

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 Electric) Case No. 14-1411-EL-ORD
Companies, and Competitive Retail)
Electric Service, to Implement 2014 Sub.)
S.B. No. 310.)

THIRD ENTRY ON REHEARING

The Commission finds:

- (1) On May 28, 2014, the General Assembly passed 2014 Sub.S.B. No. 310 (S.B. 310), which became effective on September 12, 2014. S.B. 310, inter alia, amended provisions in R.C. Chapter 4928, which governs the alternative energy portfolio standard rules and regulations. Additionally, amended R.C. 4928.65 directs the Commission to adopt rules governing the disclosure to customers of the costs of the renewable energy resource, energy efficiency (EE) savings, and peak demand reduction (PDR) requirements of R.C. 4928.64 and 4928.66. In light of amended R.C. 4928.65, this proceeding was opened on August 15, 2014, specifically to establish rules regarding bill disclosures found in Ohio Adm.Code Chapters 4901:1-10 and 4901:1-21, which govern electric companies and competitive retail electric service (CRES) providers.
- (2) On October 15, 2014, the Commission issued proposed rules for comment. Comments were filed by multiple stakeholders.
- (3) On December 17, 2014, the Commission issued its Finding and Order approving the proposed rules in Ohio Adm.Code Chapters 4901:1-10 and 4901:1-21. The proposed rules included a new rule, Ohio Adm.Code 4901:1-10-35, which governs the required cost disclosures regarding electric distribution utilities (EDUs), and a new rule, Ohio Adm.Code 4901:1-21-19, which governs the required cost disclosures regarding CRES providers. Both proposed rules

included a method for calculating costs of compliance with the renewable energy resource, EE savings, and PDR requirements.

- (4) Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the Order upon the Commission's journal.
- (5) On January 16, 2015, The Dayton Power and Light Company (DP&L), Retail Energy Supply Association (RESA), the Ohio Manufacturers' Association Energy Group (OMAEG), and the Environmental Law and Policy Center (ELPC), Sierra Club, Natural Resources Defense Council, and Ohio Environmental Council (collectively, Environmental Groups), filed applications for rehearing pursuant to R.C. 4903.10. On January 26, 2015, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) filed a memorandum contra the applications for rehearing.
- (6) By Entry on Rehearing issued February 11, 2015, the Commission granted the applications for rehearing for further consideration of the matters specified therein. Thereafter, by Second Entry on Rehearing issued July 1, 2015 (Order), the Commission granted the applications for rehearing filed by DP&L, RESA, and OMAEG, in part, and denied the application for rehearing filed by the Environmental Groups. Among other things, the Commission modified its previously proposed method for calculating the costs of compliance with the EE and PDR requirements, finding that the costs of interruptible programs should be included as a cost of compliance, as the primary benefit to customers from the interruptible programs is the reduction in peak demand (Order at 9).
- (7) Thereafter, on July 31, 2015, ELPC filed a second application for rehearing. FirstEnergy and Industrial Energy Users-Ohio (IEU-Ohio) filed memoranda contra the application for rehearing on August 10, 2015.

- (8) In its second application for rehearing, ELPC asserts as its sole assignment of error that the Order is unlawful and unreasonable because the Commission found that utility interruptible program costs are costs of compliance with the PDR requirements. ELPC asserts that only a fraction of the costs of these programs results from the need to generate PDR to comply with the statutory requirements, citing data from FirstEnergy's and AEP-Ohio's 2014 portfolios. Additionally, ELPC argues that nothing suggests the interruptible programs are essential to FirstEnergy's compliance with its PDR obligations. ELPC claims that, as a result, inclusion of the costs of these programs in the calculation will present inflated costs to consumers that do not reflect the true costs of the statutory requirements. Further, ELPC contends that granting rehearing on this finding would not be inconsistent with the Commission's decision in *In re Ohio Power Company*, Case No. 13-2385-EL-SSO, et al., Entry on Rehearing (May 28, 2015), as that case concerned the different issue of rider design and whether a program could be successfully implemented.
- (9) In its memorandum contra ELPC's application for rehearing, IEU-Ohio contends that the argument in ELPC's application for rehearing advances a position that is in conflict with its support of incenting EDUs to over-comply with the EE and PDR portfolio mandates. IEU-Ohio argues that ELPC's position will prohibit EDUs that have over-complied with the mandates from disclosing those compliance costs to customers. IEU-Ohio asserts that, consequently, the Commission should affirm its finding in the Second Entry on Rehearing that costs of the EDUs' interruptible programs should be included in the costs to be disclosed. Further, IEU-Ohio claims that adopting ELPC's position would be inconsistent with the Commission's finding in *In re Ohio Power Company*, supra, as the Commission found in that case that interruptible programs reduce peak demand and encourage energy efficiency.
- (10) In its memorandum contra ELPC's application for rehearing, FirstEnergy opposes ELPC's argument that the Commission was unreasonable in requiring the costs of interruptible programs to be included in the costs of compliance to be

disclosed on customer bills. FirstEnergy points out that its Economic Load Response Rider (Rider ELR)¹ tariff clearly states that participating customers commit their demand response to the Companies for their compliance with the PDR requirements in R.C. 4928.66. Further, FirstEnergy argues that, contrary to ELPC's assertion, it has claimed all of its Rider ELR-contracted PDR attributes for compliance with the statutory mandates.

- (11) The Commission finds that ELPC's application for rehearing should be denied. We are not persuaded by ELPC's contention that the interruptible programs are not related to compliance with the peak demand reduction mandates based upon a review of a single year, 2014, rather than a review of compliance with each year since the inception of the peak demand reduction requirements in 2009. Further, even if ELPC had presented the data for each compliance year since 2009, we do not agree with ELPC's claim that the interruptible program must be *necessary* for compliance with the peak demand reduction mandates in order to be included in the costs of the peak demand reduction requirements. ELPC's claim would impose a standard that does not exist in the statute. Moreover, as we noted in the Second Entry on Rehearing, the primary benefit to customers from the interruptible programs is the reduction in peak demand. Second Entry on Rehearing at 9. The fact that the electric utilities have used the interruptible programs in conjunction with other energy efficiency and peak demand reduction programs to successfully reduce their peak demand to comply with R.C. 4928.64 does not change this primary benefit.

We acknowledge that the interruptible programs have benefits related to economic development. However, consistent with our previous decisions, we continue to find that the primary benefit of the interruptible programs is the reduction in peak demand. *In re Ohio Power Co.*, Case No. 12-2385-EL-SSO, et al., Entry on Rehearing (May 28, 2015).

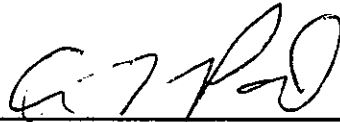
¹ Rider ELR is available to customers who take service at primary voltages or higher voltages and agree to reduce their load to a pre-established contract firm load when requested by the Companies, among other conditions.

It is, therefore,

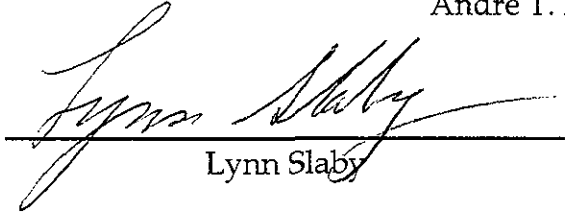
ORDERED, That the second application for rehearing filed by ELPC be denied.
It is, further,

ORDERED, That a copy of this Third Entry on Rehearing be served upon all parties of record.

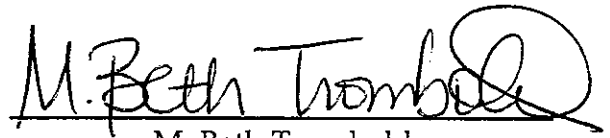
THE PUBLIC UTILITIES COMMISSION OF OHIO



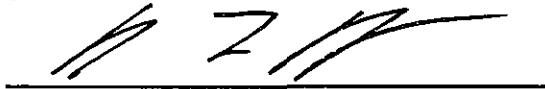
Andre T. Porter, Chairman



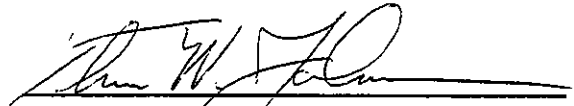
Lynn Slaby



M. Beth Trombold



Asim Z. Haque

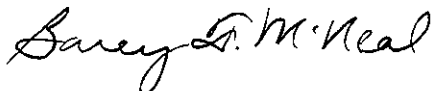


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Entered in the Journal

AUG 26 2015



Barcy F. McNeal
Secretary