

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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 Portfolio Plans for 2013 through 2015.

**Case No. 12-2190-EL-POR
12-2191-EL-POR
12-2192-EL-POR**

**MEMORANDUM CONTRA OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND
THE TOLEDO EDISON COMPANY TO SECOND APPLICATION FOR
REHEARING THE ENVIRONMENTAL LAW & POLICY CENTER, OHIO
ENVIRONMENTAL COUNCIL, AND NATURAL RESOURCES DEFENSE
COUNCIL**

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INTRODUCTION

Ohio Edison Company (“Ohio Edison”), The Cleveland Electric Illuminating Company (“CEI”), and The Toledo Edison Company (“Toledo Edison”) (collectively, the “Companies”), file this Memorandum Contra the Second Application for Rehearing filed by the Environmental Law & Policy Center, Natural Resources Defense Council, and Ohio Environmental Council (collectively “Environmental Advocates”). Environmental Advocates challenge the Commission’s April 20, 2019 Fifth Entry on Rehearing (“Fifth Entry”), which allowed the Companies to count prospective savings of opt-out customers toward their compliance with the energy efficiency benchmarks is reasonable and lawful. For the reasons set forth herein, the Commission should deny the Environmental Advocates’ Application for Rehearing.

ARGUMENT

I. The Commission acted reasonably and lawfully when it held that the Companies may count prospective savings of opt-out customers toward compliance with energy efficiency mandates.

In its Fifth Entry the Commission granted the Companies’ Application for Rehearing to allow them to count prospective savings of opt-out customers toward compliance with the energy efficiency benchmarks.¹ Environmental Advocates argue that this will harm customers by reducing the Companies’ compliance requirements, causing the Companies to forego efforts to procure even more energy efficiency savings.² Environmental Advocates raised the same issue prior to the Fifth Entry. The Commission has thoroughly considered the issue. While Environmental Advocates present their

¹ Fifth Entry on Rehearing at para. 14.

² Second Application for Rehearing, p. 2-3.

arguments differently,³ with phrases such as “double-whammy” and irrelevant analogies about customers moving out of the Companies’ service territories, they raise nothing new for the Commission’s consideration. Therefore, Environmental Advocates’ Application for Rehearing should be denied.

The Commission’s Fifth Entry is reasonable and lawful for all of the reasons stated therein. The Commission correctly concluded that customers have already paid for the energy savings achieved by opt-out customers, and should not have to pay for utilities’ additional efforts to make up for exclusion of opt-out customers’ energy savings.⁴ The Commission also correctly noted that its decision is consistent with its recent rejection of a proposed rule that would have excluded opt-out customer energy savings from counting toward compliance.⁵

³ Memorandum Contra of Environmental Law & Policy Center and Sierra Club, filed January 2, 2015, page 3 (ELPC and Sierra Club also argued that the ambiguity of silence in the statute about implementation represents a gap reasonably filled by the Commission).

⁴ Fifth Entry on Rehearing at para. 14.

⁵ *Id.* (citing *In re the Commission's Review of its Rules Jbr Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code*, Case No. 12-2156-EL-ORD, et al., Finding and Order (Dec. 19, 2018)). Environmental Advocates did not challenge the Commission’s rejection of the proposed rule.

CONCLUSION

For all of the foregoing reasons, the Commission should deny Environmental Advocates' Second Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company has been filed with the Commission's Docket Information System this 20th day of May and is available for all interested parties.

/s/ Robert M. Endris
*One of the Attorneys for Ohio Edison
Company, The Cleveland Electric
Illuminating Company and The Toledo
Edison Company*

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Summary: Memorandum Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Second Application for Rehearing of Environmental Advocates electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company