Before

**The Public Utilities Commission of Ohio**

In the Matter of the Application of )

Ohio Edison Company, The Cleveland )

Electric Illuminating Company and The ) Case No. 12-2190-EL-POR

Toledo Edison Company for Approval of ) Case No. 12-2191-EL-POR

Their Energy Efficiency and Peak Demand ) Case No. 12-2192-EL-POR

Reduction Program Portfolio Plans for )

2013 through 2015 )

**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA**

**APPLICATION FOR REHEARING of Environmental Law & Policy Center**

**and Ohio Environmental Council**

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April 29, 2013 Attorneys for Industrial Energy Users-Ohio

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**and Ohio Environmental Council**

The Environmental Law & Policy Center (“ELPC”) and the Ohio Environmental Council (“OEC”) have sought rehearing of the Public Utilities Commission of Ohio's ("Commission") Opinion and Order authorizing the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) to count and provide incentives for upgrades to standard T-8 lighting and to use the Energy Independence Security Act (“EISA”) standard as a baseline for determining savings. ELPC and OEC have presented no new arguments for the Commission to address. Because the Commission fully addressed ELPC’s and OEC’s arguments in the Opinion and Order, the Commission should deny ELPC’s and OEC’s Application for Rehearing.

The Opinion and Order authorized FirstEnergy to count and provide incentives for standard T-8 lighting upgrades because “despite EISA's prohibition of manufacturing or import of T-12 fixtures as of July 14, 2012, the T-12 fixtures will likely remain in retail stock or customer inventory for a period of time, during which, as FirstEnergy and lEU-Ohio point out, there will be opportunities for actual energy savings by incenting standard T-8 fixtures.” Opinion and Order at 28 (citations omitted). Regarding the use of the EISA standard, the Commission noted that it previously held that "[f]or purposes of calculating compliance with statutory benchmarks for programs other than those targeting early retirement of functioning equipment, the baseline should be set at the higher of federal or state minimum efficiency standards.”[[1]](#footnote-1)

In their Application for Rehearing, ELPC and OEC argue that FirstEnergy should not be allowed to count and provide incentives for upgrades to standard T-8 fixtures and light bulbs. ELPC and OEC claim that because EISA prohibits the manufacture or importation of T-12 or standard T-8 lighting after July 14, 2012, customers will naturally gravitate away from T-12 lighting and FirstEnergy should not be able to take credit for savings that occur as a result of those decisions.[[2]](#footnote-2) ELPC and OEC assert that FirstEnergy witness Miller’s claim that T-12 lighting will likely remain in retail stock or customer inventory for a period of time was conclusory.[[3]](#footnote-3)

The Opinion and Order fully addressed and rejected ELPC’s and OEC’s arguments,[[4]](#footnote-4) determining that, despite the prohibition against importation and manufacture of T-12 and standard T-8 lighting, T-12 fixtures will likely remain in retail stock or customer inventory for a period of time. Thus, there will be opportunities for actual energy savings by incenting standard T-8 fixtures. Opinion and Order at 28. Moreover, Mr. Miller clearly testified based upon his expertise regarding lighting programs. And, simple logic supports Mr. Miller’s conclusion: T-12 lighting will not disappear overnight.[[5]](#footnote-5) Moreover, ELPC’s counsel cross-examined Mr. Miller but did not inquire regarding the basis of Mr. Miller’s opinion.[[6]](#footnote-6) Thus, Mr. Miller’s conclusion was not controverted.

ELPC and OEC also challenge the use of the EISA standard as a baseline for determining savings. ELPC and OEC argue that FirstEnergy witness Miller was not aware whether minimally EISA-compliant bulbs are available on the market; thus, customers will have to replace incandescent bulbs with compact fluorescent bulbs.[[7]](#footnote-7) ELPC and OEC claim that “the Commission’s use of this inflated baseline allows FirstEnergy to receive credit for savings they have not actually achieved, a violation of ORC § 4928.66(a).”[[8]](#footnote-8) ELPC and OEC argued this position in their Initial Brief,[[9]](#footnote-9) and the Commission rejected the argument, finding that the use of the EISA baseline was reasonable.[[10]](#footnote-10) ELPC and OEC offer no new argument to suggest that the Commission’s decision was not reasonable. Therefore, the Commission should not grant rehearing on this issue.

Practically speaking, granting ELPC’s and OEC’s Application for Rehearing would make compliance with energy efficiency requirements more difficult and likely drive up the cost of compliance. Prohibiting incentives for upgrading lighting and rejection of the EISA standard as recommended by these parties would ignore, for compliance purposes, energy savings that result from upgrading to higher efficiency light bulbs and fixtures. Ignoring these savings opportunities would result in a failure to capture the energy savings opportunities that presently exist at a point in time when these types of projects are low hanging fruit. For these reasons, the Commission should reject ELPC’s and OEC’s Application for Rehearing.

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

#### I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra Application for Rehearing of Environmental Law & Policy Center and Ohio Environmental Council*, was served upon the following parties of record this 29th day of April, 2013 *via* hand-delivery, electronic transmission, or first class mail, U.S. postage prepaid.

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1. Opinion and Order at 29 (Mar. 20, 2013) (*citing In re the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Finding and Order at 9 (Oct. 15, 2009)). [↑](#footnote-ref-1)
2. Application for Rehearing of ELPC and OEC at 6 (Apr. 19, 2013). [↑](#footnote-ref-2)
3. *Id*. at 7. [↑](#footnote-ref-3)
4. ELPC and OEC Initial Brief at 23-25 (Nov. 20, 2012). [↑](#footnote-ref-4)
5. Tr. Vol. VI at 1074-1082 (Nov. 13, 2012). [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. Application for Rehearing of ELPC and OEC at 9 (Apr. 19, 2013). Minimally EISA-compliant bulbs, however, are available on the market. *See* *GE Energy Efficient Soft White Light Bulbs* http://www.gelighting.com/LightingWeb/na/consumer/products/highlights/energy-efficient-soft-white/ (last viewed on Apr. 29, 2013). [↑](#footnote-ref-7)
8. Application for Rehearing of ELPC and OEC at 9 (Apr. 19, 2013). [↑](#footnote-ref-8)
9. Initial Brief of ELPC and OEC at 21-23 (Nov. 20, 2012). [↑](#footnote-ref-9)
10. Opinion and Order at 29 (Mar. 20, 2013). [↑](#footnote-ref-10)