

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Aligning Electric	)	
Distribution Utility Rate Structure with	)	
Ohio's Public Policies to Promote	)	Case No.10-3126-EL-UNC
Competition, Energy Efficiency, and	)	
Distributed Generation	)	

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**MOTION FOR LEAVE TO FILE APPLICATION FOR REHEARING BY  
THE ENVIRONMENTAL LAW & POLICY CENTER**

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The Environmental Law and Policy Center ("ELPC") did not file comments nearly three years ago when they were requested by the Public Utilities Commission of Ohio ("PUCO") in its December 2010 Entry. On August 21, 2013, the Commission issued a Finding and Order ("Order") that, among other things, endorsed the straight fixed variable rate design. Given the time lapse between the filing of comments in early 2011 and the Order in August 2013, ELPC requests leave to file an application for rehearing pursuant to Ohio Revised Code ("R.C.") § 4903.10. As more fully explained below in the memorandum in support, just cause exists to grant the motion for leave to file an application for rehearing because of the hiatus of the docket and the fact that no party will be prejudiced in this non-adversarial proceeding.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE MOTION FOR LEAVE TO FILE  
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R.C. § 4903.10 states that “any party who has entered an appearance in person or by counsel in [a] proceeding may apply for rehearing in respect to any matters” in a Commission Order. Section 4903.10 further provides:

Notwithstanding the preceding paragraph, in any uncontested proceeding or, by leave of the commission first had in any other proceeding, any affected person, firm, or corporation may make an application for a rehearing within thirty days after the entry of any final order upon the journal of the commission. Leave to file an application for rehearing shall not be granted to any person, firm, or corporation who did not enter an appearance in the proceeding unless the commission first finds:

- (A) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was due to just cause; and,
- (B) The interests of the applicant were not adequately considered in the proceeding.

ELPC did not enter an appearance in this case or file comments when they were requested in 2010. However, ELPC should be granted leave to file an application for rehearing for three reasons. First, just cause exists due to the hiatus of the docket and the significant amount of time that has passed since initial comments were filed. As explained in the initial 2010 Entry, the Commission opened this docket to consider “modifications to Ohio electric utilities’ rate structures [that] would better align utility performance with Ohio’s desired public

policy outcomes,”<sup>1</sup> such as competition, energy efficiency, and distributed generation. The market for energy efficiency and distributed generation in Ohio, as well as the electricity market generally, has developed considerably since 2010. ELPC is a public interest organization with limited resources, and the issues addressed in this proceeding are much more important today than in 2010. ELPC submits that, given the time that has passed and the changes in the market, just cause exists for its failure to enter an appearance prior to this application for rehearing. Moreover, especially on important issues such as the rate structure being examined in this case, “[t]he Commission’s policy is to encourage the broadest possible participation” by the public.<sup>2</sup>

Second, ELPC’s application for rehearing will not prejudice any party, as this is a non-adversarial, quasi-legislative Commission proceeding. In a litigated or contested case, where discovery and cross-examination of witnesses are critical, an adversarial party may be greatly prejudiced by a late intervention or motion. Those elements do not apply to this proceeding, where no party will be harmed by ELPC’s application for rehearing. The fact that no party will be prejudiced has been an important consideration for the Commission in making decisions such as whether a party should be allowed late intervention.<sup>3</sup>

Finally, ELPC’s interests as a regional organization with a focus on both environmental issues and economic development have not been adequately considered in the proceeding. While

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<sup>1</sup> See December 29, 2010 Entry.

<sup>2</sup> See *In the Matter of the Application of the Cleveland Electric Illuminating Company for Authority to Amend and Increase Certain of its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 85-675-EL-AIR, Entry (Jan. 14, 1986).

<sup>3</sup> See *In the Matter of the Application of The Dayton Power and Light Company For Approval of its Electric Security Plan; In the Matter of the Application of The Dayton Power and Light Company For Approval of Revised Tariffs; In the Matter of the Application of The Dayton Power and Light Company For Approval of Certain Accounting Authority Pursuant to Section 4905.13, Revised Code; In the Matter of the Application of The Dayton Power and Light Company For Approval of its Amended Corporate Separation Plan*, Case No. 08-1094-EL-SSO, Entry (Feb. 5, 2009) (explaining that “no other party will be prejudiced” as reason for granting request for leave to file motion to intervene out of time).

ELPC agrees with many other commenters that a straight fixed variable rate design is inconsistent with Ohio's stated policy, ELPC favors the current ratemaking framework with adjustments for anticipated lower usage to reflect increased efficiency. However, as explained in its application for rehearing, if the Commission believes that more action should be taken to adjust for efficiency, then ELPC agrees that decoupling is a preferable adjustment to straight fixed variable rates. ELPC's experience in other states and expertise on this issue can assist the Commission in this proceeding, where it has sought broad information and comments from various stakeholders in order to make an informed determination.

For the reasons explained above, the Commission should grant ELPC's motion for leave to file an application for rehearing.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion for Leave to File Application for Rehearing and Memorandum in Support*, submitted on behalf of the Environmental Law & Policy Center, was served by electronic mail upon the following Parties of Record, this 20<sup>th</sup> day of September, 2013.

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Summary: Motion for Leave to File Application for Rehearing and Memorandum in Support electronically filed by Mr. Nicholas A. McDaniel on behalf of Environmental Law and Policy Center