

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**SECOND APPLICATION FOR REHEARING BY
THE ENVIRONMENTAL LAW & POLICY CENTER, ENVIRONMENTAL DEFENSE
FUND, OHIO ENVIRONMENTAL COUNCIL, AND NATURAL RESOURCES
DEFENSE COUNCIL**

Pursuant to Ohio Revised Code (“R.C.”) 4903.10 and Ohio Admin. Code 4901-1-35, the Environmental Law & Policy Center, Environmental Defense Fund, Ohio Environmental Council, and Natural Resources Defense Council (collectively, “Conservation Groups”) file this Second Application for Rehearing of the April 10, 2019 Entry on Rehearing in this proceeding. The Entry on Rehearing affirmed the intent of the Public Utilities Commission of Ohio (“Commission” or “PUCO”) to eliminate preapproval of utility energy efficiency programs under existing Ohio Administrative Code Chapters 4901:1-39. The Conservation Groups do not seek to relitigate our concerns regarding that approach, although they remain. Rather, this Second Application for Rehearing proposes minor improvements to the pre-filing process laid out in the Entry on Rehearing to mitigate potential uncertainty that could provide grounds for

litigation in the post-approval review of utility portfolio plans, so that the revised rules are more consistent with the Commission's intent to streamline the energy efficiency planning process.

As further explained in the accompanying Memorandum in Support, the Entry on Rehearing, and the rules it adopts, are unlawful and unreasonable for two reasons:

1. The Commission unreasonably provided for the filing of market potential studies only at extended five-year intervals, even though such studies provide important information relevant to ensuring robust, up-to-date efficiency programs.
2. The Commission unreasonably established program portfolio plan filing requirements that do not require each utility to include key information necessary to support useful stakeholder input.

Accordingly, the Conservation Groups request specific amendments to the rules adopted in the Entry on Rehearing in order to improve the odds of a smooth transition to a "post-approval" review process for utility efficiency programs.

May 10, 2019

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING BY
THE ENVIRONMENTAL LAW & POLICY CENTER, ENVIRONMENTAL DEFENSE
FUND, OHIO ENVIRONMENTAL COUNCIL, AND NATURAL RESOURCES
DEFENSE COUNCIL**

I. INTRODUCTION

The Environmental Law & Policy Center, Environmental Defense Fund, Ohio Environmental Council, and Natural Resources Defense Council (collectively, “Conservation Groups”) seek rehearing of the April 10, 2019 Entry on Rehearing in this proceeding. The Entry on Rehearing adopted amendments to Ohio Administrative Code Chapters 4901:1-39 and 4901:1-40, the Public Utilities Commission of Ohio (“Commission”) rules regarding implementation of Ohio’s energy efficiency and renewable energy portfolio standards. One of the major changes included in those rule revisions was a transition from a pre-approval process for energy efficiency portfolio plans to a “post-approval” process where Commission review of programs occurs only in the context of post-implementation cost recovery. Given the concerns

that the Conservation Groups raised about the uncertainty introduced to energy efficiency planning by eliminating the pre-approval process, we now respectfully request that the Commission grant rehearing to adopt certain proposed improvements to the post-approval process to at least mitigate that uncertainty going forward.

II. ARGUMENT

Rehearing Argument 1: The Commission unreasonably provided for the filing of market potential studies only at extended five-year intervals, even though such studies provide important information relevant to ensuring robust, up-to-date efficiency programs.

Rule 4901:1-39-03(A) would set a minimum requirement for utilities to file an “assessment of potential” – also known as a “market potential study” – just once every five years. These studies are essential to provide the utility, PUCO staff, and all interested stakeholders with current-day facts about baseline market conditions in a utility’s service territory, customer inclination to adopt efficiency measures beyond that baseline, and reasonable assumptions for savings from those measures. It is particularly important to keep such information up to date as new efficiency technologies emerge and existing technologies (such as efficient residential lighting) are more widely adopted. Without recent and Ohio-specific information about such trends, the Technical Resource Manual may become outdated and reflect artificially high savings assumptions inconsistent with a continually improving customer baseline, and stakeholders may not be well-positioned to determine whether the utilities are pursuing programs that provide real, additive savings beyond business-as-usual.

Historically, the utilities have filed these market potential studies every three years in conjunction with their portfolio plans, as reflected in the reference to such potential assessment’s in Rule 4901:1-39-04(C)(1). This timing has provided a reasonable balance between the cost of performing a market potential study and the value it provides in ensuring good efficiency

programs. Because the Entry on Rehearing would extend these filings to potentially every five years, it would unreasonably result in utility program planning that may be based on outdated information about the utility's customer efficiency baseline and new or evolving technology options to improve on that baseline.

Currently, the most recent market potential studies available for the four Ohio electric distribution utilities are from 2017 (Dayton Power & Light) or 2016 (AEP Ohio, FirstEnergy, and Duke). Stakeholders expected Duke and FirstEnergy to file new market potential studies this year along with new portfolio plans, with AEP Ohio and Dayton Power & Light filing in 2020. Under new Rule 4901:1-39-03(A), those new studies may not arrive until 2021 or 2022, leaving any evaluation of the annual program filings to rest on information that is already outdated. After that, the utilities may not file additional market potential studies until 2026 – just before the final year of the existing standard. Those significant gaps in receiving updated market potential studies will undermine the ability of all interested parties and PUCO staff to evaluate plan filings and offer informed input. Therefore, to provide a reasonable process for stakeholder input to the annual plan filings contemplated under the revised rules, the Commission should amend Rule 4901:1-39-03(A) to provide for each utility to file a market potential study at least every three years, as follows:

(A) Assessment of potential. Unless otherwise ordered by the Commission, and at least once every three ~~five~~ years thereafter, an electric utility shall conduct an assessment of potential energy savings and peak demand reduction from adoption of energy efficiency and demand-response measures within its certified territory. Such assessment may be updated by the electric utility from time to time, at no more than three ~~less than five~~ year intervals, as market conditions warrant. . . .

As described in the Conservation Groups' initial Application for Rehearing, the energy efficiency market is rapidly changing. Conservation Groups' App. for Rehearing at 2-4.

Relatively frequent market potential studies are a vital tool to make sure that utility efficiency programs keep pace.

Rehearing Argument 2: The Commission unreasonably established program portfolio plan filing requirements that do not require each utility to include key information necessary to support useful stakeholder input.

Rule 4901:1-39-03(A) now contemplates a process for initial stakeholder input into utility portfolio plans based on September 1 filings that will be implemented just four months later. That means stakeholders realistically have just a few months to provide substantive feedback on those plans, for all four utilities at once. This constrained schedule is likely to significantly decrease the time and resources that any stakeholder may devote to reviewing and providing input on such plans compared to prior plan filings that were staggered and went through a full litigation process. However, the Commission did not materially change the required elements of the plan filing to facilitate thorough stakeholder review and input during this more abbreviated process. Such full review is essential given that the Entry on Rehearing identifies the “collaborative process” as a key mechanism for avoiding extensive litigation in the post-implementation performance verification stage. Entry on Rehearing at 7-8, 24.

Accordingly, in order to provide a reasonable basis for a productive collaborative process, the Commission should require the utilities to include additional information with their annual portfolio filings rather than leaving the burden on stakeholders to extricate such information through discovery or more informal (but less reliable) means. Ideally, this information will match up with the post-implementation reports that utilities file after a program year is completed, to allow comparison of projected with actual results. The filing should also include detailed projections regarding program implementation in order to provide a full picture of the utility’s expectations for how the programs will deliver savings.

Specifically, the Conservation Groups ask that the Commission add and/or modify the following items regarding the required contents of a program portfolio plan filing under Rule 4901:1-39-04(C):

(3) A description of attempts to align and coordinate programs with other public utilities' programs, including:

(i) identification of any natural gas companies with overlapping service territory;

(ii) a summary of all Commission-approved efficiency programs being implemented by those natural gas companies, including areas of overlap with the electric utility's current or planned programs; and

(iii) an explanation of any issues that have hindered alignment or coordination between the electric utility's programs and those of other public utilities.

* * *

(5) A description of programs included in the portfolio plan. An electric utility shall describe each program included within its program portfolio plan with at least the following information:

(i) A program budget with projected expenditures, identifying program costs to be borne by the electric utility and collected from its customers, with customer class allocation, when costs will be shared among customer classes. The budget should identify projected costs by category such as customer incentives, marketing or customer education, allocated costs, research and development, evaluation, etc. . . .

(l) A list of measures offered in each program, including:

(i) assumed kwh savings from the measure and the source of that assumption;

(ii) assumed kw savings from the measure and the source of that assumption;

(iii) assumed measure life;

(iv) any projected natural gas savings from the measure;

(v) the projected rebate for the measure, if applicable;

(vi) the assumed incremental customer cost of the measure; and

(vii) the number of units of that measure projected to be rebated or provided through the program in the program year.

(m) The weighted measure life for each program and for the entire portfolio.

(6) The projected costs per kilowatt-hour saved by the programs (first year and lifetime).

(7) The projected cost-effectiveness for each program under the total resource cost test and the utility cost test.

(8) A description of the utility's efforts to coordinate its programs with any deployment of advanced metering infrastructure and leverage advanced metering capabilities to improve program effectiveness.

This is primarily information that the utilities have provided through discovery in prior portfolio plan litigation, along with information that is newly relevant as Ohio utilities deploy advanced metering infrastructure that can be coupled with energy efficiency or peak demand reduction programs to provide customer savings. All of this information would be extremely valuable in evaluating whether the proposed programs are well-designed and likely to produce cost-effective savings for customers. Requiring the utilities to include this information up front in their initial portfolio plan filings will save time for everyone involved and provide a reasonable basis for the “collaborative process” envisioned by the Commission.

III. CONCLUSION

The Conservation Groups hope to continue engaging productively in the Commission's energy efficiency planning process. We therefore seek the above modifications to the Commission's energy efficiency rules to facilitate that involvement based on a robust set of data and information.

May 10, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Second Application for Rehearing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on May 10, 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Madeline Fleisher
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Summary: Text Second Application for Rehearing electronically filed by Mr. Robert Dove on behalf of Natural Resources Defense Council and Ohio Environmental Council and Environmental Defense Fund and Environmental Law and Policy Center