

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison )	
Company, The Cleveland Electric Illuminating )	PUCO Case Nos. 12-2190-EL-POR
Company, and The Toledo Edison Company )	12-2191-EL-POR
for Approval of Their Energy Efficiency and )	12-2192-EL-POR
Peak Demand Reduction Program Plans )	
for 2013 Through 2015 )	

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**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA  
TO THE APPLICATION FOR REHEARING FILED BY THE  
OHIO ENVIRONMENTAL LAW & POLICY CENTER,  
OHIO ENVIRONMENTAL COUNCIL AND  
NATURAL RESOURCES DEFENSE COUNCIL**

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**MAY 20, 2019**

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**I. ARGUMENT**

The Environmental Law & Policy Center, Ohio Environmental Council, and Natural Resources Defense Council (collectively, “Environmental Advocates”) seek rehearing of the Public Utilities Commission of Ohio’s (“Commission”) Fifth Entry on Rehearing. The Environmental Advocates advance the claim that the Commission must exclude from the energy efficiency and peak demand reduction (“EE/PDR”) compliance calculation savings actually achieved by customers electing to opt-out of the EE/PDR requirements under the provisions of SB 310. Because the Commission correctly concluded in the Fifth Entry on

Rehearing that these savings should continue to be counted, the Commission should deny the application for rehearing of the Environmental Advocates.<sup>1</sup>

The calculation of the EE/PDR savings at issue is specified in statute. R.C. 4928.662 requires that the Commission count all EE/PDR savings already approved by the Commission (e.g. all savings committed under the mercantile customer application process and approved under the automatic approval process). A SB 310 opt-out customer's savings that have already been committed and approved by the Commission "shall," as a matter of law, continue to be counted for the "purpose of measuring and determining compliance" with the EE/PDR mandates. Simply stated, the General Assembly gave the Commission no discretion to exclude from the numerator of the compliance calculation EE/PDR savings committed by SB 310 opt-out customers and which have already been approved by the Commission.

The timing of the enactment of R.C. 4928.662 further undercuts the Environmental Advocates' argument. The Environmental Advocates assert that a customer's EE/PDR savings should be removed from the numerator because SB 310 requires the removal of a SB 310 opt-out customer's usage from the compliance baseline (denominator of calculation).<sup>2</sup> But, R.C. 4928.662 prohibits the Commission from excluding EE/PDR savings already approved from the numerator of the compliance calculation. The Commission must give full effect to the law; it cannot ignore this section based on the policy goals desired by the Environmental Advocates.

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<sup>1</sup> Fifth Entry on Rehearing at 5. The Commission noted that to do otherwise would exclude cost-effective savings, some of which were already incentivized, and was not in line with its increasing concern for the costs of compliance with the EE/PDR mandates. *Id.*

<sup>2</sup> See Environmental Advocates Application for Rehearing at 1.

Furthermore, the law has always required an electric distribution utility (“EDU”) to include in the numerator of the EE/PDR compliance calculation savings achieved outside of the portfolio plans. Specifically, R.C. 4928.66(A)(2)(c) provides that compliance with the EE/PDR mandates:

shall be measured by including the effects of all demand-response programs for mercantile customers of the subject electric distribution utility, all waste energy recovery systems and all combined heat and power systems, and all such mercantile customer-sited energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs, adjusted upward by the appropriate loss factors.<sup>3</sup>

SB 310 did not alter this provision.

The law is clear as to what must be counted with respect to the EE/PDR savings achieved by SB 310 opt-out customers. The Commission shall continue to count all EE/PDR savings already committed and approved.<sup>4</sup> Moreover, counting EE/PDR savings achieved outside of portfolio plans has been required since the creation of the EE/PDR mandates in 2008. The Environmental Advocates’ position is incompatible with the law and should be rejected.

## **II. CONCLUSION**

The Environmental Advocates ask that the Commission exclude EE/PDR savings committed by SB 310 opt-out customers from counting towards compliance with the EE/PDR mandates. Their argument is in direct conflict with R.C. 4928.662 and R.C. 4928.66(A)(2)(c). Moreover, their position would needlessly increase the costs to

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<sup>3</sup> Counting the EE/PDR savings of mercantile customers has existed since 2008; the language regarding waste energy recovery and combined heat and power was added in 2012.

<sup>4</sup> R.C. 4928.662.

comply with the EE/PDR mandates. Their application for rehearing seeks an unlawful and unreasonable result and should be denied.

Respectfully submitted,

/s/ Matthew R. Pritchard

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## **CERTIFICATE OF SERVICE**

This pleading was filed with the Docketing Division on May 20, 2019. In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

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Summary: Memorandum Contra of IEU-Ohio to Application for Rehearing electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio