BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code.	))))	Case No. 13-651-EL-ORD
In the Matter of the Commission's Review of its Rules for the Alternative Energy Portfolio Standard Contained in Chapter 4901:1-40 of the Ohio Administrative Code.	))))	Case No. 13-652-EL-ORD
In the Matter of the Amendment of Ohio Administrative Code Chapter 4901:1-40, regarding the Alternative Energy Portfolio Standard, to Implement Am. Sub. S.B. 315.	))))	Case No. 12-2156-EL-ORD

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF INTERSTATE GAS SUPPLY, INC.

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APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF INTERSTATE GAS SUPPLY, INC.

Pursuant to R.C. 4903.10, and Ohio Adm.Code 4901-1-35, Interstate Gas Supply, Inc. ("IGS Energy" or "IGS") respectfully submits this Application for Rehearing of the Finding and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission") on December 18, 2018 for the following reasons:

A. The Order is unjust and unreasonable because it creates a new Energy Efficiency and Peak Demand Reduction portfolio plan process that is inconsistent with its stated goals.

1. The new process will be more burdensome on the Commission and stakeholders.

2. The new process should explicitly incorporate the Commission's broad authority.

3. The new process could create a loophole that would allow the Electric Distribution Utilities to side-step Commission precedent and policy.

B. The Order is unjust and unreasonable because it knowingly creates an ineffective review mechanism by relying on a process that is four-to-five years behind and failing to make any improvements.

C. The Order is unjust and unreasonable because it allows the Electric Distribution Utilities to omit the amount of rebates or incentives included in their annual program portfolio plan.

For the reasons stated herein, IGS respectfully requests that the Commission grant this application for rehearing.

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MEMORANDUM IN SUPPORT
OF INTERSTATE GAS SUPPLY, INC.

II. INTRODUCTION

On January 29, 2014, the Public Utilities Commission of Ohio ("Commission") issued an Entry in these proceedings proposing amendments to Ohio Adm.Code Chapter 4901:1-39 and 4901:1-40 regarding the Commission's rules for energy efficiency and renewable energy portfolio standards. On December 18, 2018, the Commission issued a Finding and Order ("Order") that adopted certain amendments proposed by parties over three and a half years ago. Unfortunately, the Order adopts unnecessary, major revisions to the approval process for the Energy Efficiency and Peak Demand Reduction ("EE/PDR") portfolio plans filed by an electric distribution utility ("EDU").

III. ARGUMENT

A. The Order unjustly and unreasonably creates a new EE/PDR portfolio plan process that is inconsistent with its stated goals.

1. The new process will be more burdensome on the Commission and stakeholders.

Although IGS appreciates the Commission's desire to promote efficiency, reduce regulatory delay, and minimize administrative costs, unfortunately, the new portfolio plan process will have an opposite effect.

First, very simply, the number of filings related to an EDU's EE/PDR portfolio plan actually increases. Under the current rules, in a six-year period, an EDU would file two program planning assessments, two portfolio plans, and six annual status reports. Under the new rules, in a six-year period, an EDU would file one or two program planning assessments, six portfolio plans, and six annual portfolio program reports. Additionally, under the new rules, an EDU is required to file a cost recovery mechanism every year, while the current system provides a pre-approved budget for multiple years.

Next, the current process provides one venue to challenge three years of EE/PDR programs, while the new rules provide six. Currently, all four of the EDUs are operating under three-to-four-year EE/PDR portfolio plans.[1] Between the four proceedings, fifteen distinct parties intervened in at least one of these cases. All four plans were formed by stipulations with the majority, if not all, parties supporting or not opposing the agreement. For three of the EDUs, this single proceeding process successfully resulted in one multi-year portfolio plan that offers reasonable, cost-

[1] *In re FirstEnergy*, Case No. 16-743-EL-POR, Opinion and Order (Nov. 21, 2017); *In re Dayton Power and Light*, Case No. 17-1398-EL-POR, Opinion and Order (Dec. 20, 2017); *In re AEP Ohio,* Case No. 16-574-EL-POR, Opinion and Order (Jan. 18, 2017); and *In re Duke Energy Ohio,* Case No. 16-576-EL-POR, Opinion and Order (Sept. 27, 2017).

effective EE/PDR programs to all customer classes and a performance-based incentive for the EDU. Only one EDU, FirstEnergy, was left dissatisfied, however limited to the cost cap implemented by the Commission.[2]

In contrast, under the new rules, stakeholders are provided two opportunities to challenge aspects of a plan designed for just one year. With so many interested parties and substantial amounts of ratepayer funds involved, these opportunities will no doubt be utilized. Moreover, should the Commission continue to apply a reasonable cost cap, FirstEnergy would have to raise its challenge to the Commission's authority every year until its Supreme Court of Ohio appeal is resolved.

Additionally, the regulatory delay also increases with the new process. Potential disallowances and reconciliation of costs do not occur until the issuance of a Commission order within the annual performance verification, which cannot be completed until the filing the Independent Program Evaluator ("IPE Report"). However, the IPE Report has no filing deadline, and as mentioned below, the IPE Reports for Program Years 2012 and 2013 were just filed on January 10, 2019.

2. The new process should explicitly incorporate the Commission's broad authority.

In the Order, the Commission states that "maintaining our broad authority over these portfolio plans while transitioning from a pre-approval process to a post-approval process is of paramount importance."[3] Because IGS agrees with the Commission, it must express its concern that the Commission's rules do not appropriately reflect this broad authority.

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[2] FirstEnergy has appealed this issue to the Ohio Supreme Court. *FirstEnergy v. PUCO*, Case No. 2018-379, Notice of Appeal (Mar. 12, 2018).
[3] *Finding and Order* at ¶ 48.

These portfolio plans utilize substantial amounts of ratepayer dollars. In the EDUs' most recent portfolio plan cases, the Commission approved over $936M in funding for the administration, marketing, and implementation of EE/PDR programs and utility shared savings.[4] In authorizing those dollars, the Commission exercised its authority to make any appropriate modifications to ensure the plan was reasonable and consistent with law prior to implementation. Additionally, in accordance with the current rules, the EDUs were required to prove that the plan was consistent with state policy. This is an appropriate and reasonable exercise of the Commission's authority.

Under the new rules, the Commission's review process is unclear. While the rules do seem to provide a "reasonableness" standard for the recovery mechanism, in the post-approval process, the rules only mention reviewing the EDU's performance in meeting its benchmarks. There is no stated reasonableness standard, and the burden on the EDU to demonstrate the plan is consistent with state policy has been removed. IGS finds this puzzling. If the Commission believes its broad authority over the plans is "of paramount importance," then it is unreasonable not to include some sort of standard, especially in the light of the recent challenges to this authority.[5] The Commission has broad authority to administer and enforce the provisions of Title 49 and that should be fully expressed in the rule.

3. The new process could create a loophole that would allow EDUs to side-step Commission precedent and policy.

[4] See *In re FirstEnergy*, Case No. 16-743-EL-POR, Opinion and Order (Nov. 21, 2017); *In re Dayton Power and Light*, Case No. 17-1398-EL-POR, Opinion and Order (Dec. 20, 2017); *In re AEP Ohio,* Case No. 16-574-EL-POR, Opinion and Order (Jan. 18, 2017); and *In re Duke Energy Ohio,* Case No. 16-576-EL-POR, Opinion and Order (Sept. 27, 2017).
[5] See *In re FirstEnergy*, Case No. 16-743-EL-POR, Opinion and Order (Nov. 21, 2017); Entry on Rehearing (Jan. 10, 2018).

Pre-approval of the projects the best way to ensure EE/PDR ratepayer dollars are spent consistent with law and Commission precedent, such as the prohibitions against undue discrimination, undue advantages, and unreasonable rates, and the grid modernization objectives outlined in PowerForward and currently being implemented through proceedings. Further, a pre-approval process allows the Commission to ensure the state policies outlined in R.C. 4928.02 are effectuated, as required in R.C. 4928.06(A). Thus, IGS is concerned the new process will not provide the proper

For example, R.C. 4928.66(A)(2)(d)(i)(II) allows a utility to include smart grid investment programs in their EE/PDR plans, which are defined as capital improvements to the distribution infrastructure that improve reliability, efficiency, resiliency, or reduce demand. In recent proceedings, EDUs have included a variety of projects like batteries, electric vehicle charging stations, microgrids, and community solar programs that could arguably fall into this "smart grid" definition. With every proposal, the Commission has approached these projects with thoughtful consideration because of their far-reaching implications on Ohio's energy future. This process should not create a loophole for the EDUs to avoid the Commission's consideration. Further, IGS recognizes the risk on the EDU that the projects are subject to potential disallowance at some point in the future, but the investments and resulting impacts to Ohio's marketplace will still have been made.

In sum, IGS urges the Commission to maintain the current EE/PDR portfolio plan process that results in reasonable, cost-effective, projects that are in line with state policy.

B. The Order is unjust and unreasonable because it knowingly creates an ineffective review mechanism by relying on a process that is four-to-five years behind and fails to make any improvements.

As stated multiple times in the Order, if a stakeholder has concerns with an EDU's portfolio plan, the party may raise those concerns during the performance verification audit process. The new rules provide an opportunity for stakeholders to file comments on the annual performance of an EDU's report once the IPE files its Report. However, IGS believes that without a prescribed due date for the IPE Report, this review will be severely less effective.

IGS is concerned that any issues determined by the Commission in the annual performance review will take multiple years to be implemented. For example, the EDU's assessment of the Year 2020 plan will be filed by May 1, 2021, and the EDU's Year 2022 plan must be filed by September 1, 2021. In order for the EDU to incorporate the Commission's findings or the IPE's recommendations from Year 2020 into the Year 2022 plan, there is only a four-month window for the filing of the IPE Report, a 30-day comment period, a possible hearing, and the issuance of the order referenced in Ohio Adm.Code 4901:1-39-05. Any longer means that four months means <u>at least</u> two years of plans, Years 2021 and 2022, would be implemented without the feedback from an independent auditor, the stakeholders, and the Commission.

Past practice validates this concern. The current Ohio Adm.Code 4901:1-39-05(D) also requires an IPE report to be filed after an EDU files its annual portfolio status report. On January 10, 2019, the IPE Reports for 2012 and 2013 were filed.[6] With no

[6] *In re Annual Verification of the EE/PDR Reductions Achieved by the EDUs,* Case No. 14-569-EL-UNC, Reports (Jan. 10, 2019).

deadline, it took four and five full years after the plan had been complete Additionally, the Commission anticipates that the annual portfolio filings will be a continuation of prior year programs with only minor revision, which increases the likelihood that unreviewed programs will continue each year. Because the Commission describes the IPE's role as "essential to the performance verification process,"[7] and the new portfolio process relies on this post-implementation review, it is unreasonable not to provide a due date to ensure meaningful, timely review of an EDU's portfolio plan.

C. The Order is unjust and unreasonable because it allows the Electric Distribution Utilities to omit the amount of rebates or incentives included in their annual program portfolio plan.

In the Order, the Commission removed the provision that required EDUs to disclose the amount of rebates or incentives offered through each of its programs. IGS respectfully disagrees with the revision made to 4901:1-39-04(C)(5)(g) and believes the omission will be harmful to ratepayers and the success of the EE/PDR programs.

Currently, IGS, like other stakeholders, use their own funds to advertise and promote the rebates and incentives offered through portfolio plans. To do this, IGS must know the amount or the method for calculating the rebate or incentive. If an EDU does not include the rebate amount in their annual program portfolio plan, IGS will not know this information. Of course, IGS can inquire about them to the EDU, however, the real issue is that there is no guarantee these amounts will be the same the following day. In fact, in support of its argument to avoid the disclosure of rebates and incentives, AEP Ohio states this will provide it "flexibility to adjust those amounts as market conditions and customer acceptance dictate."[8] This is unjust, unreasonable, and harmful to the

[7] *Order* at ¶ 111.
[8] *AEP Ohio Initial Comments* at 6.

success of the EE/PDR programs.

In the rulemaking, the Commission retained the annual filing requirement, finding "the annual filings remain necessary as they provide notification about EDUs' proposed programs."[9] In other words, the purpose of the annual filing is to inform stakeholders and the ratepayers funding these programs of the EE/PDR opportunities offered by their EDU. Omitting the amount of rebates or incentives is unreasonable because it directly conflicts with the notification purpose of the filing.

Additionally, an incentive is encouragement, something that stimulates one to take action or work harder.[10] Customers cannot be incentivized to implement energy efficiency measures if the actual incentive is not disclosed. Also, the ability for the rebate or incentive to change at any time is adding a new risk on the customer. Large projects take time to develop and by providing an expiration date on a rebate or incentive, such as the end of the calendar year, customers will be encouraged to implement the project without the added risk.

Moreover, AEP Ohio's justification for the lack of disclosure is unpersuasive. Under the new rules, portfolio plans are submitted on an annual basis. This properly strikes a balance between providing the EDU with the flexibility to adjust the rebates and incentives every 12 months, and providing customers with proper notification and assurances to implement EE/PDR measures.

Finally, removing the requirement to include the amount of rebates and incentives, which would allow an EDU to change the amount at any time, is inconsistent with Ohio Adm.Code 4901:1-39-07(A). That section states certain customers may

[9] *Order* at ¶ 65.
[10] See *In re FirstEnergy*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at ¶ 190.

request “an incentive payment based on payment levels established in the electric utility’s portfolio plan.” Thus, the formula or methodology for incentives are to be established in the EDU’s portfolio plan.

IV. CONCLUSION

IGS appreciates the Commission’s efforts to establish an efficient and less burdensome EE/PDR portfolio plan review process. However, these rules fail to do so. IGS urges the Commission to grant this application for rehearing and to correct the errors identified.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this *Application for Rehearing and Memorandum in Support of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 18th day of January 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties on counsel for all parties.

/s/ Bethany Allen
Bethany Allen

Summary: App for Rehearing Application for Rehearing by Interstate Gas Supply, Inc. electronically filed by Bethany Allen on behalf of Interstate Gas Supply, Inc.