

**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 ) Case No. 16-0743-EL-POR  
For Approval of Their Energy Efficiency and )  
Peak Demand Reduction Program Portfolio )  
Plans for 2017 through 2019 )

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REBUTTAL TESTIMONY OF

EREN G. DEMIRAY

ON BEHALF OF

OHIO EDISON COMPANY  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY  
THE TOLEDO EDISON COMPANY

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1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.**

2 **A.** My name is Eren G. Demiray and my business address is 76 South Main Street,  
3 Akron, Ohio 44308. I am the Manager of the Reporting Group in the Energy  
4 Efficiency Department of FirstEnergy Service Company and I report to the Director  
5 of Compliance and Reporting in the Energy Efficiency Department.

6 **Q. ARE YOU THE SAME EREN DEMIRAY WHO PREVIOUSLY PROVIDED**  
7 **TESTIMONY IN THIS PROCEEDING?**

8 **A.** Yes. I provided Direct Testimony on April 15, 2016 and Amended Direct  
9 Testimony on December 9, 2016.

10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11 **A.** The purpose of my testimony is to respond to the Supplemental Direct Testimony  
12 of Richard F. Spellman on behalf of the Office of the Ohio Consumers' Counsel  
13 ("OCC"). Mr. Spellman suggests several changes to the shared savings mechanism  
14 ("Mechanism") proposed by Ohio Edison Company, The Cleveland Electric  
15 Illuminating Company and The Toledo Edison Company ("Companies"). For the  
16 reasons set forth below, the Commission should reject those proposed changes.

17 **Q. DO YOU AGREE WITH MR. SPELLMAN THAT THE COMPANIES'**  
18 **MECHANISM IS NOT DESIGNED TO BENEFIT CUSTOMERS?**

19 **A.** No. The Mechanism, included in this case and approved by the Commission in  
20 previous cases, aligns the interests of the Companies' customers and of the  
21 Companies in the following ways:

- 1           1. The Mechanism encourages the Companies to exceed the statutory  
2            benchmarks set forth in O.R.C. 4928.66 through the delivery of cost-  
3           effective energy efficiency programs;
- 4           2. The Mechanism utilizes a tiered structure that increases the Companies’  
5           financial incentives as increased energy efficiency savings are delivered  
6           to the Companies’ customers;
- 7           3. The clear majority (no less than 87%) of the calculated benefits  
8           produced through cost effective management and delivery of energy  
9           efficiency programs accrue to the Companies’ customers;
- 10          4. The Mechanism appropriately aligns recovery of shared savings  
11          incentives with the customer classes that received the benefits of energy  
12          efficiency programs;
- 13          5. The Mechanism aligns ratepayer and the Companies’ objectives to  
14          control energy efficiency program expenses by focusing on costs that  
15          are within the Companies’ direct control; and
- 16          6. The Mechanism contains further protections for ratepayers through the  
17          use of a total shared savings incentive cap spread across the three  
18          Companies.

19   **Q.   DO YOU AGREE WITH MR. SPELLMAN THAT THE COMPANIES’**  
20   **MECHANISM VIOLATES “CLASS EQUITY”?**

21   **A.**   No. As an initial matter, Rule 4901:1-39-03, Ohio Administrative Code does not  
22   provide for the principal of class equity that Mr. Spellman describes. Rather, Rule  
23   4901:1-39-03(B)(6) provides that “[w]hen developing *programs for inclusion in*

1        *its program portfolio plan*, an electric utility shall consider...[e]quity among  
2        customer classes.” (emphasis added). The Companies’ shared savings mechanism  
3        is not a “program” the Companies developed “for inclusion in [their] program  
4        portfolio plan.” Therefore, Mr. Spellman’s testimony on this issue is based on a  
5        faulty premise and should be rejected.

6

7        Regardless, if a Company triggers the Mechanism, the triggering Company collects  
8        the incentive dollars based on an allocation at the rate schedule level. The  
9        allocation is proportionate to the Adjusted Net Benefits achieved by programs  
10       serving that class of the Company’s customers. For instance, if programs offered  
11       to the Residential class of customers produce 40% of a Company’s Adjusted Net  
12       Benefits, any financial incentive that Company earned would be collected with 40%  
13       borne by the same Residential customer class. In this manner, shared savings are  
14       appropriately collected from customer classes that are directly served and receive  
15       the resulting benefits of programs provided to that customer class.<sup>1</sup>

16    **Q.    DO YOU AGREE WITH MR. SPELLMAN’S RELATED PROPOSAL TO**  
17    **CREATE CLASS AND PARTICIPATION TARGETS?**

18    **A.**    No. Mr. Spellman proposes that the Mechanism include class-specific targets for  
19       the Residential (Non-Low Income), Residential (Low Income), and Nonresidential

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<sup>1</sup> Indeed, Mr. Spellman applies the “class equity” concept set forth in O.A.C. 4901:1-39-03 in a number of other, equally inapplicable ways, conflating his perceived concerns about the Mechanism’s incentive tiers, trigger, and cross-subsidization. His concerns, however, lack merit as the currently-approved Mechanism is properly designed to achieve equity and parity by aligning collection of a shared savings incentive with the customer class that benefited from delivery of the Companies’ programs.

1 classes, as well as “participation” targets within each of these classes. This proposal  
2 is unnecessary and would be administratively burdensome.

3

4 As the Commission has noted, the Mechanism is designed to encourage the  
5 Companies to exceed the energy efficiency benchmarks in O.R.C. 4928.66—in  
6 which no class or participation specific targets are contained. Further, the nine  
7 targets in the currently-approved Mechanism (one for each Company for each of  
8 three years) would balloon to fifty-four under Mr. Spellman’s proposal based on  
9 three sectors within each of the three Companies, each with an energy savings and  
10 participation target, for each of the three years. These proposed targets would  
11 vastly complicate the current straightforward trigger design, making them  
12 unreasonable and unduly burdensome from an administrative perspective. For  
13 example, Mr. Spellman does not define the term “participant,” making the  
14 requirement vague without Commission guidance. I am unaware of the  
15 Commission placing such an administrative burden on any other Ohio utility.  
16 Indeed, if this is a goal established by the Commission, it should be applied  
17 uniformly across all utilities.

1 **Q. MR. SPELLMAN ARGUES THAT A SINGLE SHARED SAVINGS CAP**  
 2 **ACROSS ALL COMPANIES HARMS CUSTOMERS BECAUSE ONE**  
 3 **COMPANY’S CUSTOMERS MAY BE FORCED TO SUBSIDIZE**  
 4 **BENEFITS ENJOYED BY ANOTHER COMPANY’S CUSTOMERS. DO**  
 5 **YOU AGREE?**

6 **A.** No. Mr. Spellman argues that a single shareholder incentive cap is not equitable to  
 7 customers because shared savings incentives paid by customers of one Company  
 8 may be higher depending on performance at another Company, but the application  
 9 of the shared savings cap can only lower (not increase) a Company’s incentive.  
 10 In practice, the shared savings cap, if reached, limits the level at which the  
 11 Companies collect shared savings and produces a lower effective incentive rate. As  
 12 an example, the Companies triggered shared savings for compliance years 2013-  
 13 2015 at the 13% incentive tier, with uncapped incentive levels as follows:<sup>2</sup>

<b>Portfolio Adjusted Net Benefits</b>			
	<u>2013</u>	<u>2014</u>	<u>2015</u>
OE	\$69,820,038	\$85,580,411	\$49,980,360
CE	\$48,025,109	\$67,906,548	\$34,415,580
<b>TE</b>	<b>\$23,991,420</b>	<b>\$35,316,290</b>	<b>\$29,400,312</b>
<b>Total</b>	<b>\$141,836,567</b>	<b>\$188,803,249</b>	<b>\$113,796,252</b>

<b>After-tax Shared Savings Incentive, Uncapped</b>			
	<u>2013</u>	<u>2014</u>	<u>2015</u>
OE	\$9,076,605	\$11,125,453	\$6,497,447
CE	\$6,243,264	\$8,827,851	\$4,474,025
<b>TE</b>	<b>\$3,118,885</b>	<b>\$4,591,118</b>	<b>\$3,822,041</b>
<b>Total</b>	<b>\$18,438,754</b>	<b>\$24,544,422</b>	<b>\$14,793,513</b>

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<sup>2</sup> See Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to the Public Utilities Commission of Ohio in Dockets 14-0859-EL-EEC *et. seq.*, 15-0900-EL-EEC *et. seq.*, and 16-0941-EL-EEC *et. seq.*

1 When applying the after-tax cap, the \$10 million was allocated and spread across  
 2 the Companies in proportion to the uncapped shared savings incentive amounts  
 3 earned by each Company:

<b>After-tax Shared Savings Incentive, Capped</b>			
	<u>2013</u>	<u>2014</u>	<u>2015</u>
OE	\$4,922,570	\$4,532,783	\$4,392,092
CE	\$3,385,947	\$3,596,683	\$3,024,315
<u>TE</u>	<u>\$1,691,484</u>	<u>\$1,870,534</u>	<u>\$2,583,593</u>
Total	\$10,000,000	\$10,000,000	\$10,000,000

4 In each case, the cap effectuated a limit on the collection of shared savings  
 5 incentives, thus lowering the effective incentive rate to between 5.3% and 8.8%.

<b>Effective Incentive Rate</b>			
	<u>2013</u>	<u>2014</u>	<u>2015</u>
Total Adj. Net Benefits	\$141,836,567	\$188,803,249	\$113,796,252
Capped Incentive	<u>\$10,000,000</u>	<u>\$10,000,000</u>	<u>\$10,000,000</u>
Effective Incentive Rate	7.1%	5.3%	8.8%

6 Application of the Mechanism’s cap thus does not “harm customers.”

7 **Q. MR. SPELLMAN ARGUES THAT THE COMPANIES SHOULD ONLY**  
 8 **RECEIVE SHARED SAVINGS FOR EXCEEDING 600,000 MWh PER**  
 9 **YEAR AS PROVIDED FOR IN THE STIPULATION (“STIPULATION**  
 10 **GOAL”). DO YOU AGREE?**

11 **A.** No. The Companies’ Mechanism proposed in this case and approved in previous  
 12 cases is similar to other approved mechanisms in Ohio that are designed to  
 13 encourage utilities to exceed the EE/PDR benchmarks contained in O.R.C.  
 14 4928.66. The Commission recently reinforced this fundamental concept with  
 15 unambiguous language, explaining that “shared savings are the result of the

1 Companies exceeding the statutory mandates for energy efficiency.”<sup>3</sup> Further,  
2 in AEP Ohio’s (“AEP”) recently approved EE/PDR Portfolio Plan, the Commission  
3 approved a continuation of AEP’s prior shared savings mechanism.<sup>4</sup> AEP’s  
4 mechanism is triggered once AEP exceeds its statutory benchmarks of  
5 approximately 436,500 MWh per year,<sup>5</sup> and not the AEP EE/PDR Plan’s targeted  
6 energy savings of approximately 608,800 MWh per year.<sup>6</sup> There is no reason for  
7 the Commission to adopt a different standard in this case.

8  
9 Continued use of the Companies’ statutory benchmarks as the trigger is not only in  
10 line with prior Commission decisions, but it also provides a simple and transparent  
11 target aligned with information presented in the Companies’ Annual Portfolio  
12 Status reports. In addition, it continues to encourage the Companies to make  
13 prudent and cost-effective decisions that maximize customer net benefits.

14 **Q. DO YOU AGREE WITH THE MODIFICATIONS THAT MR. SPELLMAN**  
15 **PROPOSED TO THE INCENTIVE TIERS?**

16 **A.** No. The proposed adjustments run contrary to the Companies’ existing approved  
17 Mechanism and other approved mechanisms in Ohio. Among other issues, the level  
18 of the tiers was thoroughly examined in the Companies’ 12-2190-EL-POR Case  
19 when the existing mechanism was approved:

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<sup>3</sup> See Case No. 14-1297-EL-SSO, March 31, 2016, Opinion and Order, p. 95.

<sup>4</sup> See Case No. 16-0574-EL-POR, January 18, 2017, Opinion and Order, ¶¶ 23, 33.

<sup>5</sup> See Case No. 16-0574-EL-POR, Direct Testimony of Jon F. Williams on Behalf of Ohio Power Company, June 15, 2016, Exhibit JFW-1, (Volume 1), Page 10 of 180, Table 1. (2017-2019 incremental/3).

<sup>6</sup> See Case No. 16-0574-EL-POR, Direct Testimony of Jon F. Williams on Behalf of Ohio Power Company, June 15, 2016, Exhibit JFW-1, (Volume 1), Page 10 of 180, Table 3. (2017-2019 incremental/3).



1 The Commission notes that the record of this case indicates broad support  
2 for some type of shared savings mechanism for the Companies. However,  
3 the parties disagree on the details of such mechanisms. For example, the  
4 Companies propose a top tier incentive of 13 percent, without a hard cap  
5 (Co. Ex. 5 at 10, 12) while Staff recommends a top tier of 10 percent, after  
6 tax, and OCC advocates for a top tier of 8 percent (OCC Ex. 1 at 16-17).  
7 We note that the incentive tiers proposed by the Companies are consistent  
8 with tiers approved by the Commission in AEP-Ohio's most recent portfolio  
9 proceeding...Accordingly, based upon our review of the evidence in this  
10 proceeding, we will adopt the shared savings mechanism proposed by the  
11 Companies, subject to certain modifications.<sup>7</sup>  
12

13 Mr. Spellman's proposed modification advocating for a top tier of 8 percent mimics  
14 OCC's recommendation in the prior case, which the Commission rejected. The  
15 tiers as continued by the Companies' Mechanism appropriately recognize this  
16 history and also align with the tiers approved by the Commission in AEP's most  
17 recent portfolio proceeding on January 18, 2017.<sup>8</sup>

18 **Q. SHOULD THE COMPANIES BE SUBJECT TO PENALTIES FOR NOT**  
19 **REACHING THE STIPULATION GOAL AS MR. SPELLMAN ASSERTS?**

20 **A.** No. Mr. Spellman has not asserted any statutory authority whereby the  
21 Commission can penalize the Companies for not meeting the Stipulation Goal. The  
22 Ohio General Assembly clearly defined the circumstances under which the  
23 Commission may impose penalties for non-compliance with energy efficiency and  
24 peak demand benchmarks in O.R.C. 4928.66, and it would be improper to expand  
25 those penalties.

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<sup>7</sup> See Case No. 12-2190-EL-POR, March 20, 2013, Opinion and Order, pp. 15-16. The Companies' incentive tiers were not modified by this Order.

<sup>8</sup> See Case No. 16-0574-EL-POR, December 9, 2016, Stipulation and Recommendation, ¶ IV.8.j; January 18, 2017, Opinion and Order, ¶¶ 23, 33.

1 **Q. DO YOU AGREE WITH MR. SPELLMAN THAT THE COMPANIES**  
2 **SHOULD NOT EXCLUDE NET BENEFITS OF NON-COST EFFECTIVE**  
3 **PROGRAMS FOR PURPOSES OF SHARED SAVINGS?**

4 **A.** No. As an initial matter, the only “non-cost effective program” as filed in the  
5 Companies’ Revised EE/PDR Plan is the low income customer program. All other  
6 programs in the Companies’ Revised EE/PDR Plan are cost effective. Thus, all  
7 program elements (i.e., subprograms and measures) are contained within specific  
8 programs, and, accordingly, are already included in the calculation of the total  
9 discounted net lifetime benefits that program produced.

10

11 Moreover, Mr. Spellman’s claim that “none of the other Ohio electric utilities  
12 excludes non-cost effective programs from its shared savings mechanism” is simply  
13 wrong.<sup>9</sup> The Companies’ Mechanism is similar to AEP’s recently approved shared  
14 savings mechanism, which specifically excludes AEP’s low income program from  
15 its shared savings mechanism, while counting the program’s results toward  
16 statutory compliance and the calculation of shared savings eligibility and incentive  
17 tiers.<sup>10</sup> AEP’s low income program—the Community Assistance Program—is not  
18 cost-effective as set forth in AEP’s Plan, with a TRC score of 0.8.<sup>11</sup>

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<sup>9</sup> See Supplemental Direct Testimony of Richard F. Spellman, p 46, lines 15-16.

<sup>10</sup> See Case No. 16-0574-EL-POR, December 9, 2016, Stipulation and Recommendation, Paragraph IV.D.1.

<sup>11</sup> See Case No 16-0574-EL-POR, June 15, 2016, Direct Testimony of Jon F. Williams on Behalf of Ohio Power Company, Exhibit JFW-1, (Volume 1), Page 16 of 180, Table 4.

1 **Q. DO YOU AGREE WITH MR. SPELLMAN THAT THE APPROPRIATE**  
2 **COST-BENEFIT TEST FOR THE MECHANISM IS THE TOTAL**  
3 **RESOURCE COST TEST?**

4 **A.** No. The Total Resource Cost (“TRC”) Test, as proposed by Mr. Spellman, uses  
5 incremental measure costs (whether paid by the customer or the utility) and  
6 program overhead and implementation costs as cost inputs. Importantly, the TRC  
7 does not consider the impacts of incentives paid to customers, and thus, proper  
8 design and control of incentives during program implementation have no impact on  
9 the TRC calculation. Conversely, the Utility Cost Test (“UCT”) focuses on the  
10 perspective of the utility or entity implementing the program. As such, it does not  
11 consider total incremental measure costs, but only the portion paid by the utility  
12 through the incentive.

13  
14 The quantifiable benefits under either the TRC or a UCT calculation are generally  
15 the same and are largely driven by avoided energy and capacity-related projections,  
16 but the costs can be significantly different. Using the UCT to determine the  
17 discounted net benefits calculated under the Mechanism encourages the Companies  
18 to establish incentive levels that are high enough to drive customer participation in  
19 program offerings, but balanced so as not to unnecessarily overcompensate. By  
20 contrast, the TRC is not designed to consider proper incentive levels. When viewed  
21 in total, use of the TRC in the regulatory context to support consideration and  
22 approval of programs and plan portfolios, and use of the UCT for the Companies’  
23 shared savings calculation to support cost-conscious program management makes

1 sense. This approach provides a system that encourages the Companies to make  
2 prudent and cost effective decisions through program design, administration, and  
3 implementation.

4  
5 Most importantly, this issue was thoroughly debated and decided with the creation  
6 of the Companies' existing and approved mechanism, where the Commission  
7 rejected the same argument Mr. Spellman makes here and determined that:

8 [T]he UCT should be used to determine the net shared savings in the  
9 shared savings calculation. We agree with the testimony of Staff  
10 witness Scheck that use of the UCT will encourage the Companies  
11 to keep administrative costs low and that it is appropriate to  
12 encourage electric utilities to minimize the costs of their EE/PDR  
13 programs while still achieving full compliance with their statutory  
14 mandates (Staff Ex. 1 at 10). In addition, the Commission notes that  
15 use of the UCT is consistent with our decision in AEP-Ohio's most  
16 recent portfolio proceeding, where the Commission approved a  
17 stipulation which provided for use of the UCT in the shared savings  
18 calculation.<sup>12</sup>

19  
20 The UCT is also used or proposed as the standard cost effectiveness test for shared  
21 savings mechanisms by all electric utilities in Ohio. Mr. Spellman has not  
22 articulated any reason for deviation from this precedent, and his proposal should be  
23 rejected.

24 **Q. DO YOU AGREE WITH MR. SPELLMAN THAT BEHAVIORAL**  
25 **PROGRAMS SHOULD BE EXCLUDED FROM THE MECHANISM?**

26 **A.** No. Behavioral programs are very common within the energy efficiency industry  
27 and are generally recognized as having the capability to produce cost-effective  
28 energy savings and/or peak demand reductions. In Ohio, these programs count

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<sup>12</sup> See Case No. 12-2190-EL-POR, *et al.*, March 20, 2013, Opinion and Order, p. 17.

1 towards the Companies' EE/PDR benchmarks contained in O.R.C. 4928.66.<sup>13</sup> As  
2 the Mechanism is designed to encourage the Companies to exceed the EE/PDR  
3 benchmarks in O.R.C. 4928.66, it is reasonable for these savings to be included in  
4 the Mechanism.

5  
6 To address concerns regarding persistence, the Companies have historically and  
7 will continue during the Revised Plans to conservatively calculate the Mechanism  
8 utilizing only the results of the behavioral subprogram that were achieved within  
9 the reporting year, without including assumed persistence beyond that point.

10 **Q. IS CALCULATION OF THE MECHANISM ON AN AFTER-TAX BASIS**  
11 **APPROPRIATE?**

12 **A.** Yes. The Commission already decided this issue and held that “consistent with the  
13 AEP-Portfolio Case, the Companies’ proposal should be modified such that the  
14 tiered incentive levels will be calculated on an after-tax basis.”<sup>14</sup> The use of an  
15 after-tax mechanism provides consistency within the State and a clear line of sight  
16 for the Companies in managing the programs. Again, Mr. Spellman has not  
17 articulated why the Commission should deviate from its precedent.

18 **Q. WHAT SHOULD THE COMMISSION DO IN THIS PROCEEDING WITH**  
19 **RESPECT TO THE COMPANIES’ SHARED SAVINGS MECHANISM?**

20 **A.** The Commission should approve continued use of the Companies’ Mechanism  
21 subject to the Companies’ identified changes because it:

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<sup>13</sup> See generally, Case No. 12-665-EL-UNC, August 7, 2013 Entry regarding the Ohio Independent Evaluator’s report for 2009 and 2010 Ohio Efficiency programs.

<sup>14</sup> See Case No. 12-2190-EL-POR, *et al.*, March 20, 2013, Opinion and Order, p. 17.

- 1                   1. Appropriately aligns ratepayer and the Companies' interests;
- 2                   2. Properly incents the Companies to strive to minimize costs and
- 3                   maximize customer benefits through delivery of cost-effective energy
- 4                   efficiency programs; and
- 5                   3. Is consistent with AEP Ohio's shared savings mechanism recently
- 6                   approved by the Commission in Case No. 16-0574-EL-POR, as well the
- 7                   Companies' Commission approved shared savings mechanism in Case
- 8                   No. 12-2190-EL-POR.

9   **Q.    DOES THIS CONCLUDE YOUR TESTIMONY?**

10 **A.    Yes.**

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Summary: Text Rebuttal Testimony of Eren G. Demiray electronically filed by Ms. Carrie M Dunn on behalf of The Toledo Edison Company and The Cleveland Electric Illuminating Company and Ohio Edison Company