**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|---|---|---|
| In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company. | ) | Case Nos. 09-580-EL-EEC<br>09-581-EL-EEC<br>09-582-EL-EEC |
| In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Initial Benchmark Reports. | ) | Case Nos. 09-1942-EL-EEC<br>09-1943-EL-EEC<br>09-1944-EL-EEC |
| 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 2010 through 2012 and Associated Cost Recovery Mechanisms. | ) | Case Nos. 09-1947-EL-POR<br>09-1948-EL-POR<br>09-1949-EL-POR |

---

# INITIAL POST-HEARING BRIEF BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, CITIZEN POWER, NATURAL RESOURCES DEFENSE COUNCIL AND THE CITIZENS COALITION

---

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Jeffrey L. Small, Counsel of Record
Gregory J. Poulos
Christopher Allwein

**Office of the Ohio Consumers' Counsel**
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (T)
small@occ.state.oh.us
poulos@occ.state.oh.us
allwein@occ.state.oh.us

Theodore Robinson
Staff Attorney and Counsel
**Citizen Power**
2121 Murray Avenue
Pittsburgh, PA 15217
(412) 421-7029 (T)
robinson@citizenpower.com

Joseph P. Meissner, Counsel of Record
Matthew D. Vincel
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
(216) 216-687-1900 (T)
jpmeissn@lasclev.org
mvincel@lasclev.org
**Citizens Coalition**

Henry Eckhart
50 West Broad Street, #2117
Columbus, OH 43215
Phone: (614) 461-0984
Fax: (614) 221-7401
henryeckhart@aol.com
**Natural Resources Defense Council**

## TABLE OF CONTENTS

**PAGE**

**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|---|---|---|
| In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company. | ) ) ) ) ) | Case Nos. 09-580-EL-EEC<br>09-581-EL-EEC<br>09-582-EL-EEC |
| In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Initial Benchmark Reports. | ) ) ) ) ) | Case Nos. 09-1942-EL-EEC<br>09-1943-EL-EEC<br>09-1944-EL-EEC |
| 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 2010 through 2012 and Associated Cost Recovery Mechanisms. | ) ) ) ) ) ) ) ) | Case Nos. 09-1947-EL-POR<br>09-1948-EL-POR<br>09-1949-EL-POR |

---

**INITIAL POST-HEARING BRIEF**
**BY**
**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,**
**CITIZEN POWER, NATURAL RESOURCES DEFENSE COUNCIL AND THE CITIZENS COALITION**

---

## I. INTRODUCTION

On December 15, 2009, Ohio Edison Company ("Ohio Edison"), the Cleveland Electric Illuminating Company ("CEI"), and the Toledo Edison Company ("Toledo Edison") ( collectively "FirstEnergy" or "Companies") filed an application ("Application") to request approval of their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans ("Portfolios"), their initial Statutory Benchmark

Report, and a Cost Recovery Mechanism. The Portfolios contain programs that would, if approved, be offered to all customer classes in FirstEnergy's service territory. Savings achieved by customer participation in these programs would be applied towards the Companies' energy efficiency and peak demand reduction benchmarks stated in R.C. 4928.66(A)(1). Residential programs, including low-income programs, comprise approximately 48 percent of the total cumulative projected savings presented in the three-year plan.[1]

The undersigned members of Ohio Consumer and Environmental Advocates ("OCEA") submit this post-hearing brief to achieve the following purposes: 1) to recommend improvements to FirstEnergy's Energy Efficiency and Peak Demand Reduction Portfolio of Programs so that the offerings contained within the Portfolio will actually provide benefits to all customer classes, including the residential class, as contemplated by Ohio law,[2] 2) to ask that the Commission deny the Companies' request for the collection of any costs associated with the Compact Fluorescent Light ("CFL") program – both past and present – that are not supported with reasonable detail and documentation, 3) address lost revenue collection resulting from programs implemented in 2012, and 4) to request that the PUCO institute changes to FirstEnergy's collaborative process that will provide a more productive dialogue between FirstEnergy and stakeholders in order to produce a truly comprehensive portfolio of programs that will provide benefits to customers, as required by Commission rules.[3]

---

[1] Direct Testimony of George L. Fitzpatrick at Ex. FE-GLF-2 (December 15, 2009).

[2] R.C. 4928.02.

[3] Ohio Adm. Code 4901:1-39-04(A).

## II. STATEMENT OF LAW

In 2008, Ohio enacted Sub. S.B. 221 that requires each electric distribution utility ("EDU") to establish energy efficiency programs that will achieve substantial energy savings through at least 2025 as well as peak demand reduction programs that will achieve reductions in the electricity used during peak demand hours through 2018.

Pursuant to R.C. 4928.66(A)(1)(a), starting in 2009, each EDU was required to implement energy efficiency programs. The proposed programs must be designed to meet established annual statutory benchmarks for energy efficiency. Relevant to this case, FirstEnergy must "achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state." The energy efficiency requirement will increase by an additional five-tenths of one percent in 2010, seven-tenths of one percent in 2011 and eight-tenths of one percent in 2012.[4]

Additionally, pursuant to R.C. 4928.66(A)(1)(b) and starting in 2009, each EDU is required to implement peak demand reduction programs. The peak demand reduction programs must also be designed to achieve annual statutory benchmarks. Relevant to this case, FirstEnergy must achieve "a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018."[5]

---

[4] R.C. 4928.66(A)(1).

[5] R.C. 4928.66(A)(1)(b).

### A. Commission Rules Define the Scope and Govern the Implementation of FirstEnergy's Energy Efficiency and Peak Demand Reduction Programs.

In 2009, the Commission adopted rules for the implementation of the energy efficiency and peak demand reduction programs required by R.C. 4928.66(A)(1)(a) and (b). Ohio Adm. Code 4901:1-39-04 sets out the requirements for the energy efficiency and peak demand reduction programs for the electric utilities, including such matters as filing deadlines, transparency, and program design requirements. In particular, the rules require each EDU to design, propose, and file a comprehensive energy efficiency and peak demand reduction program portfolio with cost-effective programs for all customer classes that will meet the statutory benchmarks.[6] The first such proposal had to be filed by January 1, 2010.[7] FirstEnergy's December 15, 2009 Application falls under this category.

The Commission rules also state that the PUCO will establish a deadline for interested parties to file comments and a hearing date.[8] At the hearing, FirstEnergy's burden is to prove that the proposed program portfolio plan "is consistent with the policy of the state of Ohio as set forth in section 4928.02 of the Revised Code, and meets the requirements of section 4928.66 of the Revised Code."[9]

### B. The Commission Rules also Govern the Implementation of FirstEnergy's Initial Energy Efficiency and Peak Demand Reduction Benchmark Report.

FirstEnergy's December 15, 2009 Application also includes the initial energy savings and peak demand reduction benchmark report for each of FirstEnergy's Ohio

[6] Ohio Adm. Code 4901:1-39-04.

[7] Ohio Adm. Code 4901:1-39-04(A).

[8] Ohio Adm. Code 4901:1-39-04(E).

[9] Ohio Adm. Code 4901:1-39-04(E).

operating companies.[10] In 2009, the Commission also adopted rules directing each EDU to file an initial benchmark report within sixty days of the effective date of the rule (December 10, 2010).[11] The initial benchmark report must include the energy and demand baselines for kilowatt-hour sales and kilowatt demand for the upcoming reporting year and the applicable statutory benchmarks that must be met.[12]

The Commission's rules also permit interested parties to file comments addressing FirstEnergy's initial benchmark reports and a subsequent filing of findings and recommendations by the PUCO Staff, and potentially a hearing if the Commission deems it necessary.[13] In this case the Commission also ordered testimony to be filed and a hearing to be commenced in conjunction with FirstEnergy's initial energy savings and peak demand reduction benchmark report.[14] As part of the filing requirements, FirstEnergy has the burden to demonstrate compliance with the approved program portfolio plan or annual sales of peak demand reductions required by R.C. 4928.66(A).[15]

### C. The Commission Rules also Govern Cost Recovery Requests.

FirstEnergy's Application also includes a request for recovery of a rate adjustment mechanism to collect from customers costs associated with FirstEnergy's energy efficiency and peak demand reduction programs, lost distribution revenues and

---

[10] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Initial Benchmark Reports*, Case Nos. 09-1942-EL-EEC, 09-1943-EL-EEC, and 09-1944-EL-EEC, Application (December 15, 2009).

[11] Ohio Adm. Code 4901:1-39-05(A).

[12] Id.

[13] Ohio Adm. Code 4901:1-39-06.

[14] Entry at 2. (January 14, 2010).

[15] Ohio Adm. Code 4901:1-39-06(B).

shared savings.[16] In 2009, the Commission also adopted rules permitting each EDU to request a rate adjustment mechanism to request collection from customers costs associated with FirstEnergy's energy efficiency and peak demand reduction programs, lost distribution revenues and shared savings. The rules permit interested parties to file comments addressing FirstEnergy's request for cost recovery and potentially a hearing if the application appears unjust or unreasonable.[17] In this case the Commission did determine that the application appears unjust or unreasonable and set a date for testimony to be filed and a hearing to be commenced in conjunction with FirstEnergy's proposed Energy Efficiency and Peak Demand Reduction Program Portfolio Application.[18] As part of the filing requirements, FirstEnergy has the burden to demonstrate that the requests recovery of costs associated with FirstEnergy's energy efficiency and peak demand reduction programs, lost distribution revenues and shared savings are not unjust or unreasonable.

---

[16] *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 2010 through 2012 and Associated Cost Recovery Mechanisms*, Case Nos. 09-1947-EL-POR, et al.., Application (December 15, 2009). (The cost recovery mechanism also requests the program costs associated with the Companies' intial attempt to implent the CFL program in early October.)

[17] Ohio Adm. Code 4901:1-39-07(B).

[18] Entry at 2. (January 14, 2010).

## III. ARGUMENT

### A. FirstEnergy's Collaborative Efforts were Inadequate and Unreasonable, and Accordingly an Independent Facilitator Should be Retained.

#### 1. The role and expectations of the collaborative were established (and later disregarded) by FirstEnergy.

##### a. The collaborative process was intended to be inclusive.

The Companies' initial Electric Security Plan ("ESP") was resolved in a settlement that included the requirement that the Companies work with a collaborative process to develop its energy efficiency and peak demand programs. According to the approved stipulation, the collaborative would "draw input from a wide-ranging and diverse group of stakeholders."[19] While FirstEnergy initiated a collaborative process in approximately May of 2009,[20] FirstEnergy's unwillingness to work with collaborative members prompted concerns about the effectiveness of the process.[21]

OCC Witness Dan Sawmiller noted that engaging all stakeholders in a collaborative process is critical when trying to achieve the full potential of the energy efficiency programs,[22] and cited the language in the ESP settlement document which required FirstEnergy to establish EE/PDR programs that were "based on sound program

---

[19] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. §4928.143 in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, Second Opinion and Order at 23 (March 25, 2009); adopting the Stipulation (February 19, 2009) and the Supplement (February 26, 2009) .

[20] Tr. Vol. 1 at 28 (Paganie) (March 2, 2010).

[21] For example, the PUCO Staff described FirstEnergy's frantic, last-minute approach to overseeing the eight-month process and making efforts toward meeting the statutory benchmarks as being in a perpetual "emergency" mode. PUCO Staff Ex. 1 at 6, (Direct Testimony of Gregory Scheck) (February 23, 2010); OCC witness Daniel Sawmiller described FirstEnergy's performance as the leader of the collaborative as "not helpful towards advancing the best portfolio of cost effective programs." OCC Ex. 12 at 19, (Direct Testimony of Daniel Sawmiller) (February 17, 2010).

[22] OCC Ex. 12 at 17 (Sawmiller) (February 17, 2010).

evaluation [and] garner general support from stakeholders…"[23] Environmental Law and Policy Center ("ELPC") witness Geoffrey Crandall echoed the same concerns in his testimony.[24]

FirstEnergy agreed that the purpose of the collaborative was to develop a common – and best-practices approach to developing cost-effective programs that would also assist FirstEnergy in its statutory obligation to meet the energy efficiency and peak demand reduction benchmarks defined in R.C. 4928.66.[25] FirstEnergy witness John Paganie acknowledged that FirstEnergy was the facilitator for the collaborative and thus it was FirstEnergy's responsibility to get the interested parties together, find their common interests and find a way to use those common interests to benefit the design and development of a program that will help FirstEnergy achieve its benchmark targets.[26] FirstEnergy is fully aware of the annual energy efficiency and peak demand reduction targets it must meet for 2010 through 2012.[27]

As the facilitator, FirstEnergy created the starting point for discussions[28] and the timeframe[29] for the issues presented to the collaborative. As the leader of the collaborative process, Mr. Paganie also noted that every member of the collaborative should have a role in determining the key aspects of the plan.[30] However, FirstEnergy's

---

[23] Id. at 16 ( Sawmiller) (February 17, 2010).

[24] ELPC Ex. 1 at 22 (Crandall) (February 17, 2010) ("a systematic process for the two-way exchange of ideas needs to be developed to assist FirstEnergy program implementers to develop, modify, and continuously refine programs.").

[25] Tr. Vol. 1 at 81 (Paganie) (March 2, 2010).

[26] Id.

[27] PUCO Staff Ex. 1 at 6 (Scheck) (February 23, 2010).

[28] Tr. Vol. 1 at 83 (Paganie) (March 2, 2010).

[29] Id. at 84 (Paganie) (March 2, 2010).

[30] Id. at 82 (Paganie) (March 2, 2010).

actions do not support the rhetoric that FirstEnergy has put forth. As discussed in more detail below, FirstEnergy's self-serving conduct, ranging from providing the collaborative members information at the last possible minute – and in other cases withholding pertinent information from the collaborative, to unilaterally limiting the parties participating in the collaborative -- belittled the value, credibility and effectiveness of the process to the extent that FirstEnergy has demonstrated that it is unfit to lead this process.

#### b. Providing the collaborative members with little more than an outline of the energy efficiency and peak demand portfolio plan a mere five days before filing the application is unreasonable and confirms FirstEnergy's contempt for the collaborative process.

Throughout the collaborative process, FirstEnergy consistently gave collaborative members little or no time to review information provided by the Companies. Mr. Sawmiller observed FirstEnergy's consistent inability to provide documentation with adequate review time negatively impacted the ability of the collaborative members to provide feedback and/or recommendations.[31] In addition, the recommendations and requests for more information from stakeholders were often ignored.[32] The PUCO Staff echoed this concern by stating the Companies should have "planned meetings in advance for next year **with meeting materials provided in advance for customer input**."[33]

The final product, the December 15, 2009 Application, illustrates how FirstEnergy violated the terms of the ESP stipulation by obstructing any stakeholders' ability to review specific details of the Portfolios prior to filing. FirstEnergy called one

---

[31] OCC Ex. 12 at 19 (Sawmiller) (February 17, 2010).

[32] Id.

[33] (Emphasis added) PUCO Staff Ex. 1 at 6 (Scheck) (February 23, 2010).

meeting to discuss the core substance of the Application on December 10, 2009 -- Five days before filing the Application![34] Mr. Paganie acknowledged that the collaborative members were not given a reasonable time to address the Companies' development and implementation of the Portfolios, "due to the timing of [the December 10th] meeting, vis-à-vis the filing, there was minimal time for the collaborative to review details of the plans."[35]

Additionally, FirstEnergy conceded that the meeting on December 10, 2009 was the first meeting at which the Companies were prepared to discuss the plan as a whole in detail.[36] Mr. Paganie also acknowledged that the "detail" the Companies provided at the meeting was "an outline of what the filing was going to be with the information [the Companies] had available to [FirstEnergy] at that time."[37] Excluding the CFL program, the hearing record established that the collaborative process developed by FirstEnergy offered the stakeholders little more than a brief period for review of the proposals (an eighteen-page summary of the energy efficiency programs – OCC Exhibit 8)[38] and only one chance for input on a 15 page outline of the portfolio plans (OCC Exhibit 7) -- again a mere five days before the Application was filed.[39] At the time of the December 10, 2009 meeting, the "modeling" that supported the programs was still not available to the

---

[34] Tr. Vol. 1 at 85-86 (Paganie) (March 2, 2010).

[35] Id. at 97 (Paganie) (March 2, 2010) and FirstEnergy Ex. 1 at 8 (Paganie) (December 15, 2009).

[36] Tr. Vol. 1. at 96-97 (Paganie) (March 2, 2010).

[37] Tr. Vol. 1 at 96-97 (Paganie) (March 2, 2010) (At the December 10 meeting the Companies presented a 15-page PowerPoint outline of the Application [OCC Exhibit 7] and a 20 page fact sheet that summarized the proposed programs that would be included in the portfolio plan [OCC Exhibit 8].

[38] The 18 page outline of programs was provided via e-mail on November 24, 2009.

[39] Tr. Vol. 1 at 89 (Paganie) (March 2, 2010).

collaborative members.[40] For the collaborative to function effectively and to have meaningful input – which given FirstEnergy's lack of experience and demonstrated lack of interest in energy efficiency – it is essential that information be provided on a timely basis for review and analysis. The fact that FirstEnergy makes it a standard practice to keep parties in the dark for as long as possible, sheds doubt on the efficacy of its programs on the one hand and a disdain for a true collaborative on the other. Given this, the program should be taken out of FirstEnergy's hands and given to a competent third party administrator to manage.

**c. Introducing core concepts of the energy efficiency and peak demand reduction portfolio plan application to the collaborative members a mere five days before filing the application is unreasonable and again confirms FirstEnergy's contempt for the collaborative process.**

At the December 10th collaborative meeting, FirstEnergy announced -- for the first time -- that the Application would include a shared savings mechanism and seek to "fast track" four programs.[41] Despite the fact that the collaborative existed for eight months, FirstEnergy waited until five days before filing the Application to unveil these new concepts. Again, this is a repeated FirstEnergy tactic. FirstEnergy would not have to resort to such practices if its positions were meritorious. Both a shared savings mechanism and the request to "fast track" four programs were material additions and modifications to FirstEnergy's proposals. The absence of any opportunity for the collaborative to review, discuss, and provide feedback regarding these two substantive issues further establishes that, contrary to the ESP agreement it signed with stakeholders,

[40] Id. at 90 (Paganie) (March 2, 2010).

[41] Id. at 98. (Paganie) (March 2, 2010) (Pertaining to the fast track program).

FirstEnergy sidestepped the collaborative process, and in doing so shut out the input of collaborative members and, by extension, the customer classes represented.

As part of the December 15, 2009 Application, the Companies alleged that it would be virtually impossible for the Companies to comply with the 2010 energy efficiency benchmarks as a result of the Commission's requirement to use only prorated instead of annualized savings and the procedural schedule contemplated in the Commission's Rules.[42] To address this issue, FirstEnergy demanded the Commission either rush its review and approve the Portfolios by Mid-March 2010, or separate out four programs from the rest of the Portfolios for expedited approval before April 1, 2010 – referred to in the Plans as the "Fast Track" programs.[43] The "Fast Track" idea was not specifically discussed with the collaborative and it was not a collaborative decision -- it was a FirstEnergy decision.[44]

The so-called "Fast Track" programs that the Companies set apart from the other programs in the Portfolios – and expect to be approved prior to April 1 are: (1) the Appliance Turn-In Program, (2) the redesigned Residential CFL Program, (3) the C/I Equipment Program (Lighting component); and (4) the C/I Equipment Program (Industrial motors).[45] The inclusion of the Residential CFL program as part of the so-called "Fast Track" programs contradicts FirstEnergy's decision just sixteen days earlier

---

[42] FirstEnergy Ex. 6 at 3 (Ohio Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan); FirstEnergy Ex. 7, at 3 (CEI Energy Efficiency & Peak Demand Reduction Portfolio Plan); and FirstEnergy Ex. 8 at 3 (Toledo Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan).

[43] Tr. Vol. 1 at 99 (Paganie) (March 2, 2010).

[44] Id.

[45] FirstEnergy Ex. 6 at 3 (Ohio Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan); FirstEnergy Ex. 7, at 3 (CEI Energy Efficiency & Peak Demand Reduction Portfolio Plan); and FirstEnergy Ex. 8 at 3 (Toledo Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan).

(November 30, 2009) where FirstEnergy *combined this program* with the entire Portfolio Filing.[46]

It was FirstEnergy - on November 24, 2009 - that initially requested to *delay* the start of the redesigned Residential CFL program and combine the program with the Application – not the collaborative. This decision alone cost residential customers approximately $120,000 in warehousing fees.[47] FirstEnergy now asks the Commission to set the Residential CFL program apart from the Application, again without substantial input from the collaborative.[48]

FirstEnergy's proposed Shared Savings mechanism is another example of a material aspect of the Companies' December 15 Application introduced to the collaborative only five days before the filing.[49] The Shared Savings proposal would permit FirstEnergy to receive 15 percent of the net benefits for generating energy savings in excess of the Companies' required benchmarks.[50] As discussed in more detail in section (C) below, the record establishes that FirstEnergy did not conduct any research to establish that 15 percent is a reasonable or appropriate amount[51] and cannot identify how much this type of proposal will potentially cost customers.[52] Both the expectation of a 15

---

[46] OCC Ex. 12 at 14, lns 16-20; id. at 15, lns 1-3. (Sawmiller) (February 17, 2010).

[47] OCC Ex. 12 at 14, lns 16-20; id. at 15, lns 1-3 (Sawmiller) (see discussion in section B.5). The fact that the 'fast track' programs were subsequently filed in a Joint Motion and not opposed by Citizen Power does not negate the fact that this expedited schedule should have been brought before the Collaborative in a manner that allowed for interchange of ideas between the interested parties.

[48] Tr. Vol. 1 at 99 (Paganie).

[49] OCC Ex. 12 at 9, fn. 6 (Sawmiller) (February 17, 2010).

[50] FirstEnergy Ex. 6 at 139 (Ohio Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan); FirstEnergy Ex. 7, at 139 (CEI Energy Efficiency & Peak Demand Reduction Portfolio Plan); and FirstEnergy Ex. 8 at 139 (Toledo Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan).

[51] See, for example, Tr. Vol. 1 at 161 (March 2, 2010).

[52] FirstEnergy Ex. 3 at 10 (Ouellette); and at Exhibits SEO-C1 at line 13, SEO-C2, and SEO-C3 (December 15, 2009) (no estimates shown for shared savings for the three Companies).

percent "bonus" and the cost to consumers are the type of information that should have been addressed in a collaborative setting – prior to filing the Application. Again, FirstEnergy failed to provide adequate documentation in the collaborative, and then again in this case. Thus, FirstEnergy is not entitled to the 15 percent shared savings as proposed.

FirstEnergy's decisions to circumvent the collaborative process on the Shared Savings and the "fast track" programs must be condemned by the Commission. No attempt was made by the Companies, per the agreement, to "garner general support from stakeholders." Thus, FirstEnergy's conduct violated the intent of the agreement.

**d. FirstEnergy's unilateral decision to deny interested stakeholders access to the collaborative without discussing the matter with the collaborative limits the effectiveness and credibility of the collaborative process and is unreasonable.**

FirstEnergy's decision to deny the Environmental Law and Policy Center's ("ELPC") request to join the collaborative without consulting other parties in the collaborative is unreasonable and may obstruct the collaborative's efforts toward developing cost-effective programs energy efficiency and peak demand reduction programs.[53] Citing his experience as part of other collaboratives in Ohio, Mr. Sawmiller stated that a true collaborative process should be open to all interested stakeholders to participate.[54] ELPC witness Geoffrey Crandall also testified that the collaborative should include any interested stakeholders who are willing to take the time and effort to actively

[53] OCC Ex. 12 at 18 (Sawmiller) (February 17, 2010).

[54] Id.

participate.[55] The concept of an "interested stakeholder" is a fluid concept and one that should not be limited to the interested parties at the time of the ESP settlement.

The Collaborative process provides an ongoing opportunity for stakeholders to address concerns and potentially avoid lengthy litigation on issues.[56] ELPC has outlined five issues in the testimony of Mr. Crandall that are appropriate for a collaborative to address – if provided the opportunity.[57]

Rather than addressing ELPC's membership with the collaborative, FirstEnergy stated reliance on the language of the ESP stipulation to deny ELPC's request to join the group. Mr. Paganie stated that the ESP stipulation only permits signatories and administrators to be a part of the collaborative.[58] Yet there are a number of non-signatory parties that are members of the collaborative.[59] And these members were added by FirstEnergy without consultation with the other parties, thereby demonstrating the one-sidedness of the collaborative process.

In addition, Mr. Sawmiller observed that the language in the ESP stipulation relied upon by FirstEnergy only addresses the initial composition of the collaborative.[60] Limiting the collaborative composition for the next couple of years to the signatory parties from the previous stipulation does not make practical sense – and should have

---

[55] ELPC Ex. 1 at 23 (Crandall) (February 17, 2010).

[56] OCC Ex. 12 at 18 (Sawmiller) (February 17, 2010).

[57] ELPC Ex. 1 at 2-3 (Crandall) (February 17, 2010).

[58] Tr. Vol.1 at 87-88 (Paganie) (March 2, 2010).

[59] Tr. Vol. 1 at 138 (Paganie re-direct) (March 2, 2010). FirstEnergy stated that non-signatory parties are allowed if they are part of a signatory party – however that would mean that any citizen of Ohio is permitted to be a member.

[60] OCC Ex. 12 at 17 (Sawmiller) (February 17, 2010) (citing the 2009 approved ESP Stipulation at 24): "The Companies will commence a collaborative process with Signatory parties and third party administrators(s)…").

been discussed with the entire collaborative.[61] FirstEnergy's decision to unilaterally pick and choose the parties in the collaborative will result in feedback that lacks input from all of the interested stakeholders and may frustrate the collaborative's ability to establish a common – and best-practices approach to developing cost-effective programs. Accordingly, FirstEnergy's decision to deny ELPC entry into the collaborative is incompatible with the language of the stipulation and should be overruled by the Commission.

#### e. FirstEnergy's tactic of withholding documents from the collaborative members sabotaged the purpose of the collaborative and was unreasonable.

Customers have a right to know what they are paying for and an accurate assessment of the costs. FirstEnergy failed to provide requested documentation *and* a reasonable explanation all for the costs residential customers are expected to pay for the redesigned CFL program. FirstEnergy made a decision to withhold the Residential Subcommittee of the Collaborative and withhold the meager documentation it had to support the costs incurred from the original CFL program. The Commission must establish the precedent that this type of practice by FirstEnergy is unacceptable by ordering the Companies to absorb the "advertising", "personnel", and "management service" costs that were the main subject of the withheld documents – and which still have not been adequately accounted for to this point.

[61] Tr. Vol. 1 at 83 (Paganie) (March 2, 2010).

The Residential (and low-income) Subcommittee ("subcommittee") of the collaborative, formed simultaneously with the main collaborative in May 2009,[62] was chaired and facilitated by Gregory Toth, employee and rebuttal witness for FirstEnergy. Mr. Toth organized all of the meetings.[63] One issue addressed by this subcommittee was the redesign of FirstEnergy's residential (and small business) CFL program. On November 4, 2009 the Commission ordered the Companies to go back to the subcommittee and redesign the CFL program.[64] The Companies were asked to submit the redesigned CFL program to the Commission no later than November 30, 2009.[65]

The subcommittee worked diligently throughout the month of November, meeting at least once a week to address the redesign of the CFL program.[66] Under the inauspicious circumstances of having 3.75 million light bulbs in FirstEnergy's possession, the members of the subcommittee worked very hard to find a suitable method to distribute the bulbs to FirstEnergy customers.[67]

After almost a month of working together the members of the subcommittee created an acceptable distribution plan for the light bulbs.[68] However, other components for the redesigned program were not resolved.[69] For example, the marketing for the new

---

[62] FirstEnergy Ex. 6 at 26 (Ohio Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan); FirstEnergy Ex. 7, at 26 (CEI Energy Efficiency & Peak Demand Reduction Portfolio Plan); and FirstEnergy Ex. 8 at 26 (Toledo Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan.) (along with the residential/low income subcommittee, two other subcommittees were formed as part of the collaborative process, the commercial/industrial subcommittee and the demand response subcommittee).

[63] Tr. Vol. 4. at 548 (Toth) (March 8, 2010).

[64] OCC Ex. 12 at 14 (Sawmiller) (February 17, 2010).

[65] Id.

[66] Id.

[67] Id.

[68] Id. 12 and at 14 (Sawmiller) (February 17, 2010).

[69] OCC Ex. 16 (meeting minutes from November 23, 2009 meeting); OCC Ex. 12 at 13 (Sawmiller).

program and the costs that would be included in the new program were never resolved. However, FirstEnergy chose to end the subcommittee meetings in Late-November.[70]

The Companies' December 15 Application seeks to collect approximately $12.5 million from residential customers over the next three years for the inclusion of the redesigned CFL program in its portfolio plan.[71] The $12.5 million consists of two categories: (1) Approximately $8.9 million in costs for supplies associated with the original program that was suspended on October 7, 2009, but to be used in the redesigned program (the compact fluorescent lights, the packaging, the postage and some of the information brochures),[72] and; (2) Approximately $3.75 million in new costs specific to the delivery of the bulbs as part of the redesign and not associated with the original implementation.[73] OCC repeatedly requested more information regarding both the necessity and the accuracy of the $8.9 million in costs associated with the original program through the collaborative and hearing proceedings – and the Companies have yet to meet their burden and provide the supporting documentation.

OCC repeatedly requested all supporting documentation to support the $8.9 million figure. The record includes two separate e-mails requests on November 18[74] and 19[75] from OCC to Greg Toth, where OCC requested all supporting information for

---

[70] Tr. Vol. 4 at 548 (March 8, 2010).

[71] OCC Ex. 17 at 2 (November 24, 2009 e-mail and documents the Grand total at the bottom of the page states "$12,650,036.00").

[72] OCC Ex. 17 at 2 (November 24, 2009 e-mail and documents).

[73] Id.

[74] OCC Ex. 14 (chain of emails including an email from Greg Toth (FirstEnergy) to Dan Sawmiller (OCC)).

[75] OCC Ex 15 (Chain of e-mails including an e-mail from Greg Toth (FirstEnergy) to Greg Poulos (OCC)).

components of the $8.9 million figure.[76] In addition, Mr. Toth conceded there were other requests by both OCC and other parties during the subcommittee meetings.[77] Instead of invoices and receipts, OCC was provided with a summary of the costs prepared by the Companies on November 24, 2009 -- after the last subcommittee meeting.[78] The lack of documentation for approximately $8.9 million was unacceptable to OCC and the record at hearing established that OCC continued to make that fact known at the last collaborative meeting in late November.[79] In response, Mr. Toth stated at the hearing that he did not believe there were more cost issues after the November 23 subcommittee meeting because he had "given all the information [he] had up to that point to the OCC..."[80] Yet, three months later the Companies finally revealed that additional documentation for the $8.9 million incurred from the original program did indeed exist.[81]

Three weeks before the hearing FirstEnergy provided members of the subcommittee with general, non-descriptive invoices from September of 2009 from PowerDirect, The Millcraft Group, Artists Incorporated, IMR, Inc., Robert Calmer, Bob Gold Advertising, Highland Talent Payments, Inc., Commercial Recording Studios, Inc.[82] FirstEnergy provided no explanation why the invoices for the $405,140 in advertising costs and $8,493,000 for Power Direct had been deliberately withheld from OCC and the

[76] Tr. Vol. 4 at 555. (Toth) (March 8, 2010).

[77] Id.

[78] OCC Ex. 17 (November 24, 2009 email and documents).

[79] OCC Ex. 16 at 2-3 (December 2, 2009 e-mail and documents from last residential collaborative on November 23, 2009); Tr. Vol. I at 50: FirstEnergy witness Paganie conceded that there were still "discussions" about outstanding "sunk" costs at last residential collaborative meeting.

[80] Tr. Vol. 4 at 559. (Toth). (March 8, 2010).

[81] Id. at 617 and 619 (Toth) (the Power Direct invoice was provided to the parties on February 11, 2010); Id. at 637-638 (List of Advertising Expenses) (March 8, 2010).

[82] Id. at 637-638 (Toth).

rest of the residential collaborative. Still the documentation for the "personnel", "management service", and "advertising" costs do nothing more than generally itemize how thousands and thousands of dollars were spent. FirstEnergy still has not provided documents for the record to show how this $1,360,000 money was spent and accordingly it is not reasonable to permit the Companies to pass these costs on to residential customers.[83]

If the redesigned CFL plan is going to work and be cost effective, FirstEnergy must be required to provide every detail of how residential customers' money will be spent. Withholding documents is not acceptable nor can the Commission condone such activity. FirstEnergy intends on delivering 3.75 million light bulbs to residential customers (and some small business owners) and it proposes to bill those customers approximately $13,000,000[84] in costs and another approximately $11 million[85] in lost distribution revenues in 2010 and 2011. Throughout the month of November, OCC and other parties[86] asked for all the details behind the $13,000,000 in costs – the Companies failed to adequately address these inquiries by the subcommittee and withheld documents regarding those costs.

#### f. FirstEnergy's actions demonstrated an inability to facilitate the collaborative process, and the Commission must remove the Companies from that role.

The record in the case is established that, by its own admission, FirstEnergy's collaborative process failed to provide stakeholders with an adequate opportunity to

[83] FirstEnergy Ex. 12, GMT-1 attachment – Power Direct Invoice: $630,000 for personnel costs, $225,000 for management costs; GMT-1 page 1: $405,000 in advertising costs (Toth) (March 8, 2010).

[84] OCC Ex. 15 at 2 (November 18, 2009 Toth to Sawmiller email)

[85] Id. at 2 (November 18, 2009) (Toth to Sawmiller email)

[86] Tr. Vol. 4 at 556 (Toth).

review and provide constructive feedback on the Companies' proposed energy efficiency and peak demand reduction programs. FirstEnergy's collaborative leader, Mr. Paganie, agreed that an opportunity for feedback on the programs from the collaborative members was needed but the Companies ran out of time.[87]

Mr. Sawmiller stated that a reasonable opportunity to provide input on the design of FirstEnergy's energy efficiency and peak demand reduction programs was necessary to protect customers and to ensure that the customers had access to cost effective programs.[88] As established by the record in this case, FirstEnergy's failure to provide adequate time and information to evaluate proposed programs and then ignoring recommendations and requests for information by members of the collaborative were unreasonable actions by FirstEnergy. Mr. Sawmiller stated that it was apparent by the Companies actions described in the record that FirstEnergy had demonstrated an inability to facilitate a collaborative process and therefore an independent facilitator should be put in place to manage the FirstEnergy collaborative going forward.[89]

### B. FirstEnergy's Request to Collect Over One Million Dollars That it Spent on the Original CFL Program From Residential and Small Business Customers Without Adequate Documentation Must be Denied.

#### 1. The Company failed to document how it spent two hundred and eighty-five thousand dollars on CFLs that the Companies propose to distribute.

The Companies failed to establish in the record how it calculated the $5,996,250 it proposed to collect from customers for CFL costs and therefore it should not recover all of those costs. The November 24, 2009 itemized list of CFL Programs Committed/Spent

[87] Tr. Vol. 1 at 97 (Paganie) (March 2, 2010).

[88] OCC Ex. 12 at 19 (Sawmiller) (February 17, 2010).

[89] OCC Ex. 12 at 19 (Sawmiller).

identified that $5,996,250 were spent by the Companies on CFLs for the Original CFL program back in September 2009.[90] Mr. Toth explained that the November 24, 2009 invoice was the most current invoice of CFL costs.[91] Mr. Toth also explained that all of the CFLs would have been purchased by the Middle of October, 2009.[92] The logical deduction is that the November 24, 2009 invoice should be accurate.

However, the invoice that is included as part of Mr. Toth's rebuttal testimony identifies only 5,906,250 in CFL costs.[93] Mr. Toth states that these are only "approximate" numbers. [94] These numbers are close but they do not add up and the Companies have provided no support for either of the numbers. When asked to present documentation regarding the Companies request for $5,996,250 Mr. Toth simply stated that he could provide no further documentation because the figures were based on conversations with suppliers.[95]

The only documentation for the Companies' CFL costs contained in the record do not add up and should not be used to penalize customers. For example, the 5,906,250 figure on the invoice does not add up. The invoice represents that customers will be billed $4,725,000 for 1.5 million light bulbs that will be provided to residential customers – 1.5 million multiplied by a rate of $3.00 a bulb.[96] Yet, 1.5 million times a rate of $3.00 actually equals $4,500,000 a difference of $225,000 – a difference that is not supported in the record and should not be collected from customers. The submitted invoice also

---

[90] OCC Ex. 17 at 3 (November 24, 2009 e-mail and attached "CFL Program Committed/Spent").

[91] Tr. Vol. 4 at 626 (Toth) (March 8, 2010).

[92] Id.

[93] FirstEnergy Ex. 12, GMT-1 attachment (Toth).

[94] Tr. Vol. 4 at 615 (Toth) (March 8, 2010).

[95] Id. at 615-616 (Toth) (March 8, 2010).

[96] FirstEnergy Ex. 12, GMT-1 attachment – Power Direct Invoice (Toth) (March 8, 2010).

multiplied 375,000 light bulbs for business customers again at a rate of $3.00 a bulb to reach a figure of $1,181,250.[97] Yet, 375,000 multiplied by $3.00 actually equals $1,125,000 a difference of $73,000 – a difference that again is not supported in the record and should not be collected from customers.

**2. The Company failed to document how it spent two hundred and twenty-five thousand dollars on "management services" as part of the staging of the original CFL roll-out.**

FirstEnergy failed to provide adequate support for the costs related to the "Management Services" that were incurred by the Companies associated with the Original CFL program. On November 24, 2009 the Companies provided OCC with a request to collect money from customers for "Management Services" associated with the Original CFL program.[98] The one-line item amount is $225,000.[99] FirstEnergy is seeking collection of this $225,000 in its Application.[100] Throughout the Collaborative process OCC requested information related to these costs and received no further information from the Companies.[101] No explanation was provided as to why these costs were incurred, or how they relate or benefit customers for the proposed new program.

FirstEnergy witness Toth testified that the $225,000 amount was obtained directly from an invoice supplied by the Company that performed the work, Power Direct. The Power Direct invoice was attached to Mr. Toth's testimony as GMT-1.[102] Mr. Toth also

[97] Id.

[98] OCC Ex. 17 at 3 (November 24, 2009 e-mail and attached "CFL Program Committed/Spent").

[99] Id.

[100] Tr. Vol. 4 at 630 (Toth) (March 8, 2010).

[101] OCC Ex. 12 at 16 (Sawmiller) (February 17, 2010).

[102] Tr. Vol. 4 at 614 (Toth) (March 8, 2010).

conceded that he waited until February 11, 2010 to provide this document – his only documentation regarding the $225,000 figure for "management services" to the parties.[103]

As part of his rebuttal testimony Mr. Toth did find a way to provide further detail regarding the "Management Services." Mr. Toth contacted the CFL vendor and "after a conversation" with the CFL vendor Mr. Toth was able to support his $225,000 request with three figures that add up to $225,000 ($40,750 + $31,250 + $153,000).[104] There are no invoices for these three figures[105] -- and no CFL vendor for the parties to question. As a result of the Companies decision to withhold information and then later provide only a superficial explanation for the $225,000 in management costs, the Commission should deny FirstEnergy's request to recover this amount from FirstEnergy customers.

### 3. The Company failed to document how it spent six hundred and thirty thousand dollars on "personnel" as part of the staging of the original CFL roll-out.

FirstEnergy failed to provide adequate support for the costs related to the "Personnel services" that were incurred by the Companies associated with the Original CFL program. On November 24, 2009 the Companies also provided OCC with a request to collect money from customers for "Personnel Services" associated with the Original CFL program.[106] The one-line item amount is $630,000.[107] FirstEnergy is also seeking collection of this amount in its Application.[108]

---

[103] Id. at 617 and 619. (Toth) (March 8, 2010).

[104] Id. at 631- 632 (Toth) (March 8, 2010).

[105] Id. at 632 (Toth) (March 8, 2010).

[106] OCC Ex. 17 at 3 (November 24, 2009) (email and attached "CFL Program Committed/Spent").

[107] Id.

[108] Tr. Vol. 4 at 630 (Toth) (March 8, 2010).

Mr. Toth testified Power Direct provided these services and invoices. Mr. Toth also testified that the Power Direct invoice that was attached to his testimony is the only documentation he could provide to support the $630,000 amount – there were no additional "discussions" with vendors that he could include in his testimony.[109] Mr. Toth did not have any additional breakdown of the request to collect $630,000 from residential customers other than the Power Direct one-line breakdown and a page and a half of narrative in his testimony.[110] Six hundred and thirty thousand dollars is a lot of money to simply deem reasonable based on an invoice that provides no further explanation of the cost. The Commission should again protect customers by disallowing any costs that cannot be verified. In this case, the Companies failed to reasonably establish why it should be permitted to collect $630,000 from customers for "personnel services", the Commission should deny FirstEnergy's request to recover this amount from FirstEnergy customers.

#### 4. The Company failed to properly market the original CFL program and the marketing costs that were incurred were poorly documented, and accordingly those costs should not be collected from customers.

The November 24, 2009 itemized list of CFL Programs Committed/Spent identified $427,140 in money spent for the original CFL program on advertising art work and design that FirstEnergy wanted to collect as part of the new program.[111] Approximately eighty days later, February 11, 2010, the Companies finally produced for the first time invoices to support approximately $405,140 in advertising costs for the

[109] Id. at 615 (Toth) (March 8, 2010).

[110] Id. at 586 (Toth) (March 8, 2010); FirstEnergy Ex. 12 at 10-11 (Toth) (March 4, 2010).

[111] OCC Ex. 17 at 3 (November 24, 2009) (email and attached "CFL Program Committed/Spent").

Original CFL program.[112] FirstEnergy had these invoices since September 2009.[113] The $405,140 was for the pre-advertising or pre-marketing of the Original CFL program.[114]

The original CFL plan requested and was approved to include $1.8 million for pre-marketing of the program.[115] Mr. Sawmiller explained that "the failure of FirstEnergy to adequately pre-market the program played a significant role in its failure to adequately educate its customers on the benefits of CFLs and energy efficiency in general, resulting in a widespread consumer outcry."[116] Mr. Sawmiller testified that spending less that 24 percent of the Companies allocated marketing costs produced a campaign that was insufficient and was at least partly to blame for the negative publicity created from the implementation of the first program in October 2009.[117] Mr. Sawmiller pointed out that the Commission was also concerned about FirstEnergy's marketing efforts during the original CFL program and as a result the Commission ordered FirstEnergy to provide details on its marketing approach for the redesigned program.[118]

As stated above, FirstEnergy did provide additional information regarding the amount of money it spent on the pre-marketing and pre-advertising costs for the original CFL program on February 11, 2010.[119] The additional documentation provided by FirstEnergy, and attached to Mr. Toth's rebuttal testimony as GMT-1, stated that originally FirstEnergy was going to spend approximately $1 million in pre-marketing – or

---

[112] Tr. Vol. 4 at 637 (Toth) (March 8, 2010).

[113] Id. at 643-644 (Toth) (March 8, 2010).

[114] Id. at 638 (Toth) (March 8, 2010).

[115] OCC Ex. 12 at 15 (Sawmiller) (February 17, 2010).

[116] Id. at 15 (Sawmiller) (February 17, 2010).

[117] Id. at 15 ( Sawmiller) (February 17, 2010).

[118] Id. at 15-16 (Sawmiller) (February 17, 2010).

[119] FirstEnergy Ex. 12, Attachment GMT-1 (Toth) (March 4, 2010).

62 percent of the originally proposed $1.8 million.[120] Spending only 62 percent of the proposed $1.8 pre-marketing costs is still not close to the amount deemed appropriate by the Companies to meet the marketing needs of the program. Whether spending 62 percent of the proposed costs would have been enough to educate consumers and produce a different result for the original CFL program will never be known.

The $405,140 in pre-market/pre-advertising costs that FirstEnergy is seeking to collect from customers for the Original CFL Program is a negotiated figure. Mr. Toth stated during cross-examination that to arrive at the $405,140 dollar figure he was able to negotiate down two of the pre-advertising costs -- the "IMR" invoices for radio advertising and the "IMR" invoice for the newspaper campaign.[121] Originally the two IMR invoices totaled approximately almost $800,000.[122] FirstEnergy was able to negotiate these two invoices down to a total of $279,115.[123] However, Mr. Toth could not provide any further information to describe the type, number, or dates of the newspaper advertisements that were bought[124] or the radio spots[125] for the two IMR invoices.

Residential customers are entitled to know what consumers received for their money. FirstEnergy should only be permitted to collect reasonable advertising costs for the revised program that provide the benefit of increasing its energy savings potential. At the very least, the $279,000 of unverified and superficially documented IMR newspaper

[120] FirstEnergy Ex. 12 at Attachment GMT-1 (Toth) (March 4, 2010).

[121] Tr. Vol. 4 at 641 and 642 (Toth) (March 8, 2010).

[122] Id. at 642. (Toth) (March 8, 2010); see also FirstEnergy Ex. 12 at Attachment GMT-1, two IMR invoices (Toth) (March 4, 2010).

[123] Tr. Vol. 4 at 642 (Toth) (March 8, 2010).

[124] Id. at 644-647 (Toth) (March 8, 2010).

[125] Id. at 647-648 (Toth) (March 8, 2010).

and radio advertisement costs are not adequately established and should be subtracted from the Companies' cost recovery from FirstEnergy customers.

**5. The Companies' request to combine the filing of the CFL program with the comprehensive program portfolio created a delay that will increase the storage expenses for the CFL bulbs, and the expense caused by this delay should not be borne by the Companies' customers.**

The redesigned CFL program will take approximately 24 months from start to finish.[126] The 24-month time period had the potential to start in December 2009 (and finish in December 2011). However, FirstEnergy filed a Motion for an extension of time to file its CFL program with its 3-year Portfolio Plan filing on November 24, 2009.[127] By incorporating the implementation of the CFL Program into the Portfolios that were filed on December 15, 2010 FirstEnergy ensured that additional storage costs would be incurred due to the Companies' delay of the program's commencement.[128] The additional storage costs, from December 2009 through March 2010 should be disallowed and not collected from customers.

On November 4, the Commission ordered FirstEnergy to work with the Collaborative members and redesign the original CFL program by November 30, 2009.[129] The November 4 Entry also required FirstEnergy to file the revised plan by November 30, and permitted all other parties to respond to the filing within seven days.[130] After the seven-day response window expired, December 7, the Commission could have the

[126] FirstEnergy Ex. 12 at 6 (Toth.) (March 4, 2010).

[127] OCC Ex. 12 at 15 (Sawmiller) (February 17, 2010).

[128] Id.

[129] Id. at 14 (Sawmiller) (citing Case No. 09-580-EL-EEC, Entry on Rehearing (November 4, 2009)).

[130] Tr. Vol. 2 at 339 (Sawmiller).

opportunity to approve the implementation of the redesigned CFL program.[131] FirstEnergy removed that option for the Commission by filing its request to incorporate the implementation of the CFL program into the Portfolios filing. In fact, the Joint Motion would have allowed FirstEnergy to implement the programs without resolving the issues regarding the cost of the program.[132]

FirstEnergy's subsequent ultimatum to the Commission in its Application demanding that the redesigned CFL must be placed on a procedural "Fast Track", or some other procedural accommodation must be made by the Commission, contradicts FirstEnergy's request to incorporate the redesigned CFL program into the Portfolio filing.[133]

> This requirement to use only prorated instead of annualized savings, when coupled with the procedural schedule contemplated in the Commission's Rules, **makes it virtually impossible for the Companies to comply with 2010 energy efficiency benchmarks, absent either** (i) an acceleration of the procedural schedule with an expedited ruling on the Plans; or (ii) **the Commission's early approval of a suite of four programs -- the Appliance Turn-in Program, the CFL Program, the C&I Equipment Program (Lighting), and the C&I Equipment Program (Motors)** (collectively referred to as "the Fast Track Programs") – so as to allow these programs to launch no later than April 1, 2010.

FirstEnergy's request for the "Fast Track Programs" acknowledges the fact that it was not reasonable for the Companies to incorporate the CFL program as part of the Portfolios filing. The Companies concede that without Commission approval of the "Fast Track Programs" there is "a distinct possibility that the Companies would require an

[131] Id. at 345 (Sawmiller).

[132] Id. at 345 (Sawmiller).

[133] FirstEnergy Ex. 6 at 3 (Ohio Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan); FirstEnergy Ex. 7 at 3 (CEI Energy Efficiency & Peak Demand Reduction Portfolio Plan); and FirstEnergy Ex. 8 at 3 (Toledo Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan).

amendment to their 2010 benchmarks as allowed by R.C. 4918.66(A)(2)(b)."[134] Furthermore, FirstEnergy made the decision to propose the "Fast Track Programs" without assistance from the Collaborative.[135]

Even if the "Fast Track" proposal is accepted by the Commission the implementation of the CFL program has been needlessly delayed over the last couple of months by FirstEnergy's decision to propose this action. The redesigned CFL program was ready to be implemented by the end of November. The Collaborative worked diligently throughout the month of November to redesign the distribution and marketing components of the CFL program.[136] By the end of November the members of the Collaborative had reached a consensus on a reasonable solution – under the circumstances of having 3.75 million light bulbs in storage – for the design of a new CFL distribution plan.[137] FirstEnergy also informed the Collaborative parties that it would cost approximately $30,000 a month or $120,000 from December 2009 to March 2010 to store the CFLs in a warehouse.[138]

By combining the CFL program with the portfolio programs, the Companies have delayed program commencement by several months. The Companies requested and accepted this delay – it is not fair, just or reasonable for residential customers to now pay for FE's inability to expedite program delivery. Additional storage costs incurred due to

---

[134] FirstEnergy Ex. 6 at 3 (Ohio Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan); FirstEnergy Ex. 7 at 3 (CEI Energy Efficiency & Peak Demand Reduction Portfolio Plan); and FirstEnergy Ex. 8 at 3 (Toledo Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan).

[135] TR. Vol. 1 at 99 (Paganie) (March 4, 2010).

[136] OCC Ex. 12 at 14 (Sawmiller) (February 17, 2010).

[137] OCC Ex. 12 at 14 (Sawmiller) (February 17, 2010).

[138] Id. at 15 (Sawmiller) (February 17, 2010).

the Companies' delay of program commencement should be disallowed and not be collected from customers.

### C. FirstEnergy's Pre-Marketing for the original CFL program was inadequate and that played a role in the failure of that program, the Companies pre-marketing approach for the redesigned program is careless and may create the same problems.

The Commission should order FirstEnergy to abide by the terms in its Application and take the appropriate -- and stated -- steps to pre-market the redesigned CFL program. FirstEnergy has acknowledged that adequately pre-marketing the redesigned CFL program is "critical" for the success of the CFL Program.[139] The Companies' Application states that it will take 3-4 weeks to adequately get the public education messages to the media centers and contact the distribution centers with the marketing message.[140] However, at hearing, FirstEnergy representatives dismissed the need for 3 to 4 weeks of pre-marketing of the redesigned program.[141]

The lack of education and marketing may account for further criticism of the CFL program. FirstEnergy failed to adequately educate customers on the benefits of CFLs and energy efficiency in general before initiating the Original CFL program and that played a significant role in causing the public outcry toward the Original program.[142]

[139] FirstEnergy Ex. 6 at Appendix E, page 4 (Ohio Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan); FirstEnergy Ex. 7 at Appendix E, page 4 (CEI Energy Efficiency & Peak Demand Reduction Portfolio Plan); and FirstEnergy Ex. 8 at Appendix E, page 4 (Toledo Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan).

[140] Id.

[141] Tr. Vol. 1 at 79 (Paganie) "The Program would be launched April 1. The communications would be provided at or about the time of the launch;" Tr. Vol IV at 673 (Toth) Once the redesigned CFL program is approved Mr, Toth stated that: " I think we can get something out to the market in just a couple weeks."

[142] OCC Ex. 12 at 15 (Sawmiller).

The lack of pre-marketing that contributed to the controversy over the Original CFL program should not be permitted a second time around. The Commission should order FirstEnergy to implement 3-4 weeks of pre-marketing before distributing the CFL bulbs – as proposed in the Companies' Application. In addition, the Commission should order the Companies to provide draft copies of all marketing materials to the interested collaborative members for review and comment prior to use. To ensure compliance with these requirements the Commission should make the Companies' request for collection of lost revenues contingent on compliance with these terms.

### D. FirstEnergy's Shared Savings Mechanism, Which has no Calculated Basis or Relevance to the Companies' Particular Circumstances, Should not be Approved by the Commission. In the Alternative, FirstEnergy's Shared Savings Mechanism Should be Modified to Include Customer Protections Such as Cost Caps.

FirstEnergy's Shared Savings proposal, as presented in the Application, should be rejected by the Commission for several reasons. The mechanism proposed by the Companies is not rooted in any calculation or Company-specific financial circumstance, but rather the 15 percent of net benefits proposal was arbitrarily plucked, without any limiting or governing provisions, from other utilities' filings. In addition, FirstEnergy made no attempt to estimate possible costs that would be collected from consumers in the event that one or more of the Companies exceeded their benchmarks. According to the Application, any of the Companies that exceed their benchmark by the smallest of margins receive bonus revenue of 15 percent of net benefits without any type of cap. This would be collected from all customers, including residential customers. Without safeguards to ensure a reasonable mechanism which rewards achievement directly attributable to the Companies' efforts, the Shared Savings proposal should be rejected.

### 1. The PUCO should not approve FirstEnergy's shared savings mechanism because it has no basis and no cost estimates.

FirstEnergy offered no basis for its Shared Savings proposal. In direct testimony, Steven E. Ouellette, the Companies' witness for cost recovery,[143] stated that any of the FirstEnergy Companies would receive "15% of the net benefits as calculated by the Company utility cost test, net of taxes, for generating savings in excess of that Company's required benchmarks."[144] This illustrates how the mechanism works but does not explain the basis for the specific percentage that any of the Companies exceeding the benchmark would receive. Upon inquiry of the basis for the 15 percent, FirstEnergy, in an interrogatory, noted that the Companies' "proposal of 15% is comparable to the requests of other utilities in Ohio."[145] When asked specifically to explain how the 15 percent share was determined, FirstEnergy noted only the testimony of AEP witnesses in the AEP Portfolio case and the testimony of a Duke witness in the Duke ESP case.[146] Thus, the Companies performed no independent research or analysis[147] to determine or demonstrate their 15 percent Shared Savings mechanism is reasonable, justified, or applicable in the specific circumstances under which FirstEnergy will deploy its energy efficiency and peak demand reduction programs. This proposal should not be approved by the Commission and should not be part of the Companies' portfolio plan.

---

[143] FirstEnergy Ex. 3 at 2 (Ouellette) (December 15, 2009).

[144] Id. at 10.

[145] NUCOR Ex. 1 at Ex. 1, NUCOR-Set 1, DR-17, FirstEnergy response to part (c) (Goins) (February 17, 2010).

[146] Id. at FirstEnergy response to part (d).

[147] Tr. Vol. 1 at 160 (Paganie) (March 2, 2010).

In addition, FirstEnergy provides no cost estimates or projections of a Shared Savings amount that might be collected from FirstEnergy customers, including residential customers. The Ohio Adm. Code requires that an EDU, as part of its portfolio program proposal, must include a description of "program costs to be borne by the electric utility and collected from its customers, with customer class allocation, if appropriate."[148] FirstEnergy witness Ouellette stated in direct testimony that the Companies did not include any costs in their proposal, but would include a shared savings component "in future years as appropriate."[149] Thus, FirstEnergy plans to claim the Shared Savings mechanism if one or more of the Companies exceed the benchmarks. But in violation of the rule, they have not included the projected cost of a shared savings mechanism in the Application. Without any kind of cost estimate or projection included in the filing, the possible costs to be collected from customers for this Shared Savings proposal remain unknown. This is a blank check. It should not receive Commission approval.

#### 2. FirstEnergy's shared savings mechanism proposal is not comparable to the proposals of other utilities because it is not accompanied by consumer safeguards present in other utility applications and includes transmission and distribution projects in its calculations.

Further, a comparison of FirstEnergy's Shared Savings mechanism to those proposed by Duke and AEP reveals that FirstEnergy's proposal is not "comparable" to the proposals of the other utilities. First, it is not limited by any provision such as the return on investment cap present in the Duke proposal,[150] or the program investment cost

---

[148] Ohio Adm. Code 4901:1-39-04(C)(5)(i).

[149] FirstEnergy Ex. 3 at 10 (Ouellette).

[150] Tr. Vol I. at 165-166 (Ouellette) (March 2, 2010).

cap in the AEP proposal.[151] These cost caps are graduated, meaning that, unlike the FirstEnergy proposal, neither Duke nor AEP automatically receive 15 percent for simply exceeding the benchmarks, without consideration of costs and other factors which serve to limit the amount recovered.

For example, under Duke's proposal, the utility company would, upon exceeding the benchmarks by 111 - 115 percent and qualifying for a shared savings benefit, receive a benefit capped at 11 percent of their rate of return.[152] The Shared Savings benefit is less when the percentage of the benchmark exceeded is below 111 percent.[153] Further, both the Duke and AEP proposals exclude savings from distribution or transmission projects in their savings calculations.[154]

In contrast, a FirstEnergy electric distribution utility would receive, under the same scenario, 15 percent of shared savings, regardless of the amount of program investment. In addition, the Companies would count the efficiency results from transmission and distribution projects, even though FirstEnergy witness Ouellette admitted that these kinds of projects are not primarily undertaken by the Companies for energy efficiency gains.[155]

While AEP's shared savings incentive is also limited by a program investment cap,[156] the inclusion of only measurable program savings, and the exclusion of transmission and distribution projects, FirstEnergy's proposal is not limited by any of

[151] Tr. Vol. I. at 171 (Ouellette) (March 2, 2010).

[152] Tr. Vol. I at 168 (Ouellette) (March 2, 2010).

[153] Tr. Vol. I. at 168 (Ouellette) (March 2, 2010).

[154] OCC Ex. 12 at 8 (Sawmiller).

[155] Tr. Vol. 1 at 173 (Paganie) (March 2, 2010).

[156] Tr. Vol. 1. at 171 (Ouellette) (March 2, 2010).

these considerations. Thus, these two proposals are not comparable. Duke's proposal contains limiting provisions similar to AEP's. In fact, Duke only receives 15 percent of its return on investment if it exceeds 125 percent of the savings benchmark.[157] Thus, FirstEnergy's proposal is not "comparable" to either AEP's or Duke's Shared Savings proposals. Other than the 15 percent calculation, which is only available to the other two utilities under certain circumstances, FirstEnergy's proposal bears no resemblance to other Shared Savings mechanisms currently proposed in Ohio. It should not be approved by the Commission.

### 3. Any shared savings mechanism must be significantly modified prior to Commission approval to include consumer safeguards.

In the alternative, if the PUCO determines that it is reasonable for FirstEnergy to have a Shared Savings mechanism, the Commission should still consider implementing a substantially modified shared savings mechanism. A mechanism that encourages the Companies to exceed its energy saving benchmarks makes it more likely that FirstEnergy will comply with its cumulative 2025 target because the Companies will give up fewer long-lasting energy saving opportunities, such as opportunities to increase the efficiency of new building shells, appliances, and HVAC systems. According to NRDC witness Dylan Sullivan, shared savings mechanisms "grant the utility a portion of the net benefit that it helped create for its customers through energy efficiency programs."[158] The purpose of a shared savings mechanism is to provide a "reward for utilities that do an exemplary job of delivering energy efficiency programs to customers."[159]

[157] Tr. Vol. 1. at 166 (Ouellette) (March 2, 2010).

[158] NRDC Ex. 1 at 3 (Sullivan) (February 17, 2010).

[159] Id.

The first step of designing a shared savings mechanism is determining "exemplary performance." NRDC Witness Sullivan states that in Ohio, "where the 'floor' of energy efficiency performance is set by Ohio Revised Code Section 4928.66 … incentives are appropriate when a utility over-complies with its annual energy savings benchmark by using cost effective energy efficiency programs delivered to customers."[160] OCC Witness Sawmiller states that "the Companies should become eligible for shared savings only when exceeding the annual benchmarks using utility-directed customer programs."[161] According to R.C. 4928.66, the Company is required to meet the benchmarks except when it proves that non-compliance was the result of regulatory reasons beyond its reasonable control.[162] Consumers are thus guaranteed a certain level of energy efficiency performance, even without a shared savings mechanism. A shared savings mechanism should thus only be triggered when an electric distribution utility exceeds this required performance.

Further, the Companies should only receive a shared savings incentive if it complies with the law using energy efficiency programs delivered to customers. FirstEnergy should not be entitled to an incentive if it meets statutory benchmarks with transmission and distribution investments ("T&D investments") that reduce line losses or mercantile self-direct projects. As Mr. Sullivan states, "Allowing the Company to collect shared savings from T&D investments conflicts with O.A.C. Section 4901:1-39-07(1), which only allows the company to collect costs from these investments for "the potion of those investments that are attributable to and undertaken primarily for energy efficiency

---

[160] Id.

[161] OCC Ex. 1 at 9 (Sawmiller) (February 17, 2010).

[162] R.C. 4928.66(A)(2)(b).

and demand reduction purposes."[163] As noted, FirstEnergy Witness Ouellette agreed that the primary purpose of the Companies' T&D projects is not energy efficiency.[164] Mr. Ouellette agreed that such projects are undertaken for reliability, upgrades in the system and growth.[165]

A shared savings incentive is not appropriate for mercantile self-direct projects because the Companies are not undertaking, incentivizing, or investing in these projects. As stated by OCC Witness Sawmiller, the Companies have no "material involvement" in mercantile projects.[166] As the shared savings incentive is designed to reward an electric distribution utility for its actions and programs, the Commission should not allow FirstEnergy to collect shared savings on mercantile self-direct program savings.

Applying shared savings only to "energy efficiency programs delivered to customers," as recommended by Mr. Sullivan, would better align the Companies' shared savings mechanism with models stipulated in Ohio and enacted in other states. Mr. Sullivan states that the shared savings mechanism stipulated in the Program Portfolio Plan Case of AEP-Ohio excludes mercantile self-direct savings from the shared savings mechanism, and that AEP did not propose and T&D investments in its plan.[167] Further, shared savings, which provides a utility a portion of the net benefit its programs create, was developed in states where T&D investments and mercantile self-direct projects are not included in the mechanism. According to Mr. Sullivan, the Companies' proposal imports a model used in other states "without taking into account … Ohio-specific

---

[163] NRDC Ex. 1 at 5, A.11. (Sullivan) (February 17, 2010).

[164] Tr. Vol 1 at 173 (Paganie) (March 2, 2010).

[165] Id.

[166] OCC Ex. 12 at 9 (Sawmiller) (February 17, 2010).

[167] NRDC Ex. 1 at 6-7 (Sullivan) (February 17, 2010).

circumstances" regarding how energy savings are calculated.[168] Other states do not allow the results of T&D investments and mercantile self-directed projects to be included in shared savings mechanisms: Ohio should exclude these savings from the any approved shared savings mechanism.

The PUCO should also ensure that any shared savings mechanism does not allow FirstEnergy to receive a shared savings incentive twice for "banked" energy savings. The purpose of a shared savings mechanism is to encourage good performance, not encourage creative gaming of the shared savings mechanism. According to NRDC Witness Sullivan, "the Commission should ensure that "banked" savings from a previous year's over-compliance are not used to trigger a shared savings incentive in a subsequent year."[169] Also, the Commission should "ensure that the effects of "banked" savings are excluded from the net benefits used to calculate the shared savings incentive."[170]

To summarize, the PUCO must make at least four changes to FirstEnergy's shared savings proposal: 1. The mechanism should be triggered only when the Companies meet the statutory benchmarks with energy efficiency programs delivered to customers; 2. The mechanism should exclude energy savings from T&D investments; 3. The mechanism must exclude energy savings from mercantile self-direct projects, and 4. The Commission should ensure that "banked" savings are not counted twice in the shared savings mechanism.

---

[168] Tr. Vol . 3 at 305 (Sullivan).

[169] NRDC Ex. 1 at 8 (Sullivan) (February 17, 2010).

[170] Id.

### E. FirstEnergy Should Revisit the Joint Home Performance Program Proposal with Dominion East Ohio as Part of the Collaborative Process.

The PUCO should require that FirstEnergy pursue a joint home performance program with the Dominion East Ohio Gas Company as part of the collaborative process moving forward. As stated by OCC Witness Sawmiller, this program design was nearing completion at the time discussions were discontinued.[171] The Commission should require that the program be reconsidered by FirstEnergy.

A joint program with Dominion East Ohio would provide advantages to FirstEnergy customers and the utilities. The program would be available to customers with income-levels above 200 percent of the federal poverty guidelines.[172] Customers served jointly by FirstEnergy and Dominion East Ohio would have the opportunity to receive whole-house gas and electric weatherization through one program.[173] As Mr. Sawmiller noted, this would provide an efficient and non-duplicative delivery system, thus making the program less expensive for FirstEnergy, Dominion East Ohio, and the customers of both utilities.[174] Finally, such a program could also be used to target and serve high-use customers.[175] Further, it would be more convenient and customer friendly to have one instead of two audits. The PUCO should require FirstEnergy to continue the development of the program and file a progress report prior to January 1, 2011.

---

[171] OCC Ex. 12 at 11 (Sawmiller) (February 17, 2010).

[172] Id. at 12 (Sawmiller) (February 17, 2010).

[173] Id. at 12-13 (Sawmiller) (February 17, 2010).

[174] Id. at 13 (Sawmiller) (February 17, 2010).

[175] Id. at 13 (Sawmiller) (February 17, 2010).

### F. FirstEnergy Should Modify its Cost-Effectiveness for Its Commercial Lighting Program To Comply With the Industry Standard.

The Companies' proposed commercial lighting programs fail the Companies' Total Resource Cost test.[176] Commercial lighting programs are typically cost effective programs due to the energy use differential, long hours of use, long useful life of measures, the market potential, applicability and the ease of installation.[177] In fact, Commercial lighting programs are generally the largest and most cost effective portion of a utility's energy efficiency portfolio.[178]

FirstEnergy and its consultant, George Fitzpatrick, appear to have used overly-conservative assumptions in modeling the proposed program. The Companies' modeling of labor costs for fluorescent lighting retrofits did not take into account the fact that the new system would be replacing a system that had already exhausted a portion of its useful life; thus some labor costs would have been expended anyway when the inefficient system failed.[179] The Companies' estimate of the incremental cost of an efficient lighting system may also have been overly conservative.[180]

The Commission should require the Companies to modify its cost effectiveness analysis to be consistent with industry standard methodological practices so that appropriate adjustments are made. This program, properly designed and tested, should pass a cost-effectiveness test. If it does not, it should not proceed.

[176] FirstEnergy Ex. 6, PUCO Table 7C and 7E, Page 144 and 145 (Ohio Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan); FirstEnergy Ex. 7, PUCO Table 7C and 7E, Page 144 and 145 (CEI Energy Efficiency & Peak Demand Reduction Portfolio Plan); and FirstEnergy Ex. 8, PUCO Table 7C and 7E, Page 144 and 145 (Toledo Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan).

[177] ELPC Ex. 1 at 20 (Crandall).

[178] Id. at 16 (Sullivan).

[179] Id. at 17 (Sullivan).

[180] Id. at 20 (Crandall) ("the cost of the fixture and tubes appeared to be higher than normal").

### G. The PUCO Should Reject FirstEnergy's Proposal Regarding Lost Revenues.

#### 1. The PUCO should reject FirstEnergy's proposal regarding lost revenues because it violates the terms of the Electric Security Plan Agreement in 08-935-EL-SSO.

The Commission should also modify FirstEnergy's proposal to collect from customers any revenue that it might forgo as it implements energy efficiency programs. As stated by Mr. Sullivan, lost revenue recovery is costly,[181] restores revenue to the Companies that might not be lost,[182] and creates perverse incentives for the utilities.[183]

Moreover, in its Application, the Companies seek lost revenues for programs implemented in 2012,[184] contrary to the Stipulation and Recommendation signed by FirstEnergy and other parties in Case No. 08-935-EL-SSO. The Stipulation and Recommendation allowed the Companies to collect lost revenues from programs implemented in 2009, 2010, and 2011 for six years from the effective date of the Stipulation.[185] The Stipulation contained no agreement on lost revenues in 2012, and FirstEnergy's Application attempts to extend the terms of the Stipulation past the timeframe the parties accepted. This extension has the effect of costing residential customers an estimated $20.5 million in lost revenues in 2012, not much less than the total residential sector energy efficiency program budget of $28 million.[186]

---

[181] Id. at 12 (Sullivan) (February 17, 2010).

[182] Id. at 13 (Sullivan) (February 17, 2010).

[183] Id. at 13 (Sullivan) (February 17, 2010).

[184] FirstEnergy Ex. 6, Appendix F (Ohio Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan); FirstEnergy Ex. 7, Appendix F (CEI Energy Efficiency & Peak Demand Reduction Portfolio Plan); and FirstEnergy Ex. 8, Appendix F (Toledo Edison Energy Efficiency & Peak Demand Reduction Portfolio Plan).

[185] NRDC Ex. 1 at 11 (Sullivan) (February 17, 2010).

[186] Id. at 13 (Sullivan) (February 17, 2010).

### 2. The PUCO should institute revenue decoupling, beginning in 2012.

Instead of extending the FirstEnergy's lost revenue mechanism into 2012, the Commission should implement revenue decoupling in the residential rate class that year.[187] According to Sullivan, "revenue decoupling is a modest, regular true-up in rates to ensure that a utility collects no more and no less than its Commission-authorized fixed costs of distribution service, regardless of fluctuations in sales."[188] Revenue decoupling is preferable to other alternatives for addressing the fixed cost recovery impact of energy efficiency programs, according to Sullivan:

> "Decoupling is preferable to lost revenue collection because it removes the throughput incentive: between rate cases, a utility no longer has incentives to increase sales of electricity beyond the amount assumed in the last rate case. It also won't restore revenue to the utility that was never "lost," as described above. Decoupling is preferable to straight fixed-variable rate design because it leaves intact customers' incentives to conserve and does not punish those who have already implemented energy efficiency or conservation in their homes."[189]

Based on experience in other states, decoupling would likely produce modest rate impacts and would generate both refunds and surcharges, based on how the Companies are recovering its fixed costs of distribution service.[190]

If the Commission decides it does not have enough information to implement revenue decoupling in this case, the prudent course of action would be to discontinue lost revenue recovery in 2012, and immediately begin a process for discussing revenue decoupling and its alternatives, with a goal of implementing a mechanism in 2012.

---

[187] Citizen Power is not taking a position on whether revenue decoupling should be instituted beginning in 2012.

[188] Id. at 14 (Sullivan) (February 17, 2010).

[189] Id. at 14 (Sullivan) (February 17, 2010).

[190] Id. at 14 (Sullivan) (February 17, 2010).

### H. The Commission Should Deny FirstEnergy's Request for a Waiver of Customer Classification Information Because There is Nothing in the Record to Establish the Information the Companies Cannot Provide or to Support the Reasonableness of the Request.

FirstEnergy's blanket request for a waiver of compliance with some of the reporting requirements in the Commission's forthcoming order approving the portfolio plan template in Case No. 09-714-EL-UNC should be denied because the Companies' failed to specify the information they cannot provide. The proposed portfolio plan template in PUCO Case No. 09-714-EL-UNC would apply to energy efficiency and peak demand portfolio applications like the one filed in this case by FirstEnergy.[191] The portfolio plan template proposed by the PUCO Staff in PUCO Case No. 09-714-EL-UNC requires the utilities to provide and calculate all of the pertinent information into seven different customer classifications as opposed to the three classifications that are currently used in the tariffs.[192]

FirstEnergy states that the waiver is necessary to the extent the reporting of data for the seven customer classification does not correlate to the Companies' tariffs and billing systems.[193] The Companies raise the concern that a seven customer classification "could" require systemic and costly changes to its accounting and billing systems.[194] However, there is nothing in the record to support FirstEnergy's concerns.

In fact, the record before the Commission established that the reporting of data into seven customer classifications is reasonable and beneficial. FirstEnergy consultant, George Fitzpatrick, the FirstEnergy consultant responsible for sponsoring the

[191] Tr. Vol 2 at 208 (Fitzpatrick) (March 3, 2010).

[192] Tr. Vol. 2 at 209 (Fitzpatrick) (March 3, 2010).

[193] FirstEnergy Application, Company Ex. 10 at 7-8.

[194] Id.

application,[195] stated that reporting the data based on the seven customer classifications is reasonable.[196] Mr. Fitzpatrick also agreed that reporting the pertinent data into seven customer classifications ensures that the portfolio plans recognize – and to what extent they recognize – the different classes of customers.[197]

There is no evidence in the record to address why, or where, FirstEnergy was not able to comply with providing the proposed data for the seven customer classes. Therefore, the waiver should be denied. It is critical that the utilities report their Demand-Side Management ("DSM") efforts on a program *and* segment classification basis to establish the precise program targeting and minimizing subsidies across customer classes.

## IV. CONCLUSION

The Commission should adopt improvements to FirstEnergy's Energy Efficiency and Peak Demand Reduction Portfolio of Programs so that the offerings contained within the Portfolio will actually provide benefits to all customer classes, including the residential class. The Commission should deny the FirstEnergy's request for the collection of any costs associated with the Compact Fluorescent Light ("CFL") program that the Companies have failed to support with reasonable detail and documentation. Finally, the Commission should institute changes to FirstEnergy's collaborative process in order to produce a truly comprehensive portfolio of programs that will provide benefits to all customers.

---

[195] Tr. Vol. 2 at 202 (Fitzpatrick) (March 3, 2010).

[196] Id. at 210-211 (Fitzpatrick) (March 3, 2010).

[197] Id. at 211 (Fitzpatrick) (March 3, 2010).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Gregory J. Poulos___________________
Jeffrey L. Small, Counsel of Record
Gregory J. Poulos
Christopher Allwein

**Office of the Ohio Consumers' Counsel**
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (T)
small@occ.state.oh.us
poulos@occ.state.oh.us
allwein@occ.state.oh.us

/s/ Theodore Robinson - GJP
Theodore Robinson
Staff Attorney and Counsel
**Citizen Power**
2121 Murray Avenue
Pittsburgh, PA 15217
(412) 421-7029 (T)
robinson@citizenpower.com

/s/ Joseph P. Meissner – GJP
Joseph P. Meissner, Counsel of Record
Matthew D. Vincel
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
(216) 216-687-1900 (T)
jpmeissn@lasclev.org
mvincel@lasclev.org
**Citizens Coalition**

/s/ Henry Eckhart - GJP
Henry Eckhart
50 West Broad Street, #2117
Columbus, OH 43215
Phone: (614) 461-0984
Fax: (614) 221-7401
henryeckhart@aol.com
**Natural Resources Defense Council**

## CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing Initial Post-Hearing Brief by the Office of the Ohio Consumers' Counsel upon the following via electronic transmission (hard copy available upon request) this 29th day of March, 2010.

/s/ Gregory J. Poulos___________
Gregory J. Poulos
Assistant Consumers' Counsel

## SERVICE LIST

Kathy J. Kolich
Arthur E. Korkosz
Ebony L. Miller
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

James F. Lang
Laura C. McBride
N. Tervor Alexander
Kevin P. Shannon
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114

Will Reisinger
Trent Doughtery
Nolan Moser
1207 Grandview Avenue, Ste. 201
Columbus, OH 43212-3449

Attorneys for Staff the Ohio Environmental Council

Duane Luckey
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, OH 43216

Thomas Lindgren
Attorney General's Office
Public Utilities Section
180 East Broad Street 6th Floor
Columbus, OH 43215

Todd Jones
Christopher Miller
Andre Porter
Gregory Dunn
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215

Attorneys for the AICUO

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793

Michael E. Heintz
1207 Grandview Ave., Ste. 201
Columbus, OH 43204

Attorney for Environmental Law and Policy Center

Samuel C. Randazzo
Lisa G. McAlister
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215

Attorneys for Industrial Users Energy-Ohio

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh St., Ste. 1510
Cincinnati, OH 45202

Attorneys for the Ohio Energy Group

Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th St.
Cleveland, OH 44113

Attorney for: Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, The Empowerment Center of Greater Cleveland and Cleveland Housing Network

Theodore Robinson
Staff Attorney and Counsel
Citizen Power
2121 Murray Ave.
Pittsburgh, PA 15217

Henry W. Eckhart
50 West Broad Street, #2117
Columbus, OH 43215

Attorney for the Natural Resources Defense Council

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street

Attorney for the Ohio Manufacturers' Association and the Ohio Hospital Association

Richard L. Sites
General Counsel & Senior Director of Health Policy
155 East Broad St., 15th Fl.
Columbus, OH 43215-3620

Attorney for the Ohio Hospital Association

Glenn S. Krassen
Bricker & Eckler LLP
1375 East Ninth St., Ste. 1500
Cleveland, OH 44114

Attorney for Ohio Schools Council

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

Attorney for Ohio Schools Council

Michael K. Lavanga
Garrett A. Stone
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007

Attorneys for Nucor Steel Marion, Inc.

Jacqueline Lake Roberts
101 Federal Street, Suite 1100
Boston, MA 02110

Attorney for EnerNOC, Inc.

Robert J. Triozzi
Steven L. Beeler
City of Cleveland
Cleveland City Hall
601 Lakeside Ave., Rm. 106
Cleveland, OH 44114-1077

Attorneys for the City of Cleveland

Eric D. Weldele
Tucker Ellis & West LLP
1225 Huntington Center
41 South High Street
Columbus, OH 43215-6197

Attorney for the Council for Smaller Enterprises
.

Craig I. Smith
2824 Coventry Road
Cleveland, Ohio 44120

Attorney for Material Sciences Corporation

mkl@bbrslaw.com
gas@bbrslaw.com
mwarnock@bricker.com
gkrassen@bricker.com
will@theOEC.org
nolan@theOEC.org
jroberts@enernoc.com
mheintz@elpc.org
tobrien@bricker.com
ricks@ohanet.org
kjkolich@firstenergycorp.com
korkosza@firstenergycorp.com
elmiller@firstenergycorp.com
jlang@calfee.com
lmcbride@calfee.com
Rtriozzi@city.cleveland.oh.us
SBeeler@city.cleveland.oh.us
Eric.weldele@tuckerellis.com
wis29@yahoo.com
Ned.Ford@fuse.net
dsullivan@nrdc.org
talexander@calfee.com
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org
jpmeissn@lasclev.org
mvincel@lasclev.org
cmiller@szd.com
aporter@szd.com
gdunn@szd.com
henryeckhart@aol.com
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
robinson@citizenpower.com
duane.luckey@puc.state.oh.us
Thomas.lindgren@puc.state.oh.us
rriley@nrdc.org
megdelisi@yahoo.com

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/29/2010 5:23:51 PM**

**in**

**Case No(s). 09-0580-EL-EEC, 09-0581-EL-EEC, 09-0582-EL-EEC, 09-1942-EL-EEC, 09-1943-EL-EEC,**

Summary: Brief Initial Post-Hearing Brief of the Office of the Ohio Consumers' Counsel, Citizen Power, Natural Resources Defense Council and Citizens Coalition electronically filed by Ms. Deb J. Bingham on behalf of Poulos, Gregory J.