergy, therefore, does not need additional financial incentives to pursue savings up to that target. Accordingly, allowing FirstEnergy to collect additional profits from customers in the form of shared savings provides no benefit at all to customers and instead provides a windfall to FirstEnergy, paid by customers. Just as consumers are not required to pay additional profits to electric distribution utilities that fail to meet the statutory minimum energy savings, consumers should not be required to pay additional profits to FirstEnergy for satisfying its legal duty to reach 800,000 MWh of energy savings. The PUCO should reject this inequitable treatment of customers and should instead provide that customers will only pay additional profits (if at all) to FirstEnergy in the form of shared savings if FirstEnergy exceeds 800,000 MWh per year.[22]

B. The incentive tiers in the Shared Savings Mechanism violate the basic principles of class equity because energy savings attributable to one class of customers result in a different class of customers paying higher utility profits.

The PUCO cannot approve the tiered Shared Savings Mechanism because it unfairly shifts the costs and benefits of programs between different classes of customers. This violates the PUCO rule that a utility must consider equity among customer classes when developing its EE/PDR portfolio. *See* OAC 4901:1-39-03(B)(6) ("When

[22] As discussed below, the 800,000 MWh target must be sub-divided both by Company and by customer class for purposes of the shared savings calculation. *See* section I.J. below.

developing programs for inclusion in its program portfolio plan, an electric utility shall consider the following criteria: . . . (6) Equity among customer classes.").

As proposed, the tiered incentive mechanism gives each Company additional profits as it achieves higher energy savings compared to the statutory benchmark.[23] Each class of customers pays higher profits, even if the additional energy savings are not attributable to that class's programs, and even if the additional energy savings do not result in additional net benefits to that class. For example, for 2017, FirstEnergy identifies a baseline usage of 23,898,000 MWh for OE.[24] The annual statutory benchmark of 1%[25] for OE is therefore 238,980 MWh. Thus, as long as OE achieves 238,980 MWh in energy savings, the shared savings mechanism will trigger.[26] As OE achieves greater savings, its profits increase. At a maximum, OE receives a 13.0% incentive percentage if it achieves great than 115% of the annual benchmark (*i.e.*, if it achieves greater than 274,827 MWh of savings).

The problem with this structure, however, is that the Shared Savings Mechanism is triggered by, and the incentive tiers are based on, total energy savings, regardless of which class of customers' programs are responsible for those savings. That means that if the utility's residential programs underperform (and therefore contribute a lower percentage of savings than expected), but the utility's commercial and industrial programs over-perform so that the aggregate savings from all programs is above the statutory

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[23] *See* Portfolio Plan § 7.1.

[24] *See* Direct Testimony of Denise J. Mullins, Exhibit DJM-1, Case No. 16-743-EL-POR (Apr. 15, 2016).

[25] *See* R.C. 4928.66(A)(1)(a).

[26] The Third ESP IV Stipulation requires the Companies collectively to reach 800,000 MWh of energy savings in each of 2017, 2018, and 2019. OE projects 386,445 MWh kWh of energy savings for 2017. *See* Application, OE Appendix B-2. As discussed below, OE should be required to reach this amount of savings, and not 238,980 MWh for the shared savings mechanism to trigger.

benchmark, then residential customers will still be required to pay higher profits using the higher incentive percentage. The PUCO cannot permit this type of cross-subsidization between classes of customers. One class of customers should not be required to pay higher profits based on the performance of another class's programs.

To remedy this, the Shared Savings Mechanism should be modified so that the incentive tiers are not tied to aggregate compliance percentages but instead are tied to energy savings by class as compared to that class's projected savings. For example, FirstEnergy projects that OE's non-low-income residential programs will achieve 180,604,550 KWh of energy savings in 2017.[27] This number should form the baseline for the shared savings tiers. If OE does not achieve at least 180,604,550 KWh savings through its non-low-income residential programs, then the Shared Savings Mechanism should not trigger for non-low-income residential customers. The compliance percentages in the Shared Savings Mechanism should be percentages of the projected energy savings, not percentages of the aggregate statutory benchmark. The same would apply for all other customer classes of OE, TE, and CEI individually. This amendment to the mechanism protects customers in each class and more appropriately incents FirstEnergy to achieve savings in all sectors.

C. Customers should not be required to pay additional profits to the Companies simply because the Companies achieve savings that are marginally higher than the statutory minimum. Shared savings profits should reward only exemplary performance.

The Companies' Shared Savings Mechanism rewards them by requiring customers to pay millions of dollars in extra profits as soon as the Companies achieve any savings

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[27] *See* Application, OE Appendix B-2.

over the statutory minimum.[28] In the lowest tier, customers pay profits to the Companies in the amount of 5% of the Total Discounted Net Lifetime Benefits[29] if the Companies achieve between 100% and 105% of the annual statutory minimum savings. In its most recent status report, FirstEnergy reported the following annual energy savings for 2015 and the following total discounted net lifetime benefits:[30]

Company	Energy Savings	Total Discounted Net Lifetime Benefits
OE	190,614 MWh	$49,980,360
CEI	99,603 MWh	$34,415,580
TE	89,435 MWh	$29,400,312
TOTAL	379,652 MWh	$113,796,252

Even at the lowest tier in the Shared Savings Mechanism, this would result in customers paying an additional $5.7 million per year in profits across the three Companies.[31] Customers should not pay millions of dollars in profits to the Companies when the programs achieve savings that just barely exceed the statutory minimum. Shared savings should reward only exemplary performance. Accordingly, the Shared Savings Mechanism should include only two tiers, as follows:

[28] *See* Portfolio Plan § 7.1.

[29] The Application uses the terms "Total Discounted Net Lifetime Benefits" and "Total Discounted Net Lifetime UCT Benefits." The Consumers' Counsel understands that these terms mean the same thing for purposes of the Shared Savings Mechanism.

[30] *See* Shared Savings Determination, Case No. 16-941-EL-EEC (May 12, 2016), *available at* http://dis.puc.state.oh.us/TiffToPDf/A1001001A16E12B10005H04417_0.pdf.

[31] $113,796,252 * 0.05 = $5,689,813. Because the benchmarks were frozen in 2015, FE claims a 13% incentive under the highest incentive tier for 2015, for a total incentive of over $14 million, which is then reduced to $10 million under the cap. The Consumers' Counsel disputes the profit calculations that FirstEnergy uses in its annual report. *See* Consumers' Counsel's Comments, Case No. 16-941-EL-EEC (June 13, 2016).

Incentive Tier	Compliance Percentage	Incentive Percentage
1	<= 115%	0.0%
2	> 115%	8.0%

A 13% incentive percentage is too high. The incentive percentages proposed by the Companies should be reduced given FirstEnergy's current arrangement for collecting its lost distribution revenues from customers.[32] The top tier (tier 5 under the Companies' proposed Shared Savings Mechanism; tier 2 under the Consumers' Counsel's proposal) should be reduced to 8% to more adequately balance the interests of customers in paying reasonable rates and the interests of the Companies in increasing their profits. The 8% incentive percentage is within the range being offered to other utilities nationwide.[33]

D. Customers should not pay increased profits to FirstEnergy in the form of shared savings by excluding non-cost-effective programs from the calculation of Total Discounted Net Lifetime Benefits.

The proposed Shared Savings Mechanism provides that the Companies receive a higher "incentive percentage" (and therefore higher profits) if they achieve greater energy savings.[34] The incentive percentage is multiplied by the "Total Discounted Net Lifetime Benefits" achieved under the plan, and the resulting product is the amount of profit that customers pay. The Total Discounted Net Lifetime Benefits are the total benefits that customers receive from the programs minus the program costs. The key point is this: there is often no correlation between increasing the energy savings and increasing the net benefits to customers because of FirstEnergy's calculation of net lifetime benefits using

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[32] *See* Case No. 12-1230-EL-SSO.

[33] *See, e.g.*, Georgia Public Service Commission, Docket No. 36499 (8.5% incentive).

[34] *See* Application § 7.1.

the Utility Cost Test. Thus, FirstEnergy can increase energy savings, thereby pushing it into a higher incentive percentage under the Shared Savings Mechanism (and increasing profits), even though that increase does not benefit — and in many instances, actually harms — customers. This means that not only are customers not "sharing" in the additional savings, they are paying the utility additional profits when the utility <u>reduces</u> the benefits to customers.

One way that FirstEnergy accomplishes this is by including programs and measures in its portfolio that are not cost effective. Section 7.1 of the Application contains two provisions that work together to increase FirstEnergy's profits without any corresponding benefit to customers. First, "[t]he savings of <u>all programs</u> will contribute to the calculations of whether the Companies have exceeded their benchmarks for any particular year and in doing so, have triggered the Shared Savings Mechanism."[35] Second, "The Total Discounted Net Lifetime Benefits of all <u>cost-effective</u> energy efficiency programs (as determined by the UCT) are eligible for shared savings."[36] The use of "all programs" for counting savings toward triggering the incentive tiers but only using "cost effective" programs when calculating the amount of shared savings increases profits paid by customers to the Companies without any corresponding benefit to customers.

Excluding non-cost-effective programs from the shared savings calculation benefits FirstEnergy because the Total Discounted Net Lifetime Benefits of non-cost-effective programs is, by definition, negative. If the Total Discounted Net Lifetime Benefits of non-cost-effective programs were included in the shared savings calculation,

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[35] Application § 7.1 (emphasis added).

[36] *Id.* (emphasis added).

FirstEnergy's profits would decrease. FirstEnergy takes the net benefits of all cost-effective programs, which are positive, and uses them to calculate its shared savings profits, which are paid by customers. FirstEnergy takes the net costs of all non-cost-effective programs, and pretends that they do not exist by excluding them from the calculation. This is absurd and inequitable. In the real world, shareholders only make a profit if the entire company is profitable. A company cannot take the successful parts of its operations and declare the company to be profitable while erasing its money-losing efforts from the books. But this is exactly how the proposed Shared Savings Mechanism works.

FirstEnergy's profits increase as it achieves additional energy savings, but its profits do not decrease if its programs and measures are not cost effective. Thus, FirstEnergy has little incentive to ensure that programs and measures are cost effective. This explains, in part, why the 2017-2019 Portfolio relies heavily on programs that are not cost-effective.[37] When a program is not cost effective, it harms customers because the costs of the program are greater than the benefits.[38] FirstEnergy's proposed portfolio relies on programs that are not cost effective for over 397,000 MWh of the projected energy savings.[39] These programs, therefore, account for more than 16% of the total energy savings. Without these projected savings, FirstEnergy would not meet its 800,000 MWh energy savings goal.

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[37] *See* section III below.

[38] The exception to this is if the program provides "substantial nonenergy benefits" which can include benefits to low income customers. *See* OAC 4901:1-39-04(B). As discussed below, the majority of FirstEnergy's non-cost-effective programs do not provide substantial nonenergy benefits.

[39] *See* section III below. This excludes low income programs, which are not cost effective, but which can provide substantial nonenergy benefits.

The PUCO should not permit the Companies to increase their profits from consumers' pockets based on this creative accounting. The Shared Savings Mechanism should be modified to provide that the Total Discounted Net Lifetime Benefits[40] of all programs, not just cost-effective programs, is used to calculate shared savings profits.[41]

E. Total Discounted Net Lifetime Benefits should be calculated using the Total Resource Test because it is the test used under the PUCO rules and more appropriately balances the interests of both customers and the utility.

The PUCO rules require an electric utility to demonstrate that its EE/PDR portfolio is cost-effective on a portfolio basis and that each program is cost-effective (unless the program provides “substantial nonenergy benefits”).[42] The PUCO has determined that the appropriate test for cost-effectiveness is the total resource cost ("TRC") test. *See* OAC 4901:1-39-01(F) ("'Cost effective' means the measure, program, or portfolio being evaluated that satisfies the total resource cost test."). The TRC test calculates the net benefits of a program by subtracting both the program costs and the costs borne by customers from the total program benefits.[43] In contrast, the utility cost test ("UCT") subtracts the utility or program administrator program costs but not the costs that the customer incurs directly.[44] The PUCO could have chosen the UCT as the

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[40] For programs that are not cost-effective, it would be more appropriate to refer to the "Total Discounted Net Lifetime Costs" as opposed to benefits. Regardless of the terminology, the net costs of non-cost-effective programs should be subtracted from the net benefits of cost-effective programs before multiplying the end result by the incentive percentage.

[41] As discussed below, non-cost-effective programs should generally be removed from the Portfolio. *See* section III of this objection.

[42] *See* OAC 4901:1-39-04(B).

[43] *See* OAC 4901:1-39-01(Y).

[44] For example, if a customer purchases an energy efficient refrigerator for $1,500 and receives a $100 rebate through a utility's EE/PDR program, the TRC test accounts for the entire $1,500 ($1,400 paid by the consumer and $100 in program costs for the rebate). The UCT, however, counts only the $100 in program costs.

appropriate test for cost-effectiveness when enacting its energy efficiency rules, but it did not.

FirstEnergy proposes that for purposes of satisfying OAC 4901:1-39-04, the TRC test be used for cost effectiveness, but when calculating utility profits for shared savings, the UCT should be used. The downfall of the UCT is that it fails to take into account participant costs and therefore cannot be used to determine the actual net benefits that customers receive from the Companies' programs. A program that is not cost-effective using the TRC — and therefore not allowed at all unless it provides substantial nonenergy benefits — could nonetheless increase utility profits using the UCT.

There is no reason to use two different tests. The net benefits calculation for purposes of shared savings should be consistent with the PUCO rules and should utilize the TRC test. The TRC test is the only measure that accounts for all the costs and benefits of the Companies' EE/PDR programs. Therefore, the Companies' shared savings incentives should come from the total net benefits that the programs provide, not the net benefits provided only to the utility.

F. Customers should not pay profits to FirstEnergy for the CAP, ESID program, and Mercantile Customer Program because FirstEnergy does not contribute in any way to the savings produced by these programs.

A utility should only receive shared savings profits (if at all) for programs that it develops and administers for the benefit of customers. A properly designed shared savings mechanism encourages a utility to run efficient programs that reduce usage and peak demand and increase the overall benefits for consumers. FirstEnergy's Shared Savings Mechanism violates these core principles by including savings from the Customer Action Program ("CAP"), Energy Special Improvement District ("ESID") program, and Mercantile Customer Program (aka mercantile self-direct) in its profit calculations.

The residential CAP "captures energy savings and peak demand reductions achieved through actions taken by customers <u>outside of utility-administered programs</u>."[45] FirstEnergy plays no role in customers achieving these savings and does not provide any incentives to customers to reduce usage or demand. Rather, FirstEnergy simply performs surveys and collects data on savings that customers are achieving on their own and counts those savings toward the net benefits that are used to determine its profits in the Shared Savings Mechanism.

The ESID program captures savings that townships and municipalities achieve by creating Energy Special Improvement Districts under Ohio Revised Code 1710.061.[46] Under the state ESID initiative, the ESID offers Property-Assessed Clean Energy financing to its constituents to install energy improvements.[47] FirstEnergy does not administer these programs, does not encourage townships and municipalities to create ESIDs, and does not otherwise contribute to any of the savings achieved by these programs. Rather, FirstEnergy proposes simply to count the savings achieved by ESIDs toward its statutory benchmark and toward its shared savings profit calculations.

Like the CAP and ESID programs, the Mercantile Customer Program captures savings from projects that the mercantile customer (not the Companies) initiated and directed.

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[45] *See* Portfolio Plan § 3.2 (page 40) (emphasis added).

[46] *See* Portfolio Plan § 3.6 (page 77).

[47] *Id.*

FirstEnergy should not be allowed to include any savings from the CAP, ESID, and Mercantile Customer Programs toward shared savings because FirstEnergy bears no responsibility for the savings achieved by these programs. As the PUCO Staff has previously concluded:

> [A] shared savings mechanism for the First Energy electric distribution utilities should only be for those activities for which First Energy has had a material effect in their customers' decisions in adopting energy efficiency. Only those programs that are under the direct or indirect supervision or management of the Company should be able to count toward those savings that exceed their annual benchmarks.[48]

The CAP, ESID, and Mercantile Customer Programs are not supervised or managed by FirstEnergy, and FirstEnergy has had no effect on customers' decisions in adopting energy efficiency measures. Counting the savings from programs that achieve their savings independent of FirstEnergy is plainly unfair to customers. The customer pays the entire cost of achieving the savings with no assistance at all from FirstEnergy, and then the customer is required to pay profits to FirstEnergy as a result of the savings that the customer alone achieved and paid for. There is no possible justification for this.

The harm to customers is exacerbated by the use of the UCT to calculate shared savings. The UCT includes only costs incurred by the utility (*i.e.*, the program costs) and not costs incurred directly by the consumer. In the case of the CAP, ESID, and Mercantile Customer Programs, customers bear all of the costs. Thus, when calculating the net benefits of these programs (which are multiplied by the incentive percentage to determine utility profits), FirstEnergy counts all of the savings achieved by the consumer

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[48] *See* Proposal for Incentivizing Utility Energy Efficiency Performance Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio, Case No. 09-1947-EL-POR (Oct. 24, 2011). *See also* Opinion and Order at 16, Case No. 12-2190-EL-POR (Mar. 23, 2013) (PUCO stating that FirstEnergy would exclude self-direct mercantile energy savings from the shared savings calculation).

but none of the costs. FirstEnergy's profits, therefore, are even higher than they would be if FirstEnergy had run programs to achieve those same savings. Customers should not pay profits to FirstEnergy for the CAP, ESID, and Mercantile Customer Programs, and customers especially should not pay more profit for these programs than they do for programs that FirstEnergy actually designs and administers.

The PUCO should find that (i) the energy savings from the CAP, ESID, and Mercantile Customer Programs should not be counted when determining which "incentive tier" is achieved under the Shared Savings Mechanism and (ii) any net benefits from the CAP, ESID, and Mercantile Customer Programs should be excluded from the calculation of Total Discounted Net Lifetime Benefits for purposes of shared savings. To find otherwise is unfair to customers and represents a windfall for FirstEnergy at customer expense.

G. Behavioral programs should be excluded from the shared savings that customers would pay because they do not result in persistent savings and the measurement of savings from such programs is less reliable than other programs.

Behavior-based programs focus on energy savings resulting from changes in individual customers or organizational behavior and decision-making, compared to savings from deployment of hardware such as appliances, HVAC equipment and home insulation. By their nature, behavioral program savings are short-lived. FirstEnergy provides that the measure life for their residential behavior program is only one year.[49] In contrast, programs that involve hardware (like an HVAC system) have a measure life of anywhere from three to 18 years.[50] These non-behavioral programs provide savings that

[49] *See* Application, Appendix C-1: Measure Assumptions.

[50] *See id.*

benefit customers year after year. Consistent with the PUCO staff's recommendation in FirstEnergy's earlier portfolio case, "[p]rograms that rely strictly on behavioral changes of customers must demonstrate the persistence of such savings each year."[51] FirstEnergy admits that its residential behavioral program has a measure life of just a single year and therefore does not demonstrate persistence of savings each year.[52]

In addition, because behavioral programs do not rely on hardware or other similar measures, but instead rely on general customer decision-making, the savings from behavioral programs are harder to measure. It is relatively simple to calculate the energy savings that result from using an efficient appliance compared to an inefficient one. But there is no concrete way to determine that a customer made a behavioral change as a result of receiving a report from a utility about usage. Thus, the residential behavioral program does not satisfy the PUCO staff's recommendation that "[e]nergy efficiency savings must be clearly and easily measurable."[53]

H. Programs addressed in other dockets should not be counted for purposes of shared savings that customers pay.

FirstEnergy identifies several programs that are addressed in other dockets, including the LED Street Lighting Tariff, Mercantile Customer Program, Transmission and Distribution ("T&D") Upgrades Program, and Smart Grid Modernization Initiative Program. As FirstEnergy contends, these programs are not being addressed in this case

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[51] *See* Proposal for Incentivizing Utility Energy Efficiency Performance Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio at 2, Case No. 09-1947-EL-POR (Oct. 24, 2011).

[52] *See* Application, Appendix C-1: Measure Assumptions.

[53] *See* Proposal for Incentivizing Utility Energy Efficiency Performance Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio at 2, Case No. 09-1947-EL-POR (Oct. 24, 2011) ("Energy efficiency savings must be clearly and easily measureable.").

and "no further approval is necessary in this docket."[54] Accordingly, FirstEnergy should not be entitled to charge customers for these programs in its shared savings calculation.

Furthermore, to the extent that the T&D Upgrades Program, Smart Grid Modernization Initiative Project, or any other programs include capital investments, the Companies already receive a return on those investments, so allowing shared savings would result in customers paying a double incentive to the Companies. *See also* R.C. 4928.66(A)(V)(ii) (prohibiting T&D line losses from inclusion in shared savings).

I. There is no justification for FirstEnergy's request that customers pay the Companies $25 million per year in profits, a 150% increase from its previous portfolio.

FirstEnergy requests a 150% increase in profits to be paid by customers from $10 million per year to $25 million[55] per year. FirstEnergy provides no information on how it arrived at this number, why it is appropriate, why customers should be asked to pay it, or why it is 150% higher than the previous cap. Indeed, there is no justification for such a substantial increase in profits that customers would pay. The cap should remain at $10 million per year, which represents nearly 10% of the total annual proposed program costs.

1. Charging customers for $25 million in profits is excessive because FirstEnergy bears almost no risk under the 2017-2019 Portfolio.

The Companies' return (profit) from EE/PDR programs should be commensurate with the risk associated therewith. *See Ohio Edison Co. v. PUCO*, 63 Ohio St. 3d 555, 562 (1992) ("the return to the equity owner should be commensurate with returns on

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[54] *See* Application ¶ 23.

[55] As discussed above, because the $25 million cap is post-tax, customers will actually pay up to $39 million a year in profits.

investments in other enterprises have corresponding risks") (quoting *Federal Power Co. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944)). FirstEnergy, however, bears almost no risk at all with respect to the 2017-2019 Portfolio. The 2017-2019 Portfolio costs FirstEnergy nothing: consumers pay 100% of program costs plus distribution revenues that are lost as a result of EE/PDR programs. As long as FirstEnergy achieves the statutory minimum for energy efficiency savings (a near certainty, given that FirstEnergy is targeting savings that exceed the statutory minimum by over 50%), it will not be subject to a PUCO fine, and it will not incur any costs. Despite the lack of any risk on behalf of the Companies, FirstEnergy asks customers to pay $25 million a year to the Companies in profit if FirstEnergy achieves a certain amount of energy savings.

At the same time, FirstEnergy's incentive proposal does not include any penalty if the Companies do not meet their annual savings targets. In order to make the incentive mechanism balanced, there should be a penalty if the Companies do not achieve their savings target. If a Company does not achieve at least 85% of the annual savings target proposed in the Application, the Company should pay a penalty of 8% of the Total Discounted Net Lifetime Benefits under the TRC to customers. *See* R.C. 4928.66(C) (PUCO may order a forfeiture if a utility does not meet the benchmarks).

2. FirstEnergy has demonstrated a lack of commitment to energy efficiency that does not warrant a substantial increase in profits paid by customers.

The Companies' request for a substantial increase in profits is especially troubling in light of their demonstrated lack of commitment to energy efficiency. In response to

SB 310, FirstEnergy cancelled nearly all of its EE/PDR programs in 2015 and 2016.[56] FirstEnergy was alone in making this decision; all other electric distribution utilities in Ohio continued to run all of their EE/PDR programs for the benefit of customers.

Then, FirstEnergy took advantage of its decision to cancel its programs by using their reintroduction as a bargaining chip to gain support for the PPAs, even though the PPAs have nothing to do with energy efficiency and peak demand reduction. FirstEnergy agreed to reinstate all cancelled programs, to strive to achieve 800,000 MWh hours in energy savings each year from 2017-2019, and to increase its shared savings cap to $25 million in a stipulation with various parties in exchange for those parties' support for FirstEnergy's PPAs, which will increase consumer costs by $3 billion.[57]

In short, FirstEnergy's commitment to energy efficiency, peak demand reduction, and EE/PDR portfolio programs has been lacking. It created a portfolio of programs in 2009 and 2011 to meet the statutory minimum requirements under SB 221, and as soon as those statutory minimums were frozen under SB 310, FirstEnergy pulled those programs out from underneath customers. Then, FirstEnergy lured certain parties into supporting its costly and burdensome PPAs by promising to reinstate programs (that customers pay for) and achieve higher energy savings. Customers should not be required to reward FirstEnergy for its behavior by paying increased profits of $25 million ($39 million when accounting for taxes) per year.

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[56] *See* 2015-16 Program Cancellation Application at 2 (stating that all programs not specifically listed would be suspended for 2015-2016).

[57] *See* Direct Testimony of Matthew I. Kahal at 8, Case No. 14-1297 (Dec. 22, 2014). FirstEnergy may also be charging customers for the costs associated with restarting the programs that FirstEnergy cancelled.

J. A single shared savings cap spread across all three Companies violates the principles of corporate separateness, is unfair to customers, and cannot be approved.

The Commission cannot approve the proposed shared savings cap because it illegally entangles the affairs of the three Companies, which operate as separate business entities under Ohio law.[58] The Application states that the Shared Savings Mechanism will include a "cap of $25 million after-tax per year in total across the Companies."[59] The Application, however, does not provide any details on how the $25 million yearly shared savings cap will be spread across the three operating Companies. It does not provide any details on how much of the $25 million yearly cap will be paid by OE's customers, how much by CEI's customers, and how much by TE's customers.

If the Commission approves a single cap spread across all three Companies, as opposed to a separate cap for each Company, then the amount of profits paid by one Company's customers may be higher or lower depending not just on the success of those customers' own operating Company's programs, but on the success or failure of the other two operating Companies' programs. The following example demonstrates the inequity that results from a single cap across all three Companies.

Scenario 1. Suppose, under the proposed Portfolio, that in 2017, OE, CEI, and TE all meet their annual and cumulative benchmarks and are all eligible for shared savings. Suppose that, under the Shared Savings Mechanism, each of OE, CEI, and TE would receive $20 million in shared savings, for a total of $60 million. Because of the shared

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[58] *See* FirstEnergy Corp. 10-Q (Apr. 26, 2016) (identifying OE, CEI, and TE as operating subsidiaries of FirstEnergy Corp.).

[59] *See* Portfolio Plan § 7.1.

savings cap, however, the total would be reduced to $25 million.[60] Thus, none of the Companies would collect $20 million, but instead, each would collect closer to $8 million from its customers.[61]

Scenario 2. Now suppose that OE meets its annual and cumulative benchmarks in 2017, but CEI and TE do not. Suppose that OE's performance is the same as in Scenario 1 such that it would receive $20 million in shared savings under the Shared Savings Mechanism. Because CEI and TE did not meet their benchmarks, they would not be entitled to any shared savings. But because the total shared savings across all three Companies is less than the $25 million cap, OE's customers would pay the entire $20 million to OE. In other words, OE's customers would pay $20 million in utility profits instead of just over $8 million, even though OE's portfolio performance was identical in both scenarios. OE's customers cannot be punished for CEI's and TE's failure to meet their annual savings benchmarks because this would violate the fundamental principle that the Companies are separate legal entities. *See MA Equip. Leasing I, LLC v. Tilton*, 980 N.E.2d 1072, 1082 (Ohio Ct. App. 2012) ("With the benefits realized by creating separate corporate entities comes the responsibility to treat the various corporations as separate entities."); *accord Ameritech Ohio v. PUC*, 85 Ohio St. 3d 78, 82 (1999) (Moyer dissenting) ("Ohio law dictates that separate corporations, whether affiliated or not, are to be accepted as wholly separate entities.").[62]

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[60] For purposes of simplicity, this example ignores the fact that shared savings is paid on an after-tax basis. The underlying principle of this argument does not rely on tax issues.

[61] The Application does not state how the $25 million will be allocated across the three Companies if the cap is reached. For purposes of argument, this example assumes that the savings would be split proportionally across the three Companies.

[62] As discussed above, OE did not reach its savings target in 2010, so the possibility that one Company reaches its savings target but another does not is real.

Rather than a single cap spread across all three operating Companies, the PUCO should require there to be three separate caps, one for each Company. As discussed above, FirstEnergy has not justified a 150% increase in its shared savings cap from $10 million per year to $25 million per year. And as discussed above, FirstEnergy has made it clear that it is not committed to energy efficiency and the reduction of energy usage and peak demand. Therefore, the $10 million total cap under the 2013-2015 Portfolio should remain in place. The individual caps should be based on the percentage of total 3-year cumulative energy savings attributable to that Company[63] as follows:[64]

OE	$4.77 million
CEI	$3.46 million
TE	$1.77 million

The PUCO must approve a separate shared savings cap for each Company, as opposed to a single cap for all three Companies, to protect customers from unfairly paying an excessive amount of profits to the Companies.

Based on the same reasoning, the individual Company caps should be broken down further by customer class (non-low-income residential, low-income residential, and

[63] *See* Application, PUCO 5A:

Company	3-Year MWh Savings	% of Total	$10 million * % of Total
OE	1,151,824	47.7%	$4.77 million
CEI	835,856	34.6%	$3.46 million
TE	426,638	17.7%	$1.77 million

[64] If the Commission finds that the total cap should be some number other than $10 million, then the individual Company caps be adjusted in accordance with the formula set forth in footnote **[6]**.

nonresidential), with each class's shared savings cap based on the proportion of energy savings projected for that class's programs.

K. FirstEnergy should weather-normalize forecasted peak demands to produce a more accurate forecast.

Company witness Denise J. Mullins testified that forecasted peak demands were not normalized for weather.[65] According to Ms. Mullins, "[w]eather adjusting the peaks in the actual baseline years would require at least twenty years of daily peak and at least twenty years of the daily temperature humidity indices."[66] Ms. Mullins stated, however, that "daily peaks are only available since 2002, and any calculation using only ten years of history would not be reliable."[67]

Ms. Mullins has not explained why 20 years of data is necessary or how accurate the forecast would be using data from the past 14 years[68] compared to forecasts using the 20 years that she claims is required. FirstEnergy should weather-normalize the forecasted peak demands when determining benchmarks for the shared savings incentive calculations because 14 years of data is more than sufficient for this purpose.

II. THE PUCO CANNOT APPROVE THE SHARED SAVINGS MECHANISM BECAUSE IT IS VAGUE AND INCOMPLETE.

Separate from the arguments set forth above, the PUCO should deny FirstEnergy's request for customers to pay shared savings profits because the Application does not include a complete description of the Shared Savings Mechanism. Without a

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[65] *See* Direct Testimony of Denise J. Mullins on Behalf of the Companies at 12:10-18, Case No. 16-743-EL-POR (Apr. 15, 2016).

[66] *Id.*

[67] *Id.*

[68] Ms. Mullins' testimony that "using only ten years of history would not be reliable" is confusing, given that 2002 was 14 years ago, not ten.

complete description, the PUCO, Consumers' Counsel, and other intervenors cannot evaluate the impact that the Shared Savings Mechanism will have on consumers, whether it complies with applicable laws and regulations, or whether it will result in consumers paying rates that are unjust and unreasonable.

Rather than describing the Shared Savings Mechanism, the Application states that it "is the same as approved by the Commission in the Companies' Previous EE/PDR Portfolio Plans except for the changes approved by the Commission in the Companies' Stipulated ESP IV."[69] The "Previous EE/PDR Portfolio Plans" are the plans that the Companies filed in Case Nos. 12-2190-EL-POR, 12-2191-EL-POR, and 12-2192-EL-POR.[70] The "Stipulated ESP IV" is the Companies' Stipulated Fourth Electric Security Plan approved in Case No. 14-1297-EL-SSO.[71] The Application then identifies certain "key" features of the Shared Savings Mechanism, without identifying the remaining features of the Shared Savings Mechanism that FirstEnergy considers to be non-key.

If the Shared Savings Mechanism were readily available and identifiable in the docket to Case Nos. 12-2190-EL-POR, 12-2191-EL-POR, and 12-2192-EL-POR, then parties could simply turn to those dockets and understand what the Companies propose in the Application.[72] But the shared savings mechanism from the Previous EE/PDR Portfolio Plans is not contained in any one place on those dockets. Rather, the details of the shared savings mechanism in those cases must be cobbled together from, at the very least, (i) section 7.1 of the application filed in those cases, (ii) Exhibit E to the application

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[69] *See* Portfolio Plan § 7.1.

[70] *See* Application ¶ 6.

[71] *See* Application ¶ 3.

[72] Even if it were, it should still be reproduced in the Application in this case so that parties do not need to constantly cross-reference another matter.

filed in those cases, which provides example incentive mechanism calculations,[73] (iii) the July 31, 2012 direct testimony of Eren Demiray filed with the applications in those cases, (iv) the October 29, 2012 rebuttal testimony of Eren Demiray, (v) 1206 pages of trial transcripts, (vi) two Commission orders, and (vii) at least three entries on rehearing. Relevant information describing the shared savings mechanism as approved in these cases may be found elsewhere on the dockets, but FirstEnergy does not provide any guidance. FirstEnergy's Application simply cites to the docket in its entirety and expects parties to dig through 207 docket entries (which total over 6,000 pages) to figure out the details of the Shared Savings Mechanism.

The Companies' bare citation to "the changes approved by the Commission in the Companies' Stipulated ESP IV"[74] is similarly vague. FirstEnergy does not identify any specific documents on the ESP IV docket that pertain to the Shared Savings Mechanism. The ESP IV docket contains over 1,000 entries and over 32,000 pages. FirstEnergy cannot reasonably expect parties in this case to sift through all of these documents in an attempt to figure out what FirstEnergy means when is refers to "the changes approved by the Commission in the Companies' Stipulated ESP IV."

The Commission should conclude that FirstEnergy is not entitled to charge customers for any shared savings unless it files a complete copy of the Shared Savings Mechanism on the docket in this case, which (i) includes all inputs, assumptions, methodologies, calculations, and other relevant information, (ii) includes a sample calculation demonstrating how shared savings will be calculated under the 2017-2019 Portfolio, and (iii) does not rely on citations to other cases (and especially not vague

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[73] A similar exhibit is not included in the Application.

[74] *See* Application § 7.1.

citations to entire dockets).[75] Without this information, Ohio consumers — who FirstEnergy is asking to pay $117 million[76] in profits to FirstEnergy through the Shared Savings Mechanism — do not have enough information to fully assess the basis for these profits.[77] *See* Ohio R. Civ. P. 7(B) (request for relief "shall state with particularity the grounds therefor"); *Thomas v. Croft*, 2010 U.S. Dist. LEXIS 56950, at *3 (S.D. Ohio Mar. 8, 2010) (concluding that motion was "too vague to allow the Court to grant any relief").

III. THE 2017-2019 PORTFOLIO VIOLATES OAC 4901:1-39-04 BECAUSE ONE-THIRD OF THE RESIDENTIAL PROGRAM BUDGET IS SPENT ON PROGRAMS THAT ARE NOT COST EFFECTIVE AND DO NOT PROVIDE SUBSTANTIAL NONENERGY BENEFITS TO CUSTOMERS.

The 2017-2019 Portfolio violates OAC 4901:1-39-04(B) because it relies heavily on programs that are not cost effective and do not provide substantial nonenergy benefits. OAC 4901:1-39-04(B) requires programs in an electric utility EE/PDR portfolio to be cost-effective. *See* OAC 4901:1-39-04(B) ("Each electric utility shall demonstrate that its program portfolio plan is cost-effective on a portfolio basis. In general, each program proposed within a program portfolio plan must also be cost-effective, although each measure within a program need not be cost-effective."). Cost effectiveness is measured

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[75] This is not an issue that can be resolved through interrogatories, requests for the production of documents, or depositions. The parameters of the Shared Savings Mechanism are part of FirstEnergy's request for relief in the Application. The Shared Savings Mechanism has not yet been approved for 2017-2019, and therefore, it does not exist independently of the Application. There can be no other "facts" regarding the Shared Savings Mechanism that can be "discovered" because the mechanism does not yet exist. All that exists is FirstEnergy's proposal for a Shared Savings Mechanism. If something is not included in the Application, then it is not part of the proposal. FirstEnergy cannot file a partial version of the Shared Savings Mechanism and then claim that there are other pieces that it will keep to itself until a party asks.

[76] *See* footnote 13 above.

[77] Parties should have an opportunity to file supplemental objections to the Shared Savings Mechanism if FirstEnergy files a complete copy.

using the TRC test for this purpose.[78] A utility can include a program that is not cost effective in one limited circumstance: the program "provides substantial nonenergy benefits."[79] "Nonenergy benefits" are "societal benefits that do not affect the calculation of program cost-effectiveness pursuant to the total resource cost test including but not limited to benefits of low-income customer participation in utility programs; reductions in greenhouse gas emissions, regulated air emissions, water consumption, natural resource depletion to the extent the benefit of such reductions are not fully reflected in cost savings; enhanced system reliability; or advancement of any other state policy enumerated in section 4928.02 of the Revised Code."[80]

The 2017-2019 Portfolio includes the following residential programs that are not cost effective under the TRC test: Direct Load Control, Behavioral[81], Audits & Education, School Education, HVAC, Smart Thermostat, Low Income – New Homes, and Community Connections.[82] The following Table 1 summarizes the TRC results for these programs,[83] along with the program costs and the projected savings associated with each program for 2017-2019:[84]

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[78] OAC 4901:1-39-01(F).

[79] OAC 4901:1-39-04(B).

[80] OAC 4901:1-39-01(Q).

[81] Behavioral has a TRC score of 1.00 for OE and is therefore just barely cost effective. *See* MPS Table 8-19. It is not cost effective for CEI and TE. *Id.* Table 8-20, Table 8-21.

[82] In addition, the following non-residential programs are not cost effective: Audits & Education – SCI, Custom Buildings – SCI, Government Tariff Lighting (only TE is not cost effective), and Agricultural. *See* MPS Tables 8-19, 8-20, & 8-21 (pages 107-09).

[83] The Low Income – New Homes and Community Connections programs are low income programs that provide nonenergy benefits as required by OAC 4901:1-39-04(B). The Consumers' Counsel supports low-income programs and therefore excludes them from this chart.

[84] *See* MPS Tables 8-19, 8-20, & 8-21 (pages 107-09); Application Appendix B-1: Program Cost by Program Year (page 4 of 4 for each Company); Application Appendix B-2: Program Savings by Program Year (for each Company).

Table 1

	OE			CEI			TE		
Program	TRC	Cost	KWh Savings	TRC	Cost	KWh Savings	TRC	Cost	KWh Savings
Direct Load Control	0.69	$1,003,972	0	0.69	$591,209	0	0.69	$162,207	0
Behavioral				0.91	$4,868,653	73245972	0.88	$1,938,575	27261834
Audits & Education	0.89	$3,786,218	8,535,885	0.89	$2,651,944	9784111	0.89	$1,092,726	2555802
School Education	0.93	$2,984,315	9,648,607	0.93	$1,817,727	7232542	0.93	$992,181	4002424
HVAC	0.37	$4,319,275	13,914,103	0.37	$3,079,548	9611430	0.37	$1,266,486	4054764
Smart Thermostat	0.55	$1,958,536	2,449,729	0.54	$1,533,079	1756986	0.54	$587,051	720335
TOTALS		**$14,052,316**	**34,548,324**		**$14,542,160**	**101,631,041**		**$6,039,226**	**38,595,159**

The following Table 2 compares the costs and energy savings from non-cost-effective residential programs to total costs and energy savings from non-cost-effective residential programs (both excluding low income programs):

Table 2

	Cost of Non-Cost-Effective Residential Programs	Cost of All Residential Programs	% of Costs Not Cost Effective	KWh Savings from Non-Cost-Effective Residential Programs	KWh Savings from all Residential Programs	% of KWh Not Cost Effective
OE	$14,052,316	$61,571,440	22.82%	34548324	492,136,164	7.02%
CEI	$14,542,160	$43,196,847	33.66%	101631041	350,371,682	29.01%
TE	$6,039,226	$18,517,733	32.61%	38595159	142,465,704	27.09%
TOTAL	$34,633,702	$123,286,020	28.09%	174,774,524	984,973,550	17.74%

As these charts demonstrate, the Companies propose that they spend a substantial portion of their budget on programs that are not cost effective. Among the three Companies, residential customers will pay <u>$34.6 million in program costs</u> for programs that are not cost effective. This is in addition to over <u>$70 million in programs costs</u> for non-residential programs that are not cost effective.[85] This is unacceptable and is not permitted under OAC 4901:1-39-04(B).

Moreover, these programs do not provide "substantial nonenergy benefits" and are thus not exempt from the requirement that they be cost effective. FirstEnergy does

[85] *See* Application, Appendix B-1: Program Cost by Program Year (page 4). These non-residential programs account for an additional 222,000 MWh of energy savings. *See* Application, Appendix B-2: Program Savings by Year.

not state anywhere in its Application that any of these programs provide any nonenergy benefits, let alone "substantial" nonenergy benefits. There is no evidence that the Behavioral, Audits & Education, School Education, HVAC, and Smart Thermostat programs provide substantial benefits to low income customers, significantly reduce greenhouse emissions, regulated air emissions, water consumption, or natural resource depletion, or substantially enhance system reliability.

Under OAC 4901:1-39-04(B), consumers cannot be required to pay over $100 million dollars for programs that are not cost effective. Accordingly, Behavioral, Audits & Education, School Education, HVAC, and Smart Thermostats should be removed from the 2017-2019 Portfolio.[86]

IV. CUSTOMERS SHOULD NOT PAY COSTS INCURRED TO RESTART PROGRAMS AND MEASURES THAT FIRSTENERGY UNILATERALLY CANCELLED FOR 2015 AND 2016.

SB 310 amended R.C. 4928.66(A)(1)(a) to eliminate the annual energy savings requirements for the years 2015 and 2016 (commonly referred to as the "freeze").[87] Utilities had two options for 2015 and 2016: continue their current portfolio of programs

[86] FirstEnergy may attempt to justify the inclusion of these programs by arguing that some of them are "sub-programs" and not "programs" and therefore do not need to be cost effective under OAC 4901:1-39-04(B) (providing that "programs" must be cost effective unless they provide substantial nonenergy benefits). OAC 4901:1-39-1(V) defines a "program" as a "single offering of one or more measures provided to consumers." OAC 4901:1-39-1(O) defines a "measure" as any "material, device, technology, operational practice, or educational program that makes it possible to deliver a comparable level of quality of end-use energy service while using less energy or less capacity than would otherwise be required." Based on these definitions, FirstEnergy's "sub-programs" are "programs," so OAC 4901:1-39-04(B) applies, and sub-programs must be cost-effective. Moreover, the PUCO should not permit FirstEnergy to elevate form over substance. There is no valid justification for including programs that FirstEnergy knows are not cost effective. They should be removed from the Portfolio.

[87] *See* R.C. 4928.66(A)(1)(a) (if the utility achieves cumulative savings of 4.2%, then "the utility shall not be required to achieve additional energy savings for that year, but may achieve additional energy savings for that year").

or seek an amendment to their current portfolio.[88] The other electric distribution utilities in Ohio (AEP Ohio, Duke Energy, and Dayton Power & Light) all chose to continue their EEPDR programs for the benefit of customers. FirstEnergy was alone in amending its portfolio to cancel substantially all of its EEPDR programs.[89]

FirstEnergy cancelled the following residential programs and measures for 2015 and 2016:[90]

- Appliance Turn In (refrigerator, freezer, and room air conditioner recycling
- School Education
- EE Kits
- Audits & Education (comprehensive audit and on-line audit)
- Behavioral
- New Homes (townhouse and duplex, condos, single family, and multi-family homes)
- Appliances (clothes washers, freezers, refrigerators, dehumidifiers, and water heaters)
- Consumer Electronics (monitors, computers, TVs)
- Lighting (CFL and LED lamps and fixtures)
- HVAC (heat pump, central and room air conditioners, heat pumps, HVAC maintenance, and furnace fans).

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[88] *See* SB 310, § 6, *available at* http://archives.legislature.state.oh.us/bills.cfm?ID=130_SB_310.

[89] *See* Program Cancellation Application ¶ 3; Finding and Order, Case No. 12-2190-EL-POR (Nov. 20, 2014) (approving the application to amend the portfolio plan).

[90] *See* 2015-16 Program Cancellation Application at 2 (stating that all programs not specifically listed would be suspended for 2015-2016).

FirstEnergy proposes that each of these programs be restarted (collectively, the "Restarted Programs") under the 2017-2019 Portfolio.[91] Collectively, these programs will cost consumers over $115 million from 2017-2019.[92] This is an increase of over $10 million from FirstEnergy's previous portfolio.[93]

FirstEnergy has not identified what portion of the increase in costs for the Restarted Programs is attributable to the wind-down of the programs and the resulting costs associated with starting these programs up again. For example, restarting programs that were previously cancelled may require FirstEnergy to incur costs to develop new program plans and evaluation plans (as opposed to just modifying existing plans), hire and train staff and consultants, develop new marketing materials for programs to avoid customer confusion, renegotiate contracts with vendors, and resurrect dormant information technology systems and update input data. These costs may not have been incurred if FirstEnergy had not unilaterally eliminated these programs for 2015 and 2016.

Customers should not be required to pay for costs that FirstEnergy incurs as a result of its decision to eliminate EE/PDR programs. These costs should be excluded from program costs, and FirstEnergy should not be entitled to any other form of recovery for any costs associated with restarting the Restarted Programs.

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[91] *See* Portfolio Plan § 3.2 (Table 7).

[92] *See* Application, Appendix B-1 (page 4).

[93] *See* Ohio Edison Company Energy Efficiency & Peak Demand Reduction Program Portfolio (July 31, 2012) at Exhibit B-4, Case No. 12-2190; The Cleveland Electric Illuminating Company Energy Efficiency & Peak Demand Reduction Program Portfolio (July 31, 2012) at Exhibit B-4, Case No. 12-2190; Toledo Edison Company Energy Efficiency & Peak Demand Reduction Program Portfolio (July 31, 2012) at Exhibit B-4, Case No. 12-2190;

V. THE PORTFOLIO PLAN VIOLATES OAC 4901:1-39-02 BECAUSE FIRSTENERGY DID NOT PROVIDE COLLABORATIVE MEMBERS WITH A MEANINGFUL OPPORTUNITY TO PROVIDE FEEDBACK.

FirstEnergy grossly overstates the level to which it permitted stakeholders (the "Collaborative Group") to participate in developing the 2017-2019 Portfolio. OAC 4901:1-39-02 states that the PUCO rules on energy efficiency programs serve four purposes: (i) to "encourage innovation and market access for cost-effective energy efficiency and peak-demand reduction," (ii) to "achieve the statutory benchmark for peak-demand reduction," (iii) to "meet or exceed the statutory benchmark for energy efficiency," and (iv) to "<u>provide for the participation of stakeholders in developing energy efficiency and peak-demand reduction programs for the benefit of the state of Ohio</u>" (emphasis added).[94] Stakeholder participation in program development, therefore, is a fundamental part of the portfolio development process.

This makes sense: customers pay hundreds of millions of dollars in program costs, utility profits (shared savings), lost distribution revenues, and other costs, so they need to have a real opportunity to provide meaningful, substantive input on a utility's EE/PDR portfolio.

FirstEnergy, however, denied stakeholders the right to participate in the planning and development of the 2017-2019 Portfolio by (a) agreeing to restart all prior programs, to target 800,000 MWh in savings per year, and to increase the shared savings cap to $25 million as part of the Third ESP IV Stipulation and without any input whatsoever from the Collaborative Group and (b) distributing only very basic information regarding the 2017-2019 Portfolio for discussion at collaborative meetings.

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[94] *See also* OAC 4901:1-39-04(C)(2) (requiring an electric distribution utility to include in its application a "description of stakeholder participation in program planning efforts and program portfolio development.").

A. FirstEnergy made important and costly decisions on programs, savings targets, and utility profits without any input from the Collaborative Group.

On December 1, 2015, the Companies signed the Third ESP IV Stipulation in their ESP IV case, in which they agreed to (a) "reactivate in 2017 all programs suspended in their EE/PDR Portfolio Plan in Case No. 12-2190-EL-POR," (b) "strive to achieve over 800,000 MWh of energy savings annually," (c) increase the shared savings cap from $10 million to $25 million.[95]

Which programs to include or exclude is critically important to customers because customers are the ones who pay for and potentially benefit from programs. The energy savings target is also one of the key features of a portfolio plan because it has a direct impact on, among other things, the number of programs offered, the type of programs offered, the scope of programs offered, the total cost of the portfolio, and the cost effectiveness of programs and measures. In addition, customers undeniably have a strong interest in the shared savings cap because every dollar of shared savings is a transfer of money from the pockets of customers to the pockets of the utility's shareholders.

Yet FirstEnergy made each of these critical decisions without consulting the Collaborative Group and without giving the collaborative group any opportunity to give input on whether all prior programs should be re-introduced, whether 800,000 MWh was an advisable (or feasible) target, and whether a $25 million shared savings cap was appropriate. The Collaborative Group should have been involved in these decisions, but it was not. FirstEnergy signed the Third ESP IV Stipulation on December 1, 2015, but it did not hold a collaborative meeting on the 2017-2019 Portfolio until more than two

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[95] *See* Third ESP IV Stipulation § E.3.

months later on February 9, 2016.[96] By failing to include the Collaborative Group on these key decisions, FirstEnergy violated OAC 4901:1-39-02(A), which requires FirstEnergy to "provide for the participation of stakeholders in developing energy efficiency and peak-demand reduction programs for the benefit of the state of Ohio."

B. The materials that FirstEnergy provided to the Collaborative Group lacked the detail necessary to evaluate the most important aspects of the Portfolio.

In its Application, FirstEnergy touts its willingness to seek guidance from the Collaborative Group and to make changes to the portfolio based on the Collaborative Group's comments. *See, e.g.*, Application ¶ 2 ("The Companies actively solicited input and suggestions from the Collaborative Group on the Proposed Plans. Based on feedback received from the Collaborative Group, the Proposed Plans were designed to reflect many of the suggestions received."); Application ¶ 34 ("the Proposed Plans are generally extensions of the Prior Plans, only with additional measures, many of which were requested by members of the Collaborative Group"); Portfolio Plan § 1.2 ("The Companies' plan development approach balances key sources of information: . . . External stakeholder experience and opinions captured through a collaborative process."); Portfolio Plan § 3.1.5 ("These Plans incorporate many of the Collaborative members' suggestions."). The evidence, however, demonstrates that FirstEnergy made little effort to include the Collaborative Group. FirstEnergy took a bare minimum of steps so that it could make the facial claim that it provided information to the Collaborative Group and made changes to the Portfolio based on collaborative input.

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[96] In the Application, FirstEnergy claims that it held a collaborative meeting in December 2015 "at the onset of the plan development." FirstEnergy did hold a collaborative meeting on December 15, 2015, but the 2017-2019 Portfolio was not addressed at this meeting. Regardless, this meeting took place after parties signed the Third ESP IV Stipulation on December 1, 2015.

FirstEnergy held only two collaborative meetings on the 2017-2019 Portfolio, one on February 9, 2016, and one on March 22, 2016.[97] One week prior to the February 9 meeting, FirstEnergy distributed a 37-page presentation to the Collaborative Group. The February 9 presentation included basic information on potential aspects of the 2017-2019 Portfolio, including (a) identifying the 800,000 MWh target, (b) deadlines, (c) a list of best practices, (d) several bullet points describing what the MPS would accomplish, (e) 12 pages of charts with brief descriptions (some as short as one sentence) of potential sub-programs, and (f) 11 pages of charts listing measures, without any description, from FirstEnergy's previous portfolio and some measures that FirstEnergy was considering for its 2017-2019 Portfolio.[98] The presentation does not include material information on proposed costs, program design, or cost recovery mechanisms. Furthermore, as FirstEnergy acknowledged at the beginning of the presentation, the information contained therein was "preliminary," "intended to provide generally descriptive information," and "subject to change."[99]

FirstEnergy distributed a second presentation in advance of the March 22, 2016 collaborative meeting.[100] This presentation included additional information on projected savings, budgets, and a more definitive list of programs. The program descriptions remained brief, however, and the information in this presentation is substantially less

[97] As discussed above, the December 15, 2015 collaborative meeting did not address the 2017-2019 Portfolio. The May 9, 2016 technical conference was held after the Application was filed.

[98] A copy of the February 9, 2016 presentation (the "February 9 Presentation") is attached to the Limited Objection to the Utility's Proposed Schedule by the Office of the Ohio Consumers' Counsel, filed in this case on April 29, 2016.

[99] *See* February 9 Presentation at 2.

[100] A copy of the March 22, 2016 presentation (the "March 22 Presentation") is attached to the Limited Objection to the Utility's Proposed Schedule by the Office of the Ohio Consumers' Counsel, filed in this case on April 29, 2016.

detailed than the information in the Application. As in the February 9 Presentation, all information was "preliminary," "intended to provide generally descriptive or summary information," and "subject to change."[101]

The February 9 Presentation and the March 22 Presentation did not include (a) a draft of the Application, (b) a draft of the Market Potential Study, (c) a description of the Shared Savings Mechanism, or (d) an analysis of program cost-effectiveness. Nor did FirstEnergy provide any of these documents or information to the Collaborative Group before FirstEnergy filed its Application.

FirstEnergy's claims throughout the Application that the Collaborative Group played a meaningful role in developing the 2017-2019 Portfolio are false. FirstEnergy held two meetings that provided only limited information, and FirstEnergy did not truly value the Collaborative Group's input. To the extent that FirstEnergy implemented changes suggested by collaborative members, these changes are measure tweaks, at best. FirstEnergy made final decisions on the vast majority of programs, program design, budgets, incentive payments, cost recovery mechanisms, and virtually all other material details in the 2017-2019 Portfolio without any input, or opportunity for input, from the Collaborative Group. FirstEnergy did not "provide for the participation of stakeholders in developing energy efficiency and peak-demand reduction programs for the benefit of the state of Ohio." *See* OAC 4901:1-39-02(A).

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[101] *See* March 22 Presentation at 2.

VI. FIRSTENERGY VIOLATED OAC 4901:1-39-03(A) BY AGREEING TO RESTART PROGRAMS THAT ARE PAID FOR BY CUSTOMERS AND BY AGREEING TO INCREASE ITS SAVINGS TARGET TO 800,000 MWH BEFORE THE MARKET POTENTIAL STUDY WAS PERFORMED.

FirstEnergy was required to complete a market potential study before filing its Application so that the portfolio would be properly designed and maximize benefits to consumers. OAC 4901:1-39-03, entitled "Program Planning Requirements," prescribes steps that an electric distribution utility must take in developing its EE/PDR portfolio plan. The first requirement under OAC 4901:1-39-03 is that the utility must perform an "assessment of potential." This is done through what is commonly called a "market potential study." "Prior to proposing its comprehensive energy efficiency and peak-demand reduction program portfolio plan, an electric utility shall conduct an assessment of potential energy savings and peak-demand reduction from adoption of energy efficiency and demand-response measures within its certified territory." OAC 4901:1-39-03(A). The MPS is required to include an analysis of technical potential (reduction in energy usage or peak demand that would result if the most efficient measures were adopted, regardless of cost[102]), economic potential (reduction in energy usage or peak demand if the most efficient and cost-effective measures were all adopted[103]), and achievable potential (likely reduction in energy usage or peak demand taking into account barriers to customer adoption, including market, financial, political, regulatory, or attitudinal barriers[104]). In conjunction with the MPS, the utility is also required to "describe all attributes relevant to assessing [each measure's] value, including, but not

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[102] OAC 4901:1-39-01(X).

[103] OAC 4901:1-39-01(H).

[104] OAC 4901:1-39-01(A).

limited to potential energy savings or peak-demand reduction, cost, and non-energy benefits." *See* OAC 4901:1-39-03(A)(4).

The MPS is an important part of the portfolio design process because it guides the utility in developing programs that can reasonably and efficiently provide savings for customers. Yet FirstEnergy agreed to increase its savings target to 800,000 MWh (more than 150% of the statutory benchmark) without the benefit of the MPS, which is designed precisely for the purpose of determining whether a particular savings target is feasible. FirstEnergy also agreed to restart all of its prior programs before the MPS was completed. A key element of the MPS, however, is the determination that a particular program is or is not cost effective and therefore should or should not be included in the portfolio. Indeed, as discussed above, the 2017-2019 Portfolio includes programs that are not cost effective. FirstEnergy included non-cost-effective programs because including them was the only way to reach 800,000 MWh (and because they increase profits, as discussed above), not because the MPS concluded that those programs were cost effective.

VII. FIRSTENERGY'S PORTFOLIO VIRTUALLY IGNORES LOW INCOME CUSTOMERS — CUSTOMERS THAT NEED ASSISTANCE THE MOST.

A. The Companies' should more accurately calculate the number of low-income residential customers rather than using the Percentage of Income Payment Plan as a proxy.

In estimating the number of low-income residential customers, the Companies use those customers enrolled in the Percentage of Income Payment Program ("PIPP") as of January 2016 as a proxy.[105] Use of PIPP as a proxy, however, underestimates the number

[105] *See* Portfolio Plan § 1.1.

of low-income residential customers because only those customers below 150% of the poverty line are eligible for PIPP, but customers up to 200% of the poverty line are considered low income for purposes of FirstEnergy's low-income programs.[106]

By undercounting the number of low-income customers, FirstEnergy may spend less money on low-income programs, and achieve lower energy savings in the low-income sector. Rather than relying on PIPP as a proxy, the Companies should use the best available market research data to arrive at a more accurate estimate of low-income customers. This will ensure that program budgets for low-income programs are adequate and reasonable when compared to non-low-income program budgets. In addition, as discussed above, the shared savings incentive should be calculated at the sector level, not the overall portfolio level. Separate savings targets, therefore, should be established for residential non-low-income, residential low income, and nonresidential sectors.

B. The budget for low-income programs is disproportionately low.

The Companies have a total of 1.9 million residential customers, many of whom are low-income customers. For low-income customers, electricity bills can make up a substantial portion of the customer's gross income and can therefore be burdensome. The Application identifies 159,821 low income customers (77,775 for OE, 56,864 for CEI, and 25,182 for TE). As discussed above, however, many more than just these customers are actually low-income customers. The Companies use PIPP as a proxy for "low-income." But only customers below 150% of the poverty line are eligible for PIPP, whereas customers up to 200% of the poverty line are eligible for FirstEnergy's low-income programs. Because FirstEnergy has not provided any estimate of how many

[106] *See* Portfolio Plan § 3.2 (page 37).

customers fall between the 150% and 200% lines, FirstEnergy could be grossly underestimating the number of low-income customers.

FirstEnergy devotes only $2 million of the $125.4 million residential budget — less than 1.7% — to low-income programs.[107] Using FirstEnergy's lowball estimate of 159,821 low-income customers, low-income customers make up over 8.5% of the total residential customer base. The disparity (1.7% of the budget for 8.5% of customers) is unacceptable, and indeed, the disparity is likely substantially worse once customers between 150% and 200% of the poverty line are taken into account. The $2 million budget equates to less than $13 per low-income customer (and again, would be even lower if those above the 150% line were counted).

In addition, FirstEnergy's commitment to low-income programs is not in line with other electric distribution utilities in Ohio. AEP Ohio, for example, devotes 28.3% of its budget and over $68 per low-income customer on low income programs.[108] DP&L's most recent portfolio devotes 14.7% of its residential budget and nearly $34 dollars per low-income customer on low-income programs.[109] FirstEnergy should cancel the programs that are not cost effective (discussed above) and should consider whether to use the budgets from those programs to bolster its low-income programs. The PUCO has identified benefits of low-income customers as one of the primary nonenergy benefits in

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[107] *See* Application, Appendix B-1 (page 4).

[108] *See* AEP 2012-2014 Energy Efficiency / Peak Demand Reduction (EE/PDR Action Plan) (Nov. 29, 2011) Table 17 (460,159 low income residential customers out of 1,162,338 total residential customers); Table 7 ($31.4 million budget for low income programs out of $110.8 million total residential budget); Case No. 11-5569-EL-POR. $31.4 million divided by 460,159 = $68.24.

[109] *See* Application of the Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Reduction Program Portfolio Plan (Apr. 15, 2013) Table 3 ($3,575,736 budget for low income programs); Table 5 (454,697 total residential customers); MPS page 16 (23% of households low income).

an EE/PDR portfolio.[110] FirstEnergy should be required to place a greater focus on low-income programs that is more in line with the number of low-income customers serviced by the Companies and that is more in line with other Ohio utilities' focus on low-income programs.

C. FirstEnergy must substantially increase its effort to increase participation in low-income programs.

The 2017-2019 Portfolio includes only two low-income programs: Community Connections and Low-Income New Homes. Community Connections is not a standalone program that FirstEnergy administers. Rather, Community Connections is a program administered by the Ohio Partners for Affordable Energy ("OPAE"). OPAE "uses the funds from this program to leverage other state funded programs through various agencies within the State of Ohio."[111] The Low-Income New Homes program "provides incentives for the construction of new energy efficiency housing or major rehabilitation of existing housing for low-income customers."[112]

FirstEnergy projects that 3,341 low-income customers will participate in the Community Connections program and that 48 will participate in the Low-Income New Homes programs per year. This is just over 2% of the low-income customers identified by FirstEnergy, and even less when taking into account low-income customers above 150% of the poverty line. FirstEnergy must substantially improve its effort to develop and design low-income programs that result in higher participation rates.

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[110] *See* OAC 4901:1-39-01(Q).

[111] *See* Portfolio Plan § 3.1.6.

[112] *See* Portfolio Plan § 3.2, Table 6.

VIII. CONCLUSION

The Portfolio could cost customers over $440 million[113] for EE/PDR programs over three years. This is an unconscionable amount of money for customers to pay for a Portfolio that (i) includes at least $100 million in programs and measures that are not cost-effective, (ii) unjustifiably increases the amount of profits that customers pay to FirstEnergy by 150%, (iii) manipulates the Shared Savings Mechanism to increase utility profits while decreasing net customer benefits, (iv) includes costs to restart programs that FirstEnergy unilaterally discontinued in 2015 and 2016, (v) violates multiple provisions in the Ohio Administrative Code, and (vi) does very little to protect the interests of low-income customers.

The proposed 2017-2019 Portfolio is poorly designed, requires consumers to pay costs that are not just and reasonable, and does not serve the core regulatory goal of "developing energy efficiency and peak-demand reduction programs for the benefit of the state of Ohio."[114] The PUCO should find that the 2017-2019 Portfolio cannot be approved as filed and must be substantially modified consistent with the Consumers' Counsel's objections and recommendations.

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[113] This includes $323 million in program costs, up to $117 million in shared savings (profits), and an unknown amount of lost distribution revenues.

[114] OAC 4901:1-39-02(A).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Objection was served on the persons stated below via electric transmission this 14th day of June 2016.

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