

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Cleveland Electric Illuminating Company,)
Ohio Edison Company, and The Toledo) Case No. 12-2190-EL-POR
Edison Company for Approval of Their) Case No. 12-2191-EL-POR
Energy Efficiency and Peak Demand) Case No. 12-2192-EL-POR
Reduction Program Plans for 2013 through)
2015.)

THIRD ENTRY ON REHEARING

The Commission finds:

- (1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) On July 31, 2012, FirstEnergy filed an application for approval of the Companies' energy efficiency and peak demand reduction program portfolio plans for 2013 through 2015 pursuant to Section 4928.66, Revised Code, Rules 4901:1-39-04, 4901:1-39-05, 4901:1-39-06, and 4901:1-39-07, Ohio Administrative Code (O.A.C.), and the Commission's February 29, 2012 entry in Case No. 12-814-EL-UNC.
- (3) On March 20, 2013, the Commission issued an Opinion and Order approving the portfolio plans with modifications.
- (4) Section 4903.10, Revised Code, indicates that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (5) On April 19, 2013, FirstEnergy, Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and Nucor Steel Marion, Inc. (Nucor), filed applications for rehearing. In addition, a joint application for rehearing was filed by the Environmental Law and Policy Center (ELPC) and Ohio Environmental Council (OEC). On May 15, 2013, the

Commission granted the applications for rehearing for further consideration of the matters specified in the applications for rehearing.

- (6) Subsequently, by Entry on Rehearing issued on July 17, 2013 (Second Entry on Rehearing), the Commission denied the application for rehearing filed by OCC and the joint application for rehearing filed by ELPC and OEC and granted, in part, and denied, in part, the applications for rehearing filed by FirstEnergy, IEU-Ohio, and Nucor.
- (7) On August 16, 2013, EMC Development Company, Inc. (EMC), filed a motion for leave to file an application for rehearing, or in the alternative, motion for clarification as well as an application for rehearing and/or motion for clarification.
- (8) On August 26, 2013, the Companies filed a memorandum contra the application for rehearing submitted by EMC. ELPC also filed, on August 26, 2013, a memorandum contra the motions and application for rehearing filed by EMC.
- (9) In its motion for leave to file an application for rehearing, EMC notes that it is in the business of aggregating energy efficiency projects in order to qualify those projects to bid into PJM capacity auctions. EMC claims that it did not enter an appearance in this proceeding prior to the issuance of the Second Entry on Rehearing because its interests were not affected by the proceeding until the issuance of the Second Entry on Rehearing. Specifically, EMC claims that the Second Entry on Rehearing imposed restrictions on mercantile customers who participate in the utilities' energy efficiency programs by requiring such customers to transfer ownership of the energy efficiency attributes, created through participation in the programs, to the Companies to be bid into the PJM capacity auctions. EMC reasons that, since the Commission's restrictions occur only in the Second Entry on Rehearing, just cause exists to allow EMC leave to file an application for rehearing. EMC further argues that the Second Entry on Rehearing may preclude the opportunity for competitive providers to operate successfully in the Ohio marketplace.

- (10) The Companies respond that EMC's application for rehearing is beyond the scope of the Second Entry on Rehearing. The Companies claim that the Commission determined in FirstEnergy's most recent electric security plan proceeding that mercantile customers who participate in the Companies' energy efficiency programs must transfer ownership of the energy efficiency attributes to the Companies. *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012). The Companies argue that the Commission affirmed this ruling in the Opinion and Order issued in this proceeding. Opinion and Order (March 20, 2013). Therefore, FirstEnergy concludes that EMC's opportunity to seek rehearing on this issue ended on April 19, 2013.
- (11) ELPC argues that EMC has not demonstrated just cause for its failure to enter an appearance in this case. ELPC claims that EMC cannot satisfy the requirements of Section 4903.10, Revised Code, for leave to file an application for rehearing. ELPC argues that EMC cannot demonstrate just cause because the issue of ownership of the energy efficiency attributes was a fundamental issue in this case from its inception. In support of its claim, ELPC cites the Companies' application and testimony filed with the application on this issue (Co. Ex. 1 at 17). ELPC also notes that the Companies published notice of the hearing.

Further, ELPC argues that the Commission adequately considered EMC's interests in this proceeding because EMC's interests are entirely derivative of mercantile customers and parties representing mercantile customers participated in the proceeding, including parties such as IEU-Ohio, Ohio Manufacturers' Association, Ohio Energy Group, and Advanced Energy Economy Ohio.

Moreover, ELPC claims that energy efficiency attributes created through the use of the ratepayer funds are owned by the utility and must be prudently managed on behalf of customers. ELPC disputes EMC's claim that the ruling in the Second Entry on Rehearing was anti-competitive because any customer who undertakes an energy efficiency project without receiving money from the utility, money funded by ratepayers, retains ownership of its energy efficiency attributes.

- (12) The Commission finds that EMC's motion for leave to file an application for rehearing should be denied. The issue of ownership of the energy efficiency attributes has been at issue in this proceeding since the application was filed on July 31, 2012, and was addressed in the Opinion and Order issued on March 20, 2013. EMC had ample notice of the issues in this proceeding and ample opportunity to participate prior to the issuance of the Second Entry on Rehearing. Therefore, the Commission finds that EMC has not demonstrated just cause to file an application for rehearing.

However, the Commission notes that ELPC's interpretation of our Second Entry on Rehearing is flawed. ELPC contends that the Commission determined, in the Second Entry on Rehearing, that ownership of the energy efficiency attributes should be transferred to the utility because ratepayer funds are used to create the energy efficiency attributes. However, in the Second Entry on Rehearing, the Commission held that "mercantile customers may seek *exemption from Rider DSE2 or other rebates* in lieu of exemption from Rider DSE2 pursuant to Section 4928.66(A)(2)(c), Revised Code, without being required to transfer ownership of energy attributes to FirstEnergy." (Emphasis added.) Second Entry on Rehearing at 11. Therefore, it is not relevant whether the mercantile customer has obtained an exemption from the rider, a cash rebate, a commitment payment or any other compensation from the electric utility. Use of ratepayer funds is not the determining factor whether ownership should be transferred. The determining factor is whether the mercantile customer has a Commission approved application to commit its energy savings for integration into the utility's energy efficiency and peak demand reduction programs, pursuant to Section 4928.66(A)(2)(c), Revised Code, and Rule 4901:1-39-08, O.A.C. In those cases, which includes participation in the Companies' mercantile self-direct programs, the mercantile customer is not required to transfer ownership of the energy efficiency attributes to the utility.

- (13) Further, on August 16, 2013, OCC and ELPC filed applications for rehearing regarding the Second Entry on Rehearing.

- (14) On August 26, 2013, the Companies filed a memorandum contra the applications for rehearing submitted by OCC and ELPC.
- (15) The Commission grants the applications for rehearing filed by OCC and ELPC. We believe that sufficient reason has been set forth by OCC and ELPC to warrant further consideration of the matters specified in the applications for rehearing.

It is, therefore,

ORDERED, That the motion for leave to file an application for rehearing, or in the alternative, motion for clarification, filed by EMC be denied. It is, further,

ORDERED, That the applications for rehearing filed by OCC and ELPC be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

ORDERED, That copies of this entry on rehearing be served upon the parties and counsel of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

M. Beth Trombold

Lynn Slaby

Asim Z. Haque

GAP/sc

Entered in the Journal

SEP 11 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary