**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| In the Matter of the Commission’s Investigation of the Implementation of the Federal Infrastructure and Jobs Act. | )  )  ) | Case No. 22-755-AU-COI |

**APPLICATION FOR REHEARING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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April 21, 2023

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The PUCO’s Entry[[1]](#footnote-3) modifying the Grid Innovation Program application process fails to ensure transparency, harming consumers. The PUCO declined to decide whether applicants for Grid Innovation Program grants could file applications under seal.[[2]](#footnote-4) The answer should be “no.” Applicants should be required to file materials publicly. If applications contain trade secrets, applicants can request a protective order.

Accordingly, under R.C. 4903.10, OCC applies for rehearing of the March 22, 2023 Entry, which was unlawful in the following respects:

ASSIGNMENT OF ERROR NO. 1: The PUCO erred by failing to require Grid Innovation Program partners to file applications publicly, in violation of R.C. 4901.12.

The PUCO should grant rehearing and abrogate or modify its March 22, 2023 Entry and Order to prevent Grid Innovation Program applications from being filed under seal.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

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**TABLE OF CONTENTS**

**PAGE**

[I. INTRODUCTION 1](#_Toc132293476)

[II. MATTER FOR CONSIDERATION 2](#_Toc132293477)

[ASSIGNMENT OF ERROR NO. 1: The PUCO erred by failing to require Grid Innovation Program partners to file applications publicly, in violation of R.C. 4901.12. 2](#_Toc132293478)

[III. CONCLUSION 3](#_Toc132293479)

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# INTRODUCTION

The Infrastructure Investment and Jobs Act (the “Act”) contains $1.2 trillion in total funding for various infrastructure, including roads and bridges, broadband, drinking water resources, airports, and electrical vehicles.[[3]](#footnote-5) The Council of State Governments analysis shows that there is $73 billion in funding allocated for power grids and utilities improvements.Part of the Act is the Grid Innovation Program.[[4]](#footnote-6) As described by the PUCO, “objectives and areas of interest [of the Program] include reliability and resilience, advanced technologies, innovative partnerships, transmission and distribution modeling and planning, interconnection queues, resource adequacy, and demonstrations that involve a strategy for wide-scale adoption.”[[5]](#footnote-7)

On January 6, 2023, the PUCO issued an entry requesting comments on the Grid Innovation Program grant application process, specifically its draft program narrative. Interested parties provided a variety of proposals, including that the PUCO should allow potential Grid Innovation Program partners to file their applications under seal.[[6]](#footnote-8) The PUCO issued an entry revising the draft program narrative on March 22, 2023. On the topic of sealed applications, the PUCO stated it is “still considering how to structure the application process for this program.”[[7]](#footnote-9)

Accordingly, OCC objects to the PUCO’s Entry. The question regarding whether Grid Innovation Program partners can file their applications under seal is too important to be left unanswered. And the answer should be that the PUCO should require applications to be filed publicly. If proposals contain trade secrets, applicants can request a protective order.

The PUCO should grant OCC’s Application for Rehearing as further explained below to preserve transparency in the application process.

# MATTER FOR CONSIDERATION

## ASSIGNMENT OF ERROR NO. 1: The PUCO erred by failing to require Grid Innovation Program partners to file applications publicly, in violation of R.C. 4901.12.

Requests for public funds should be available to the public. Public money should not be awarded under a shroud of secrecy. The public should know how public funds will be used. The General Assembly acknowledged this in R.C. 4901.12, which provides that “all proceedings of the public utilities commission and all documents and records in its possession are public records.” Allowing utilities to file sealed applications would keep PUCO records from the public, in violation of R.C. 4901.12.

Further, requiring Grid Innovation Program partners to file applications publicly will help make certain that funding is ultimately used for the purpose it was intended. The Act allows a unique opportunity for consumers to receive more reliable electric service. To hold utilities accountable for providing reliable service, the PUCO must implement transparent processes for requesting grants and tracking how the public funds are spent.

If proposals include trade secrets, applicants can seek a protective order.[[8]](#footnote-10) This will protect utilities from sharing information that could competitively disadvantage them, while allowing the public to evaluate how applicants intend to spend public funds. But keeping applications entirely secret undermines transparency and accountability. OCC asks the PUCO to require publicly filed applications, to protect consumers.

# CONCLUSION

The Grid Innovation Program has the potential to benefit consumers. But planning, monitoring, transparency and accountability are critical to the program’s long-term success. To further these objectives, the PUCO should require applicants to file proposals publicly.

Respectfully submitted,

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*/s/ William J. Michael*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 21st day of April 2023.

*/s/ William J. Michael*

William J. Michael

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

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1. Entry and Order (March 22, 2023). [↑](#footnote-ref-3)
2. Entry at ¶15. [↑](#footnote-ref-4)
3. Pub. L. No. 117-58. [↑](#footnote-ref-5)
4. *See id.* [↑](#footnote-ref-6)
5. Entry (November 28, 2022) at 2. [↑](#footnote-ref-7)
6. Comments of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company (“FirstEnergy Comments”) (February 9, 2023) at 3. [↑](#footnote-ref-8)
7. Entry at ¶15. [↑](#footnote-ref-9)
8. *See* FirstEnergy Comments at 3. [↑](#footnote-ref-10)