

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The )	
Cleveland Electric Illuminating Company, )	
Ohio Edison 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 Plans for 2013 through )	
2015. )	

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**APPLICATION FOR REHEARING AND/OR MOTION FOR CLARIFICATION  
OF  
EMC DEVELOPMENT COMPANY, INC.**

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Pursuant to Section 4903.10, Revised Code (R.C.), and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), EMC Development Company, Inc. (EMC) hereby respectfully requests rehearing and/or clarification of the Commission's July 17, 2013 Entry on Rehearing (Entry on Rehearing) issued in the above-captioned matters regarding the portfolio programs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (FirstEnergy). EMC contends that the Entry on Rehearing is unlawful and unreasonable in the following respect:

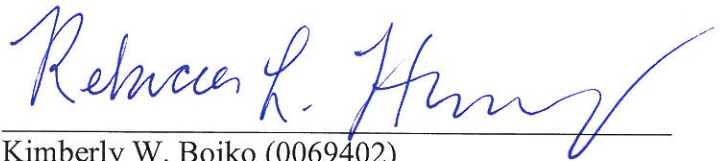
1. The Entry on Rehearing is unlawful, unreasonable, and anti-competitive to the extent it requires mercantile customers to transfer ownership of the customers' energy attributes to FirstEnergy.

As stated further in the Motion for Leave, EMC's decision not to enter an appearance prior to the filing of the Entry on Rehearing is supported by just cause pursuant to Section 4903.10, R.C. EMC further contends that it is an "affected corporation" under Rule 4901-1-

35(A), O.A.C., as discussed in the attached Memorandum in Support and, thus, its Application for Rehearing is properly filed, although it is not a party in these proceedings to date.

For these reasons, and as further explained in the Memorandum in Support attached hereto, EMC respectfully requests that the Commission grant its Application for Rehearing and issue an Entry on Rehearing holding the same. Alternatively, EMC requests that the Commission clarify the language of its Entry on Rehearing for purposes of explaining when mercantile customers may retain their ownership rights to the energy attributes associated with the customers' energy efficiency projects.

Respectfully submitted,



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### **Memorandum in Support**

Rule 4901-1-35(A), O.A.C., provides, in pertinent part, that “[a]ny party or any affected person, firm, or corporation may file an application for rehearing \* \* \* in the form and manner and under the circumstances set forth in section 4903.10 of the Revised Code.” As detailed in the companion document to this pleading, EMC’s Motion for Leave to File an Application for Rehearing or, in the Alternative, Motion for Clarification, EMC is negatively affected by the Entry on Rehearing in that several of its Ohio customers, many of which have utilized EMC as an aggregator of capacity attributes from their energy efficiency projects for up to three years, may no longer be permitted to participate in the Commission’s energy efficiency mercantile programs and continue to assign the capacity attributes from their projects to EMC to bid into PJM auctions. This type of restriction placed upon its customers by the Commission would significantly impact EMC’s business model, in that it disallows numerous customers who have traditionally assigned their energy efficiency capacity attributes to EMC to aggregate and bid into PJM from so doing if they also participate in the Commission’s mercantile energy efficiency programs. Given that EMC’s customers’ rights to select an aggregator of their choice for purposes of bidding capacity attributes into the PJM auctions would be thwarted by a prohibition of this practice, EMC’s customer base would be diminished and its business detrimentally affected. As such, EMC is an “affected corporation” under Rule 4901-1-35(A), O.A.C., which grants EMC the opportunity, subject to its compliance with Section 4903.10, R.C., to file an application for rehearing in this matter.

EMC contends that the Commission’s determination that mercantile customers participating in other utility programs may be required to transfer ownership of the energy attributes to FirstEnergy for bidding into PJM auctions is not supported by the manifest weight

of evidence, as evidence (sufficient or otherwise) was not offered on this narrow topic. Therefore, the Entry on Rehearing and its directives resulting from that determination are unlawful and unreasonable in that respect.

EMC is a member of PJM and, as a member, has qualified approximately 6,000 energy efficiency projects completed by its customers as energy efficiency resources in the PJM capacity market. The ability to bid capacity in the market is generally only available to large-scale projects; however, working with local Ohio partners, EMC aggregates smaller projects in order to qualify them for participation in PJM capacity auctions. EMC has, over the past three years, bid attributes from these projects into PJM capacity auctions. EMC provides a significant portion of the proceeds from the auctions to participating customers who have implemented the energy efficiency projects. EMC provides a cost-effective means for Ohio ratepayers who have completed energy efficiency projects to derive value from those projects in PJM's market. A number of the projects EMC has, in the past, aggregated for purposes of PJM capacity auctions, and wishes to continue to aggregate in the future, are located in FirstEnergy's service territory in Ohio.

Over the period from 2011 to the present, 534 Ohio facilities have assigned the capacity attributes from their energy efficiency projects to EMC. This total represents 534 individual decisions by Ohio companies to place the attributes with a competitive aggregator. By deciding, as it has, without the benefit of the introduction of evidence in the record on the topic of attribute assignment, that "mercantile customers who participate in the other utility programs set forth in the program portfolio plans *may be required* to transfer ownership of the energy attributes to the Companies for bidding into the PJM auctions[.]"<sup>1</sup> the Commission has effectively foreclosed the ability of these customers to make the decision to place their attributes with a third-party

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<sup>1</sup> Entry on Rehearing at 11 (emphasis added).

aggregator, like EMC, who has significant experience participating in the market in this narrow field. Consequently, EMC may not have the benefit of many of its customers' commitments in the wake of the Commission's Entry on Rehearing.

Further, in the process of rendering aggregators like EMC unable, in many instances, to serve the customers they have previously served in Ohio, the Commission has also committed to FirstEnergy, in the Entry on Rehearing, twenty percent of the net benefits of bidding these resources into PJM auctions. The effects of this decision on energy efficiency aggregators are untenable; they functionally amount to the adoption of anti-competitive measures in Ohio's electric markets and further, while employing these anti-competitive measures, award the incumbent utility with twenty percent of the benefits of a service that was formerly performed by competitive aggregators. The process of deregulation that Ohio's electric markets have undergone over the past decades does not support the Commission's decision on this topic, nor does Section 4928.02, R.C., which broadly promotes competition and the utilization of energy efficiency measures in Ohio's electric markets.

Indeed, the Commission has previously ensured that regulations in other areas, namely, provisions affecting retail electric service providers and aggregators, promote competition in Ohio. The Commission has even opened a docket, 12-3151-EL-COI, in order to investigate whether the current regulatory framework in Ohio is promoting competition as readily as possible.

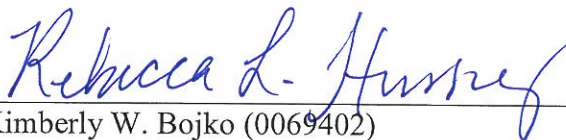
The Commission's decision in the Entry on Rehearing may eliminate the opportunity for many customers to select competitive services for the aggregation and marketing of their energy efficiency attributes and requires those customers to commit attributes without just compensation. The Entry on Rehearing further does so without the benefit of the introduction of

evidence in the hearing regarding the appropriateness of the ownership of the rights to the mercantile customers' energy efficiency attributes. The result of this decision is anti-competitive and starkly contrasts with the policy goals in Ohio laws which promote competition in Ohio energy markets. It also removes rights from customers that they once retained without just compensation.

For these reasons, the Commission's decision set forth in its Entry on Rehearing is unlawful, unreasonable, and against the manifest weight of the evidence. Accordingly, EMC respectfully requests that the Commission grant its Application for Rehearing.

In the alternative, EMC respectfully requests that the Commission clarify the language of its Entry on Rehearing to explain when mercantile customers may retain their ownership rights to the energy attributes associated with the customers' energy efficiency projects.

Respectfully submitted,




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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on August 16, 2013.

  
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Summary: Application For Hearing And/Or Motion For Clarification Of EMC Development Company, Inc. electronically filed by Mrs. Kimberly W. Bojko on behalf of EMC Development Company, Inc