

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 12-2190-EL-POR
Edison Company For Approval of Their)	Case No. 12-2191-EL-POR
Energy Efficiency and Peak Demand)	Case No. 12-2192-EL-POR
Reduction Program Portfolio Plans for)	
2013 through 2015.)	

**APPLICATION FOR REHEARING BY
THE ENVIRONMENTAL LAW AND POLICY CENTER**

Pursuant to R.C. § 4903.10 and Ohio Admin. Code 4901-1-35, the Environmental Law and Policy Center (“ELPC”) hereby applies for rehearing of the Entry on Rehearing issued in the above-captioned cases on July 17, 2013 (“July 17 Entry”). As explained in more detail in the attached Memorandum in Support, the July 17 Entry is unjust, unreasonable, and unlawful because the Public Utilities Commission of Ohio (“PUCO” or “Commission”) erred in unreasonably and unlawfully finding for the first time in this proceeding that Ohio Edison Company (“Ohio Edison”), the Cleveland Electric Illuminating Company (“CEI”), and the Toledo Edison Company (“Toledo Edison”) (collectively, “FirstEnergy” or the “Companies”) can receive 20 percent of revenues received from bidding and clearing capacity from their 2013-2015 Energy Efficiency and Peak Demand Reduction Program Portfolio Plans (“EEPs”) in the PJM Reliability Pricing Model (“RPM”). This finding was an abuse of discretion and exceeded the PUCO’s jurisdiction because the issue was not raised by any party on rehearing and is not justified by the facts in the case.

For the foregoing reasons, as demonstrated in the Memorandum in Support of this Application, the Commission should grant this Application for Rehearing.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE APPLICATION FOR REHEARING BY
THE ENVIRONMENTAL LAW AND POLICY CENTER**

I. INTRODUCTION

By bidding and clearing energy efficiency resources into the PJM RPM, the Companies can increase the value of the customer-funded energy efficiency resources created by the EEPs. This value is derived from the reduction in capacity costs to FirstEnergy customers created by including the low-cost energy efficiency resources in the RPM, as well as from the revenue returned from the RPM that can be used to offset the cost of EEPs by reducing Rider Demand Side Energy (“DSE”).¹ As the Commission recognized in this case, these are important benefits of energy efficiency that can only be realized by participation in the RPM. In its initial March 20, 2013 Order, the Commission required FirstEnergy to bid energy efficiency resources created by the EEPs into the RPM, and required FirstEnergy to use any revenue generated by the auctions to offset the costs of Rider DSE.

¹ *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 2013 through 2015*, Case No. 12-2190-EL-POR, et al., Opinion and Order at 20-21 (March 20, 2013).

In its July 17 Entry, the Commission unreasonably and unnecessarily determined that customers, who fund EEPs, cannot reap the full return on their investment. Instead, the Commission decided to provide FirstEnergy with a windfall, despite eliminating any possible risk to FirstEnergy by allowing FirstEnergy to recover the costs of participating in the auction and by including a hold harmless provision should FirstEnergy fail to realize all of the energy efficiency capacity that clears the auctions. Specifically, the Commission determined that the revenue from the PJM auctions should be split between FirstEnergy and customers, with FirstEnergy receiving 20 percent of the revenue.² Customers, despite paying 100 percent of the costs to create these energy efficiency resources, will receive only 80 percent of the revenue. The Commission provided this windfall to FirstEnergy without the Companies even asking for it.

ELPC requests rehearing on this issue because the Commission's determination is unlawful, unreasonable, and unsupported by the record in this case. Moreover, the Commission did not have authority to establish a revenue sharing mechanism in its Entry because the issue was not raised by any party on rehearing and intervenors did not have adequate opportunity to contest the issue.

II. ARGUMENT

A. The July 17 Entry improperly allows FirstEnergy to receive revenues from the PJM RPM auctions.

On April 19, 2013, ELPC, FirstEnergy, and other parties filed applications for rehearing. FirstEnergy argued that the Commission should have allowed it to recover any penalties or costs that it could incur as a result of the Commission's mandate that it bid planned energy efficiency

² *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 2013 through 2015*, Case No. 12-2190-EL-POR, et al., Entry on Rehearing at 5 (July 17, 2013).

resources into the RPM. Notably, however, FirstEnergy did not also seek revenue sharing,³ nor did any other party. Despite the fact that the Companies did not make the request, the Commission held that an “80/20 percent share of revenue between ratepayers and a company, respectively, is appropriate.”⁴

In placing the bidding requirement on FirstEnergy, the Commission acknowledged that bidding energy efficiency resources into the RPM “could substantially benefit ratepayers by lowering capacity auction prices and reducing Rider DSE costs.”⁵ To address any potential risks of auction participation, the Commission determined that FirstEnergy had to bid only 75 percent of energy efficiency resources generated through the EEPs as “a reasonable balance between the uncertainty and potentially substantial benefits [of bidding resources into the RPM].”⁶

This balance protected FirstEnergy and ratepayers from the alleged risks of bidding into the RPM resources that are planned but not installed. The Commission also granted uncapped compensation to FirstEnergy should it be subject to prudently-incurred penalties from PJM. Because FirstEnergy was left without any risk to bidding resources paid for by ratepayers, an additional incentive for FirstEnergy is unnecessary. By granting revenue sharing, the Commission has arbitrarily shifted a substantial amount of the benefits of the ratepayers’ investment in efficiency from ratepayers to FirstEnergy. The PUCO provides no rationale for why this shifting of benefits is necessary, especially in light of the fact that FirstEnergy bears no risk in the auction participation. No new evidence has been presented in this case to support such a finding.

³ Case No. 12-2190-EL-POR, FirstEnergy Application for Rehearing (April 19, 2013).

⁴ Entry on Rehearing at 4 (July 17, 2013).

⁵ *Id.*

⁶ *Id.*

As the Commission explained, “the energy efficiency resources generated by the Companies’ energy efficiency resources are a valuable asset managed by the Companies on behalf of ratepayers.”⁷ Because FirstEnergy’s customers pay for the energy efficiency resources generated by the EEPs, “[t]he Companies are required to manage such assets prudently in order to minimize the costs of the energy efficiency programs.”⁸ Pursuant to the Commission’s reasoning, customers should reap the benefits from these customer assets. FirstEnergy is held harmless and is fully compensated for bidding resources into the RPM. The Companies have no investment in these resources and therefore should not be allowed to get a return on the backs of ratepayers.

B. The Commission lacked authority to establish a revenue sharing program in its July 17 Entry.

As explained above, no party in this case requested that the Commission provide FirstEnergy with any revenue from the RPM auctions except that necessary to offset the costs of bidding and verifying the resources. Despite this, the Commission improperly took it upon itself to institute a revenue sharing mechanism in the rehearing process.

R.C. § 4903.10, which governs applications for rehearing, specifically states that the rehearing process allows the Commission to “grant and hold such rehearing on the matter specified” in an application for rehearing “if in its judgment sufficient reason therefore is made to appear.” Applications for rehearing must “set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” R.C. § 4903.10 says nothing about granting the Commission the power to *sua sponte* revisit parts of the decision not alleged to be unreasonable or unlawful by a party. If the General Assembly intended to confer

⁷ *Id.* at 6.

⁸ *Id.*

upon the Commission authority to grant rehearing on any matter it saw fit to change after its initial order, then the General Assembly would not have limited the Commission's rehearing only to those items raised in an application for rehearing.

The Commission's unilateral action deprived the parties to this case the opportunity to litigate and contest this issue. The Companies did not make the revenue-sharing request, did not present any evidence or testimony in support, and did not brief the issue. Intervenors therefore did not have the opportunity to present their own witnesses or evidence in opposition or their own arguments as to why this arrangement is unlawful and unreasonable. Requiring that an issue be raised in a party's application for rehearing ensures that all parties have notice and an opportunity to address the issue themselves.

Because no party raised the issue of revenue-sharing, the Commission erred in unilaterally implementing a revenue-sharing mechanism during the rehearing process.

III. CONCLUSION

The energy efficiency resources created by ratepayer funds through the Companies' EEPs are "valuable asset[s]" that must be prudently managed by FirstEnergy.⁹ The Commission is clear that FirstEnergy bears no risk in this PJM auction participation, and FirstEnergy did not request to share in any of the auction revenue. The Commission's determination that FirstEnergy should receive 20 percent of the revenue is unlawful and unreasonable. ELPC requests that the Commission grant its Application for Rehearing on this issue.

⁹ *Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Application for Rehearing*, submitted on behalf of the Environmental Law & Policy Center, was served by electronic mail upon the following Parties of Record this 16th day of August, 2013.

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Summary: Application for Rehearing by the Environmental Law and Policy Center electronically filed by Mr. Nicholas A. McDaniel on behalf of Environmental Law and Policy Center