

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING
OF THE ENVIRONMENTAL LAW & POLICY CENTER
AND THE OHIO ENVIRONMENTAL COUNCIL**

Pursuant to Ohio Revised Code § 4903.10 and Ohio Administrative Code Chapter 4901:1-35, the Environmental Law and Policy Center and the Ohio Environmental Council hereby apply for rehearing of the Opinion and Order issued in the above-captioned cases on March 20, 2013 ("Order"). As explained in more detail in the attached Memorandum in Support, the Order in this case is unreasonable and unlawful on the following grounds:

- A. Improperly allows Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or "Companies") to rely on energy efficiency kits beyond those distributed in schools.
- B. Improperly allows the Companies to discount Standard T-8 linear fluorescent lighting.
- C. The Order improperly allows the Companies use the EISA standard as a baseline for determining savings rather than EISA-compliant CFLs.

For the foregoing reasons, as demonstrated in the Memorandum in Support of this Application, attached hereto, the Commission should grant this Application for Rehearing.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING
OF THE ENVIRONMENTAL LAW & POLICY CENTER
AND THE OHIO ENVIRONMENTAL COUNCIL**

I. INTRODUCTION

The Commission erred in approving portions of the applications of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) for approval of their respective updated Energy Efficiency (“EE”) and Peak Demand Reduction (“PDR”) Plans (the “Proposed Plans”). Specifically, the Commission should not allow FirstEnergy to rely on energy efficiency kits beyond those distributed in schools, discount Standard T-8 linear fluorescent lighting without requiring FirstEnergy to monitor the market for T-12s, or count savings from all EISA-compliant light bulbs rather than using the wattage of EISA-compliant CFLs as the baseline for determining savings. These programs and methods for counting savings are not a good use of ratepayer money and do not generate savings that meaningfully benefit customers. The Environmental Law and Policy Center (“ELPC”) and the Ohio Environmental Council (“OEC”) respectfully request rehearing of the March 20, 2013 Opinion and Order (“Order”) in the above-captioned cases.

II. ARGUMENT

A. The Order improperly allows the Companies to rely on energy efficiency kits beyond those distributed in schools.

The Companies propose energy efficiency kits for both residential and commercial customers to achieve around 36% of total aggregate residential savings and 32% of small mercantile savings in the plan period.¹ An energy efficiency kit is a package of items the Company would send to customers, upon request, free of charge. A typical kit includes a number of CFLs, furnace whistles, faucet aerators, LED nightlights, smart strips, and shower heads. With the exception of those provided in schools, the energy efficiency kits circumvent normal market channels and provide items with very low installation rates, and the Companies have not demonstrated that customers would not purchase the items if FirstEnergy did not provide them for free.

In concluding in the Order that “the evidence in this case does not reflect an undue reliance by the Companies upon energy efficiency kits,” the Commission relied on Staff witness Scheck’s testimony and the fact that he “did not agree that the Companies’ proposed use of kits was excessive.”² However, Staff witness Scheck did not endorse FirstEnergy’s use of the kits at all. In fact, upon questioning by Attorney Examiner Price as to whether “FirstEnergy relies to an excessive extent on kits,” Scheck stated: “I don’t really have a response either way. I’m not sure what the performance of the kits will do.”³

Other witnesses in this case did express an opinion on the kits, and they testified to the kits’ ineffectiveness and FirstEnergy’s overreliance on them for savings. ELPC/OEC witness Crandall explained that FirstEnergy failed to “sufficiently justif[y] the magnitude of kits it is

¹ Sierra Club Exhibit 2, Direct Testimony of Glenn Reed at 5, lines 17-18.

² Case No. 12-2190-EL-POR et al., Order and Opinion, at page 25 (March 20, 2013).

³ Tr. Vol. 4, at pages 831-32.

proposing in terms of benefits/costs compared to other programs.”⁴ Similarly, NRDC witness Reed testified that, due to the fact that most consumers are already aware of and in fact use CFLs, the kits simply undermine the market channels already in place for those customers to buy efficient products at retail.⁵ Put simply, by giving away the CFLs for free, FirstEnergy “reduces the amount of CFLs that a homeowner would then likely purchase at retail.”⁶ Also, the Ohio Consumers’ Counsel (“OCC”) recommended that “the efficiency kit budget be reduced, reallocated and redirected.”⁷ OCC agreed with ELPC/OEC and other environmental groups that “the dollars should be ‘redirected to develop a more robust retail market for efficient products, primarily through expanded retailer participation in upstream lighting incentives.’”⁸

The Companies’ own witness Miller testified that the actual installation rates for kit CFLs for FirstEnergy’s Pennsylvania utilities were only 70 percent three months after receipt of the kits,⁹ considerably less than the 0.86 installation rate proposed by the Companies in this case. FirstEnergy derives this installation rate from the Ohio Technical Reference Manual (“TRM”), which recommends a 0.86 installation rate for “CFLs *purchased* through retail channels.”¹⁰ It is reasonable to assume that the installation rate for CFLs received in a free energy efficiency kit, even if it is opt-in, would be significantly lower than those purchased by a consumer at retail.¹¹

As explained in the Initial Brief of ELPC/OEC, we do support FirstEnergy’s distribution of the school energy efficiency kits. The school kits, which make up about 17% of the total

⁴ ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 13, lines 13-14.

⁵ Tr. Vol. 3, at page 662-63 (October 24, 2012).

⁶ Tr. Vol. 3, at page 661, lines 17-21.

⁷ OCC Reply Brief, at page 20.

⁸ OCC Reply Brief, at page 20-21 (quoting Post-Hearing Brief of NRDC, Sierra Club, and Citizen Power at 29).

⁹ Tr. Vol. 6, at page 1072-73 (October 30, 2012).

¹⁰ Id. at 345, line 10 (emphasis added).

¹¹ Tr. Vol. 3, at pages 664-65 (October 24, 2012).

residential kits proposed by the Companies,¹² would be distributed in schools for children to take home as part of a school program that could include a “homework assignment [or] simple pledge form that the student takes home [and] has the family complete.”¹³ ELPC/OEC Witness Crandall noted that “[t]hese kits are likely to provide benefits due to the active participation by teachers and students and the high[er] installation rates that are expected to result” and should therefore be approved.¹⁴

ELPC/OEC respectfully request that the Commission reconsider its decision and disallow some portion of the proposed kits so that the Companies can reallocate the kit budget to other more successful programs promoted by the parties. At the very least, the Commission should require the Companies to use a 0.70 installation rate for CFLs in the kits, which is more consistent with the evidence in this case.

B. The Order improperly allows the Companies to discount Standard T-8 linear fluorescent lighting.¹⁵

ORC § 4928.66(a) requires that “energy efficiency programs achieve savings.” The operative word is “achieve.” The programs, in this case the discounts on Standard T-8 linear fluorescent lighting, must be the driver for customers to make a purchase they would not otherwise make, or to purchase a more efficient bulb or fixture than they would otherwise purchase. Thus, savings that would naturally occur regardless of the standards cannot count towards FirstEnergy’s goals. The Commission’s Order fails to meet this requirement by allowing the Companies to count savings from discounted Standard T-8s.

The Commission’s Order improperly allows FirstEnergy to provide incentives for

¹² See Appendix C-2 to the Companies’ Proposed Plans.

¹³ Tr. Vol. 3, at page 459, lines 16-19 (October 24, 2012).

¹⁴ ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 13, lines 9-11.

¹⁵ Case No. 12-2190-EL-POR et al., Order and Opinion, at page 28 (March 20, 2013).

Standard T-8 linear fluorescent bulbs and fixtures,¹⁶ despite the fact that as of July 14, 2012, EISA prohibits the manufacture of the Standard T-8 fixtures.¹⁷ Citing no evidence other than FirstEnergy Witness Miller's Rebuttal Testimony, the Commission finds that "the T-12 fixtures will likely remain in retail stock or customer inventory for a period of time."¹⁸ Yet Mr. Miller's testimony is merely conclusory. He cites no facts to support his claim that the T-12s will remain on the market and provides no timeline for exactly how long the bulbs will be available to customers. This is especially problematic given that the Companies' plans are in place through 2015, by which point more than 3 years will have passed since the last T-12 was manufactured. It is therefore likely that the supply of T-12s will dry up during the lifetime of the plans and Standard T-8s will become the least efficient option on the market. The Commission's Order does not require the Companies to stop incenting Standard T-8s when T-12s are no longer available. In fact, the Commission has not even required the Companies to track the market for T-12s to know whether or not they are available to customers. Given this market change, it is inappropriate for the Commission to allow FirstEnergy to provide discounts and rebates for Standard T-8s.

FirstEnergy has not provided any results from customer surveys demonstrating that there are a substantial number of customers who would only replace their T-12s with Standard T-8s or at what discount level they would change from Standard T-8s to High Performance T-8s. This distinction is critical because, as Sierra Club Witness Loiter testified, High Performance T-8s are 46% more efficient than the Standard T-8s.¹⁹ While the High Performance T-8 fixtures cost \$100

¹⁶ Case No. 12-2190-EL-POR et al., Order and Opinion, at page 28 (March 20, 2013).

¹⁷ Company Exhibit 21, Rebuttal Testimony of Edward C. Miller, at pages 11-12, lines 23-1.

¹⁸ Case No. 12-2190-EL-POR et al., Order and Opinion, at page 28 (March 20, 2013).

¹⁹ Sierra Club Exhibit 1, Direct Testimony of Jeffrey Loiter, at pages 12, line 11.

compared to the Standard T-8s' \$82 (a 22% difference),²⁰ Witness Miller testified that the fixtures have a 15 year lifespan,²¹ so the cost difference is negligible over the life of the measure. As Witness Crandall notes, FirstEnergy should not encourage customers to purchase less efficient equipment,²² which is what it will do by discounting Standard T-8s.

FirstEnergy would not be alone in eliminating discounts for Standard T-8s. As Witness Loiter notes, Duke Energy Ohio ("Duke") began eliminating incentives for Standard T-8s on July 15, 2012 in favor of encouraging customers to adopt High Performance T-8s.²³ Duke cites the Department of Energy's "strategy to encourage replacement of less-efficient lighting systems with highly efficient T8 and T5 fluorescent technologies" as the reason for phasing out discounts for Standard T-8s.²⁴ As Witness Crandall points out, in Illinois, Commonwealth Edison typically incentivizes only high performance or reduced wattage T-8s.²⁵

Given the changes in the market place and the lack of evidence that T-12s will remain on the market much longer, the Commission should order FirstEnergy to join Duke and Commonwealth Edison in discontinuing discounts for Standard T-8s. The FirstEnergy discounts should start with High Performance T-8s. If, however, the Commission is going to allow FirstEnergy to incent Standard T-8s, then it should require FirstEnergy to keep track of the availability of T-12s. Once T-12s become more difficult to find than Standard T-8s, the Commission should order FirstEnergy to discontinue discounts of Standard T-8s.

²⁰ Id., at pages 12, line 11.

²¹ Tr. Vol. 6, at page 1075, lines 1-5 (October 30, 2012).

²² ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 12, lines 4-5.

²³ Sierra Club Exhibit 1, Direct Testimony of Jeffrey Loiter, at pages 12-13, lines 16-2, citing <http://www.duke-energy.com/ohio-business/smart-saver/smart-saver-incentive-updates.asp>.

²⁴ Duke Energy Ohio, "Lighting incentives for standard T8s and T5s to end in Ohio," available at <http://www.duke-energy.com/ohio-business/smart-saver/smart-saver-incentive-updates.asp>.

²⁵ ELPC Exhibit 1, Direct Testimony of Geoffrey C. Crandall, at page 11, lines 19-23.

C. The Order improperly allows the Companies to use the EISA standard as a baseline for determining savings rather than EISA-compliant CFLs.

The Commission approved FirstEnergy’s proposal to use the EISA standard for screw-in light bulbs rather than the lower wattage from EISA-compliant CFLs as the baseline for determining savings.²⁶ The Commission’s use of this inflated baseline allows FirstEnergy to receive credit for savings they have not actually achieved, a violation of ORC § 4928.66(a).

EISA requires screw-in light bulbs to use fewer watts for a similar lumen output, progressively reducing the amount of allowable watts over the course of three years, from 2012-2014.²⁷

| Today's Bulbs | After the Standard | Standard Effective Date |
|---------------|--------------------|-------------------------|
| 100 watt | ≤ 72 watts | 01/01/12 |
| 75 watt | ≤ 53 watts | 01/01/12 |
| 60 watt | ≤ 43 watts | 01/01/12 |
| 40 watt | ≤ 29 watts | 01/01/12 |

Energy Independence and Security Act of 2007, US EPA Backgrounder - Spring 2011, http://www.energystar.gov/ia/products/lighting/cfls/downloads/EISA_Backgrounder_FINAL_4-11_EPA.pdf

While the standard allows for bulbs that use more watts than the CFL equivalent,²⁸ FirstEnergy Witness Miller, First Energy’s primary witness on this issue, acknowledged that First Energy does not know whether minimally EISA-compliant bulbs will be on the market.²⁹ Yet the Commission’s Order allows the Companies to count fictitious savings by prescribing a baseline based on the EISA standards. The issue here is whether or not customers replacing their expired

²⁶ Case No. 12-2190-EL-POR et al., Order and Opinion, at page 29 (March 20, 2013).

²⁷ H.R. 6 (110th), Section 321(a)(3), Energy Independence and Security Act of 2007 (enacted), hereinafter “EISA”.

²⁸ For example, a 43 watt EISA-compliant bulb that is the lumen-equivalent of a 60 watt incandescent, is 3-times less efficient than the 60 watt lumen equivalent CFL. See Company Exhibit 21, Rebuttal Testimony of Edward C. Miller, at page 4, lines 8-9; EISA, at Section 321(a)(3)(A)(ii)(I)(cc).

²⁹ Tr. Vol. 6, at pages 1069-70 (October 30, 2012).

incandescent bulbs will purchase an EISA compliant CFL regardless of FirstEnergy's incentives. If the CFL is the dominant product on the market, then FirstEnergy cannot claim savings based on a less efficient standard.

To justify its decision, the Commission relies on language from Case No. 09-512-GE-UNC, in which the Commission found that "the baseline should be set at the higher of federal or state minimum efficiency standards".³⁰ While we do not dispute the usefulness of the EISA standard in most cases, here it directly conflicts with the requirement of ORC § 4928.66(a) that "energy efficiency programs achieve savings." Regardless of what the EISA standards allow to be manufactured, the fact remains that FirstEnergy has testified that it is unaware of any EISA-compliant alternatives in the market. Customers, therefore, have no choice but to purchase CFLs when they choose to replace their existing bulbs. Hence, the only savings realized by FirstEnergy programs comes from the purchase of bulbs that exceed the efficiency of CFLs, and the baseline should be the CFL wattage.

III. CONCLUSION

For the reasons explained above, ELPC/OEC respectfully request rehearing of the Commission's March 20, 2013 Order. The Order is unreasonable and unlawful in that it improperly allows the Companies to over-rely on energy efficiency kits beyond those distributed in schools, improperly allows the Companies to discount Standard T-8 linear fluorescent lighting, and improperly allows the Companies use the EISA standard as a baseline for determining savings rather than EISA-compliant CFLs. The Commission should grant this Application for Rehearing and only approve FirstEnergy's Proposed Plans subject to the modifications explained above.

³⁰ Case No. 09-512-GE-UNC, Opinion and Order, at page 9 (October 15, 2009).

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Application for Rehearing and Memorandum in Support*, submitted on behalf of the Environmental Law & Policy Center and Ohio Environmental Council, was served by electronic mail upon the following Parties of Record this 19th day of April, 2013.

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Commission of Ohio Docketing Information System on

4/19/2013 4:58:32 PM

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Case No(s). 12-2190-EL-POR, 12-2191-EL-POR, 12-2192-EL-POR

Summary: Application for Rehearing and Memorandum in Support of the Environmental Law & Policy Center and Ohio Environmental Council