

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of	)	
Chapters 4901:1-10 and 4901:1-21,	)	
Ohio Administrative Code, Regarding	)	Case No. 14-1411-EL-ORD
Electric Companies and Competitive	)	
Retail Electric Service, to Implement	)	
2014 Sub. S.B. No. 310.	)	

---

**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA  
TO THE ENVIRONMENTAL LAW & POLICY CENTER'S  
SECOND APPLICATION FOR REHEARING**

---

Samuel C. Randazzo (Reg. No. 0016386)  
(Counsel of Record)  
Frank P. Darr (Reg. No. 0025469)  
Matthew R. Pritchard (Reg. No. 0088070)  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>TH</sup> Floor  
Columbus, OH 43215  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
sam@mwncmh.com  
(willing to accept service by e-mail)  
fdarr@mwncmh.com  
(willing to accept service by e-mail)  
mpritchard@mwncmh.com  
(willing to accept service by e-mail)

**August 10, 2015**

**Attorneys for Industrial Energy Users-Ohio**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of	)	
Chapters 4901:1-10 and 4901:1-21,	)	
Ohio Administrative Code, Regarding	)	Case No. 14-1411-EL-ORD
Electric Companies and Competitive	)	
Retail Electric Service, to Implement	)	
2014 Sub. S.B. No. 310.	)	

---

**INDUSTRIAL ENERGY USERS-OHIO’S MEMORANDUM CONTRA  
TO THE ENVIRONMENTAL LAW & POLICY CENTER’S  
SECOND APPLICATION FOR REHEARING**

---

On July 31, 2015, the Environmental Law & Policy Center (“ELPC”) filed a Second Application for Rehearing arguing that the Public Utilities Commission of Ohio (“Commission”) acted unlawfully and unreasonably by directing that the cost of interruptible credits counted by electric distribution utilities (“EDU”) be included in the individual customer cost disclosures required by R.C. 4928.65. ELPC advances two arguments in support of its Second Application for Rehearing. First, ELPC argues that the costs of interruptible programs should be excluded from the mandate cost disclosures because the interruptible programs result in over-compliance with the statutory benchmarks. Second, ELPC argues that excluding the cost of interruptible credits for the individual mandate cost disclosures will be inconsistent with the Commission’s recent decision in another case.

ELPC's Second Application for Rehearing advances a position that conflicts with its support to incent EDUs to over-comply with the energy efficiency ("EE") and peak demand reduction ("PDR") (collectively, "EE/PDR") portfolio mandates.<sup>1</sup> Now that the EDUs have over-complied with the portfolio mandates and customers are funding the additional portfolio program spending and the EDUs' incentive payments, ELPC argues that these compliance costs should not be disclosed to customers as they were not necessary for the EDUs to achieve compliance with the mandates. These over-compliance costs that ELPC has supported, however, are costs required to be disclosed to customers. Accordingly, ELPC's Second Application for Rehearing is without merit, and the Commission should deny ELPC's Second Application for Rehearing.

#### **I. BACKGROUND**

R.C. 4928.65 requires the Commission to adopt rules that result in the disclosure, on individual customers' bills, of the amounts the customer is paying for the EE mandate, the PDR mandate, and the alternative energy mandate. In the proposed rules, the Commission proposed to calculate an individual customer's cost of compliance for the EE and PDR mandates by multiplying the customer's monthly usage against its EDU's applicable EE/PDR rider.<sup>2</sup> Eighty percent of that result would be disclosed as the individual customer's cost of complying with the EE mandate, and twenty percent would be disclosed as the individual's customer cost of complying with the PDR mandate.<sup>3</sup>

---

<sup>1</sup> *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 Portfolio Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, *et al.*, Initial Brief of ELPC and Ohio Environmental Council at 35-38 (Nov. 20, 2012).

<sup>2</sup> Entry, Attachment A at 2-3 (Oct. 15, 2014).

<sup>3</sup> *Id.*

In its Finding and Order, the Commission clarified “that the costs of compliance to be disclosed must be an accurate reflection of the costs actually being borne by customers related to the EE and PDR requirements.”<sup>4</sup> The Commission found that shared savings were a cost of compliance and must be included in the disclosures.<sup>5</sup> However, the Commission concluded that lost distribution revenue and the costs of EDUs’ interruptible programs were not costs related to EDUs’ compliance with the EE and PDR mandates.<sup>6</sup> The Commission concluded that it would work with EDUs in upcoming electric security plan (“ESP”) cases to remove these items from their EE/PDR riders.<sup>7</sup>

In *AEP-Ohio’s ESP III Case*,<sup>8</sup> parties requested the Commission to transfer the collection of AEP-Ohio’s interruptible program costs from its EE/PDR rider to its Economic Development Cost Recovery Rider (“EDR”). However, in that case, the Commission concluded that AEP-Ohio’s interruptible program “reduces AEP Ohio’s peak demand and encourages energy efficiency and, therefore, it is appropriate that the costs of the program are recovered through the EE/PDR rider.”<sup>9</sup>

Subsequent to its decision in *AEP-Ohio’s ESP III Case*, the Commission issued an Entry on Rehearing in this proceeding.<sup>10</sup> The Commission denied the Ohio Manufacturers’ Association Energy Group’s (“OMAEG”) request to exclude shared

---

<sup>4</sup> Finding and Order at 19 (Dec. 17, 2014).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 20.

<sup>7</sup> *Id.*

<sup>8</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al.* (“*AEP-Ohio ESP III Case*”).

<sup>9</sup> *AEP-Ohio ESP III Case*, Second Entry on Rehearing at 12 (May 28, 2015).

<sup>10</sup> Second Entry on Rehearing (July 1, 2015).

savings costs from the mandate cost disclosures.<sup>11</sup> The Commission also reversed course from its December 17, 2014 Finding and Order and, consistent with its decision in *AEP-Ohio's ESP III Case*, concluded that interruptible costs should be included in the mandate cost disclosures.<sup>12</sup> In support, the Commission found that “the primary benefit to customers from the interruptible programs is the reduction in peak demand.”<sup>13</sup>

ELPC seeks rehearing of the Commission’s decision to include the costs of the EDUs’ interruptible programs in the mandate cost disclosures.

## **II. ARGUMENT**

### **A. The Commission should again reject ELPC’s argument that costs associated with an EDU over-complying with the EE and PDR mandates should be excluded from the mandate cost disclosures**

ELPC, along with several other entities referred to herein as the “Environmental Advocates,” submitted Initial Comments requesting that the Commission exclude from the individual customer mandate cost disclosures “any program costs that the utility does not use for compliance with R.C. 4928.66.” ELPC argued that this included shared-savings as well as “costs relating to any EE savings and PDR that represent over-compliance.”<sup>14</sup> In its Finding and Order, the Commission declined to adopt ELPC’s recommendation, holding that “the costs of compliance to be disclosed must be an accurate reflection of the costs actually being borne by customers related to the EE and PDR requirements.”<sup>15</sup> The Commission further held that it was appropriate to disclose

---

<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 9.

<sup>14</sup> Initial Comments of Environmental Advocates at 8 (Nov. 5, 2014); see also Finding and Order at 18 (Dec. 17, 2014).

<sup>15</sup> Finding and Order at 19 (Dec. 17, 2014).

costs in the year the cost was borne by customers, even if the costs were associated with over-compliance.<sup>16</sup>

ELPC has sought rehearing of the Commission's Entry on Rehearing regarding the inclusion of the cost of interruptible programs in the individual cost disclosures. Just as it did in its Initial Comments, ELPC again argues that interruptible credits should not be included in the disclosures because they relate to EDUs' over-compliance with the EE and PDR mandates.<sup>17</sup> In support of its argument, ELPC claims that at least two of the four EDUs in Ohio did not need to rely on interruptible programs to meet the statutory benchmarks.<sup>18</sup> ELPC's argument incorrectly assumes that the Commission could identify which megawatts of EE and PDR savings were utilized towards an EDU's compliance benchmark and which megawatts of EE and PDR savings from specific programs were recorded as banked savings as a basis for the Commission concluding that the interruptible programs were unrelated to compliance with the mandates.

Furthermore, and more importantly, the Commission has already held that whether a program produced megawatts of EE or PDR savings utilized for a specific year's compliance or banked for future years' compliance was irrelevant.<sup>19</sup> The savings were available for an EDU's compliance with the statutory mandates. Therefore, the Commission found that it was appropriate to disclose to customers the cost of programs

---

<sup>16</sup> *Id.* ("The Commission finds that, if an EDU over complies with the statutory EE and PDR requirements as a result of budgeted and approved EE and PDR programs, causing a shared savings expense, it is reasonable to count that shared savings expense as part of the cost of compliance in the year it is incurred.") emphasis added.

<sup>17</sup> Second Application for Rehearing of ELPC at 3-6 (July 31, 2015).

<sup>18</sup> *Id.* at 4-6.

<sup>19</sup> Finding and Order at 19-20 (Dec. 17, 2014).

generating the EE and PDR savings contemporaneously with when the costs were collected from customers.<sup>20</sup>

Accordingly, the Commission should affirm its findings in its Entry on Rehearing and reject ELPC's argument that costs of the EDUs' interruptible programs should be excluded from the mandate cost disclosures.

**B. Adopting ELPC's position would be inconsistent with the Commission's finding in *AEP-Ohio's ESP III Case* that interruptible programs reduce peak demand, encourage energy efficiency, and should therefore be included as an actual cost of AEP-Ohio's EE/PDR compliance to be recovered through AEP-Ohio's EE/PDR rider**

In its Entry on Rehearing, the Commission concluded that the inclusion of the costs of interruptible programs in the mandate cost disclosures would be consistent with its recent decision in the *AEP-Ohio ESP III Case*.<sup>21</sup> ELPC, however, argues in its Second Application for Rehearing that a ruling in its favor would not create any inconsistencies between the Commission's decisions in this case and *AEP-Ohio's ESP III Case* because *AEP-Ohio's ESP III Case* was about an entirely different issue than that in this case.<sup>22</sup> Specifically, ELPC claims that the *AEP-Ohio ESP III Case* was related to concerns raised by AEP-Ohio regarding a situation where a large amount of customers opt out of the EE/PDR rider, leaving few customers left to pay AEP-Ohio's cost to comply with the mandates.<sup>23</sup> ELPC's argument is incorrect.

After considering arguments by ELPC and others in *AEP-Ohio's ESP III Case*, the Commission concluded that AEP-Ohio's interruptible program was in fact related to

---

<sup>20</sup> *Id.*

<sup>21</sup> Second Entry on Rehearing at 9 (July 1, 2015).

<sup>22</sup> Second Application for Rehearing of ELPC at 6-7 (July 31, 2015).

<sup>23</sup> *Id.*

AEP-Ohio's EE/PDR compliance costs as the interruptible program "reduces AEP Ohio's peak demand and encourages energy efficiency."<sup>24</sup> Thus, the Commission directed AEP-Ohio to continue recovering this actual compliance cost in its EE/PDR rider.<sup>25</sup>

If the Commission were to adopt ELPC's argument, the Commission would be finding that the costs of the EDUs' interruptible programs were not related to compliance with the EE and PDR mandates. As discussed above, however, the Commission explicitly found that AEP-Ohio's interruptible program was related to reducing AEP-Ohio's peak demand and promotes energy efficiency. Adopting ELPC's position, therefore, would result in an inconsistent finding regarding whether EDUs' interruptible programs were related to compliance with EE/PDR mandates.

Accordingly, the Commission should deny ELPC's Second Application for Rehearing.

### **III. CONCLUSION**

The Commission correctly concluded in this case and the *AEP-Ohio ESP III* Case that an EDU's interruptible program, which reduces the EDU's peak demand, is related to an EDU's compliance with Ohio's EE/PDR mandates. The Commission further correctly determined that R.C. 4928.65 requires an EDU's actual costs of compliance with the EE/PDR mandates to be disclosed to customers and therefore required the EDUs to calculate the disclosures without exclusion of the interruptible program costs. Because the Commission correctly determined that the interruptible

---

<sup>24</sup> *AEP-Ohio ESP III Case*, Second Entry on Rehearing at 12 (May 28, 2015). In the *AEP-Ohio ESP III Case*, ELPC argued that AEP-Ohio's interruptible program "is an economic development measure and, therefore, the Commission should require AEP Ohio to collect [the interruptible program costs] through the EDR." *Id.* at 11.

<sup>25</sup> *Id.* at 12.



program costs must be included in the mandate cost disclosures, the Commission should deny ELPC's Second Application for Rehearing that seeks to exclude the interruptible program costs from the mandate cost disclosures.

Respectfully submitted,

/s/ Matthew R. Pritchard

Samuel C. Randazzo (Reg. No. 0016386)

(Counsel of Record)

Frank P. Darr (Reg. No. 0025469)

Matthew R. Pritchard (Reg. No. 0088070)

MCNEES WALLACE & NURICK LLC

21 East State Street, 17<sup>TH</sup> Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com

(willing to accept service by e-mail)

fdarr@mwncmh.com

(willing to accept service by e-mail)

mpritchard@mwncmh.com

(willing to accept service by e-mail)

**Attorneys for Industrial Energy Users-Ohio**

## **CERTIFICATE OF SERVICE**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra to the Environmental Law & Policy Center's Second Application for Rehearing* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 10<sup>th</sup> day of August 2015, *via* electronic transmission.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

Kyle L. Kern, Counsel of Record (Reg. No. 0084199)

Michael J. Schuler (Reg. No. 0082390)  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone: Kern Direct – 614-466-9585  
Telephone: Schuler Direct – 614-466-9547  
Kyle.kern@occ.ohio.gov  
Michael.schuler@occ.ohio.gov

### **ATTORNEYS FOR THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Kimberly W. Bojko (Reg. No. 0069402)  
Rebecca L. Hussey (Reg. No. 0079444)  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, OH 43215  
Bojko@carpenterlipps.com  
Hussey@carpenterlipps.com

### **ATTORNEYS FOR THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

Judi L. Sobecki (Reg. No. 0067186)  
The Dayton Power and Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
Judi.sobecki@aes.com

### **ATTORNEY FOR THE DAYTON POWER AND LIGHT COMPANY**

Madeline Fleisher  
Staff Attorney  
Environmental Law & Policy Center  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212  
mfleisher@elpc.org

Samantha Williams  
Staff Attorney  
Natural Resources Defense Council  
20 N. Wacker Drive, Suite 1600  
Chicago, IL 60606  
swilliams@nrdc.org

Trent A. Dougherty  
Managing Director of Legal Affairs  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212  
trent@theoec.org

Dan Sawmiller  
Senior Campaign Representative, Ohio and  
Kentucky  
Sierra Club, Beyond Coal Campaign  
131 N. High Street, Suite 605  
Columbus, OH 43215  
Daniel.sawmiller@sierraclub.org

**ATTORNEYS FOR ENVIRONMENTAL  
ADVOCATES**

Carrie M. Dunn, Counsel of Record (Reg.  
No. 0076952)  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
cdunn@firstenergycorp.com

**ATTORNEY FOR OHIO EDISON COMPANY, THE  
CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON  
COMPANY**

Steven T. Nourse  
American Electric Power Service  
Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215  
stnourse@aep.com

**ATTORNEY FOR OHIO POWER COMPANY**

Joseph M. Clark, Counsel of Record  
Direct Energy  
Fifth Third Building  
21 East State Street, 19<sup>th</sup> Floor  
Columbus, OH 43215  
Joseph.clark@directenergy.com

**ATTORNEY FOR DIRECT ENERGY SERVICES,  
LLC, DIRECT ENERGY BUSINESS, LLC, AND  
DIRECT ENERGY BUSINESS MARKETING, LLC**

William L. Wright  
Chief, Public Utilities Section  
Ohio Attorney General  
180 East Broad Street, 6th Floor  
Columbus, OH 43215-3793  
william.wright@puc.state.oh.us

**ATTORNEY FOR THE STAFF OF THE PUBLIC  
UTILITIES COMMISSION OF OHIO**

Mandy Willey Chiles  
Attorney Examiner  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215  
mandy.willey@puc.state.oh.us

**ATTORNEY EXAMINER**

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

**Commission of Ohio Docketing Information System on**

**8/10/2015 10:55:29 AM**

**in**

**Case No(s). 14-1411-EL-ORD**

Summary: Memorandum Memorandum Contra to the Environmental Law & Policy Center's  
Second Application for Rehearing electronically filed by Mr. Matthew R. Pritchard on behalf of  
Industrial Energy Users-Ohio