Before

The Public Utilities Commission of Ohio

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| In the Matter of the Amendment of Chapters 4901:1-10 and 4901:1-21, Ohio Administrative Code, Regarding Electric Companies and Competitive Retail Electric Service, to Implement 2014 Sub. S.B. No. 310. | )  )  )  )  )  ) | Case No. 14-1411-EL-ORD |

**Industrial Energy Users-Ohio’s Memorandum Contra**

**to the Environmental Law & Policy Center’s**

**Second Application for Rehearing**

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**to the Environmental Law & Policy Center’s**

**Second Application for Rehearing**

On July 31, 2015, the Environmental Law & Policy Center (“ELPC”) filed a Second Application for Rehearing arguing that the Public Utilities Commission of Ohio (“Commission”) acted unlawfully and unreasonably by directing that the cost of interruptible credits counted by electric distribution utilities (“EDU”) be included in the individual customer cost disclosures required by R.C. 4928.65. ELPC advances two arguments in support of its Second Application for Rehearing. First, ELPC argues that the costs of interruptible programs should be excluded from the mandate cost disclosures because the interruptible programs result in over-compliance with the statutory benchmarks. Second, ELPC argues that excluding the cost of interruptible credits for the individual mandate cost disclosures will be inconsistent with the Commission’s recent decision in another case.

ELPC’s Second Application for Rehearing advances a position that conflicts with its support to incent EDUs to over-comply with the energy efficiency (“EE”) and peak demand reduction (“PDR”) (collectively, “EE/PDR”) portfolio mandates.[[1]](#footnote-1) Now that the EDUs have over-complied with the portfolio mandates and customers are funding the additional portfolio program spending and the EDUs’ incentive payments, ELPC argues that these compliance costs should not be disclosed to customers as they were not necessary for the EDUs to achieve compliance with the mandates. These over-compliance costs that ELPC has supported, however, are costs required to be disclosed to customers. Accordingly, ELPC’s Second Application for Rehearing is without merit, and the Commission should deny ELPC’s Second Application for Rehearing.

# Background

R.C. 4928.65 requires the Commission to adopt rules that result in the disclosure, on individual customers’ bills, of the amounts the customer is paying for the EE mandate, the PDR mandate, and the alternative energy mandate. In the proposed rules, the Commission proposed to calculate an individual customer’s cost of compliance for the EE and PDR mandates by multiplying the customer’s monthly usage against its EDU’s applicable EE/PDR rider.[[2]](#footnote-2) Eighty percent of that result would be disclosed as the individual customer’s cost of complying with the EE mandate, and twenty percent would be disclosed as the individual’s customer cost of complying with the PDR mandate.[[3]](#footnote-3)

In its Finding and Order, the Commission clarified “that the costs of compliance to be disclosed must be an accurate reflection of the costs actually being borne by customers related to the EE and PDR requirements.”[[4]](#footnote-4) The Commission found that shared savings were a cost of compliance and must be included in the disclosures.[[5]](#footnote-5) However, the Commission concluded that lost distribution revenue and the costs of EDUs’ interruptible programs were not costs related to EDUs’ compliance with the EE and PDR mandates.[[6]](#footnote-6) The Commission concluded that it would work with EDUs in upcoming electric security plan (“ESP”) cases to remove these items from their EE/PDR riders.[[7]](#footnote-7)

In *AEP-Ohio’s ESP III Case*,[[8]](#footnote-8) parties requested the Commission to transfer the collection of AEP-Ohio’s interruptible program costs from its EE/PDR rider to its Economic Development Cost Recovery Rider (“EDR”). However, in that case, the Commission concluded that AEP-Ohio’s interruptible program “reduces AEP Ohio’s peak demand and encourages energy efficiency and, therefore, it is appropriate that the costs of the program are recovered through the EE/PDR rider.”[[9]](#footnote-9)

Subsequent to its decision in *AEP-Ohio’s ESP III Case*, the Commission issued an Entry on Rehearing in this proceeding.[[10]](#footnote-10) The Commission denied the Ohio Manufacturers’ Association Energy Group’s (“OMAEG”) request to exclude shared savings costs from the mandate cost disclosures.[[11]](#footnote-11) The Commission also reversed course from its December 17, 2014 Finding and Order and, consistent with its decision in *AEP-Ohio’s ESP III Case*, concluded that interruptible costs should be included in the mandate cost disclosures.[[12]](#footnote-12) In support, the Commission found that “the primary benefit to customers from the interruptible programs is the reduction in peak demand.”[[13]](#footnote-13)

ELPC seeks rehearing of the Commission’s decision to include the costs of the EDUs’ interruptible programs in the mandate cost disclosures.

# argument

## The Commission should again reject ELPC’s argument that costs associated with an EDU over-complying with the EE and PDR mandates should be excluded from the mandate cost disclosures

ELPC, along with several other entities referred to herein as the “Environmental Advocates,” submitted Initial Comments requesting that the Commission exclude from the individual customer mandate cost disclosures “any program costs that the utility does not use for compliance with R.C. 4928.66.” ELPC argued that this included shared-savings as well as “costs relating to any EE savings and PDR that represent over-compliance.”[[14]](#footnote-14) In its Finding and Order, the Commission declined to adopt ELPC’s recommendation, holding that “the costs of compliance to be disclosed must be an accurate reflection of the costs actually being borne by customers related to the EE and PDR requirements.”[[15]](#footnote-15) The Commission further held that it was appropriate to disclose costs in the year the cost was borne by customers, even if the costs were associated with over-compliance.[[16]](#footnote-16)

ELPC has sought rehearing of the Commission’s Entry on Rehearing regarding the inclusion of the cost of interruptible programs in the individual cost disclosures. Just as it did in its Initial Comments, ELPC again argues that interruptible credits should not be included in the disclosures because they relate to EDUs’ over-compliance with the EE and PDR mandates.[[17]](#footnote-17) In support of its argument, ELPC claims that at least two of the four EDUs in Ohio did not need to rely on interruptible programs to meet the statutory benchmarks.[[18]](#footnote-18) ELPC’s argument incorrectly assumes that the Commission could identify which megawatts of EE and PDR savings were utilized towards an EDU’s compliance benchmark and which megawatts of EE and PDR savings from specific programs were recorded as banked savings as a basis for the Commission concluding that the interruptible programs were unrelated to compliance with the mandates.

Furthermore, and more importantly, the Commission has already held that whether a program produced megawatts of EE or PDR savings utilized for a specific year’s compliance or banked for future years’ compliance was irrelevant.[[19]](#footnote-19) The savings were available for an EDU’s compliance with the statutory mandates. Therefore, the Commission found that it was appropriate to disclose to customers the cost of programs generating the EE and PDR savings contemporaneously with when the costs were collected from customers.[[20]](#footnote-20)

Accordingly, the Commission should affirm its findings in its Entry on Rehearing and reject ELPC’s argument that costs of the EDUs’ interruptible programs should be excluded from the mandate cost disclosures.

## Adopting ELPC’s position would be inconsistent with the Commission’s finding in *AEP-Ohio’s ESP III Case* that interruptible programs reduce peak demand, encourage energy efficiency, and should therefore be included as an actual cost of AEP-Ohio’s EE/PDR compliance to be recovered through AEP-Ohio’s EE/PDR rider

In its Entry on Rehearing, the Commission concluded that the inclusion of the costs of interruptible programs in the mandate cost disclosures would be consistent with its recent decision in the *AEP-Ohio ESP III Case*.[[21]](#footnote-21) ELPC, however, argues in its Second Application for Rehearing that a ruling in its favor would not create any inconsistencies between the Commission’s decisions in this case and *AEP-Ohio’s ESP III Case* because *AEP-Ohio’s ESP III Case* was about an entirely different issue than that in this case.[[22]](#footnote-22) Specifically, ELPC claims that the *AEP-Ohio ESP III Case* was related to concerns raised by AEP-Ohio regarding a situation where a large amount of customers opt out of the EE/PDR rider, leaving few customers left to pay AEP-Ohio’s cost to comply with the mandates.[[23]](#footnote-23) ELPC’s argument is incorrect.

After considering arguments by ELPC and others in *AEP-Ohio’s ESP III Case*, the Commission concluded that AEP-Ohio’s interruptible program was in fact related to AEP-Ohio’s EE/PDR compliance costs as the interruptible program “reduces AEP Ohio’s peak demand and encourages energy efficiency.”[[24]](#footnote-24) Thus, the Commission directed AEP-Ohio to continue recovering this actual compliance cost in its EE/PDR rider.[[25]](#footnote-25)

If the Commission were to adopt ELPC’s argument, the Commission would be finding that the costs of the EDUs’ interruptible programs were not related to compliance with the EE and PDR mandates. As discussed above, however, the Commission explicitly found that AEP-Ohio’s interruptible program was related to reducing AEP‑Ohio’s peak demand and promotes energy efficiency. Adopting ELPC’s position, therefore, would result in an inconsistent finding regarding whether EDUs’ interruptible programs were related to compliance with EE/PDR mandates.

Accordingly, the Commission should deny ELPC’s Second Application for Rehearing.

# conclusion

The Commission correctly concluded in this case and the *AEP-Ohio ESP III Case* that an EDU’s interruptible program, which reduces the EDU’s peak demand, is related to an EDU’s compliance with Ohio’s EE/PDR mandates. The Commission further correctly determined that R.C. 4928.65 requires an EDU’s actual costs of compliance with the EE/PDR mandates to be disclosed to customers and therefore required the EDUs to calculate the disclosures without exclusion of the interruptible program costs. Because the Commission correctly determined that the interruptible program costs must be included in the mandate cost disclosures, the Commission should deny ELPC’s Second Application for Rehearing that seeks to exclude the interruptible program costs from the mandate cost disclosures.

Respectfully submitted,

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**Certificate Of Service**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e‑filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Industrial Energy Users-Ohio’s Memorandum Contra to the Environmental Law & Policy Center’s Second Application for Rehearing* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 10th day of August 2015, *via* electronic transmission.

*/s/ Matthew R. Pritchard*

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1. *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 Reduction Portfolio Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, *et al.*, Initial Brief of ELPC and Ohio Environmental Council at 35-38 (Nov. 20, 2012). [↑](#footnote-ref-1)
2. Entry, Attachment A at 2-3 (Oct. 15, 2014). [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. Finding and Order at 19 (Dec. 17, 2014). [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. *Id.* at 20. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al.* (“*AEP-Ohio ESP III Case*”). [↑](#footnote-ref-8)
9. *AEP‑Ohio ESP III Case,* Second Entry on Rehearing at 12 (May 28, 2015). [↑](#footnote-ref-9)
10. Second Entry on Rehearing (July 1, 2015). [↑](#footnote-ref-10)
11. *Id.* at 8-9. [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *Id.* at 9. [↑](#footnote-ref-13)
14. Initial Comments of Environmental Advocates at 8 (Nov. 5, 2014); *see also* Finding and Order at 18 (Dec. 17, 2014). [↑](#footnote-ref-14)
15. Finding and Order at 19 (Dec. 17, 2014). [↑](#footnote-ref-15)
16. *Id.* (“The Commission finds that, if an EDU over complies with the statutory EE and PDR requirements as a result of budgeted and approved EE and PDR programs, causing a shared savings expense, *it is reasonable to count* that shared savings expense *as part of the cost of compliance in the year it is incurred*.”) emphasis added. [↑](#footnote-ref-16)
17. Second Application for Rehearing of ELPC at 3-6 (July 31, 2015). [↑](#footnote-ref-17)
18. *Id.* at 4-6. [↑](#footnote-ref-18)
19. Finding and Order at 19-20 (Dec. 17, 2014). [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. Second Entry on Rehearing at 9 (July 1, 2015). [↑](#footnote-ref-21)
22. Second Application for Rehearing of ELPC at 6-7 (July 31, 2015). [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. *AEP-Ohio ESP III Case*, Second Entry on Rehearing at 12 (May 28, 2015). In the *AEP-Ohio ESP III Case*, ELPC argued that AEP-Ohio’s interruptible program “is an economic development measure and, therefore, the Commission should require AEP Ohio to collect [the interruptible program costs] through the EDR.” *Id.* at 11. [↑](#footnote-ref-24)
25. *Id.* at 12. [↑](#footnote-ref-25)