BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

SECOND APPLICATION FOR REHEARING BY THE ENVIRONMENTAL LAW & POLICY CENTER

Pursuant to Ohio Revised Code ("R.C.") 4903.10 and Ohio Admin. Code 4901-1-35, the Environmental Law & Policy Center ("ELPC") hereby files this second application for rehearing to the Public Utilities Commission of Ohio ("the Commission"). This application responds to the Commission's July 1, 2015 Entry on Rehearing regarding implementation of R.C. 4928.65, which requires utilities to disclose to customers their "costs of compliance" with Ohio's renewable energy, energy efficiency ("EE"), and peak demand reduction ("PDR") standards. In the Entry on Rehearing, the Commission decided that the cost of interruptible programs must be included in the disclosure of EE and PDR compliance costs on consumer bills because their "primary benefit" to customers is the demand reduction they produce. Entry on Rehearing at 9.

The Entry on Rehearing is unlawful and unreasonable for the following reason, as further explained in the accompanying Memorandum in Support:

1. The Entry on Rehearing held that utility interruptible program costs are "costs of compliance" with the peak demand reduction requirements under R.C. 4928.65 based only on the Commission's interpretation of the purpose of those programs. However, the facts show that often only a fraction of the costs of these programs result from the need to generate the peak demand reduction necessary to comply with R.C. 4928.65.

Dated: July 31, 2015

Respectfully submitted,

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BEFORE
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MEMORANDUM IN SUPPORT OF SECOND APPLICATION FOR REHEARING BY THE ENVIRONMENTAL LAW & POLICY CENTER

I. INTRODUCTION

Pursuant to Ohio Revised Code ("R.C.") 4903.10, the Environmental Law & Policy Center ("ELPC") hereby files this second application for rehearing to the Public Utilities Commission of Ohio ("the Commission"). This application responds to the Commission's July 1, 2015 Entry on Rehearing regarding implementation of R.C. 4928.65, which requires utilities to disclose to customers their "costs of compliance" with Ohio's renewable energy, energy efficiency ("EE"), and peak demand reduction ("PDR") standards. In the Entry on Rehearing, the Commission decided that the cost of interruptible programs must be included in the disclosure of EE and PDR compliance costs on consumer bills because their "primary benefit" to customers is the demand reduction they produce. Entry on Rehearing at 9.

That decision is unlawful and unreasonable because it does not take account of whether utilities are actually relying on peak demand reductions from their interruptible programs to achieve compliance with the PDR requirements codified at R.C. 4928.66. In fact, Ohio utilities are generally using little to none of the demand reductions generated by their interruptible programs in order to meet their statutory PDR obligations. Therefore, a Commission rule that includes all interruptible program costs as "costs of compliance" with the state PDR standard –

even if only a fraction of these costs are attributable to a utility's need to meet the statutory PDR benchmarks – will mistakenly present inflated numbers to consumers that misstate the true costs of Ohio's clean energy laws and contribute to customer confusion.

II. BACKGROUND

Interruptible (or "demand response") programs provide a monetary credit to a customer in return for the customer's commitment to reduce its energy use at times of peak demand. Private third-party companies called "curtailment service providers" ("CSPs") also offer this service, funding the credits with revenues from bidding the demand "resource" into wholesale capacity markets. These programs serve multiple purposes: they allow the customer to pay less for power in return for accepting less reliable service; they allow the utility to avoid the costs of buying electricity when the market price is at its peak; and, where the resulting demand reductions are bid into PJM's wholesale capacity market, they lower the capacity price component of electricity (and generate revenues for customers).

In its original Order, the Commission determined that these program costs should not be included in the required disclosure. The Commission reasoned that "interruptible tariff credits are primarily economic development costs that have EE and PDR impacts, rather than being primarily EE and PDR programs," Order at 7, citing a prior decision emphasizing the "economic development component" of such a program. *In re FirstEnergy*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) at 30.

None of the rehearing applications in this case questioned the Commission's decision on this point. However, in the Entry on Rehearing in this case, the Commission stated that "upon further review," it had determined that "the primary benefit to customers from the interruptible programs is the reduction in peak demand." Entry on Rehearing at 9. The rationale that the

Commission provided for that reversal was that "this determination is consistent with our decision on rehearing in *In re Ohio Power Company*, Case No. 13-2385-EL-SSO, et al., Entry on Rehearing (May 28, 2015) [*AEP ESP 3 Case*]" – a decision issued after the original Order regarding the appropriate rider mechanism for recovery of the costs of interruptible programs.

III. PROCEDURAL BACKGROUND

Although ELPC submitted a rehearing application in response to the December 17, 2014 Order, R.C. 4903.10 authorizes a second application because the Entry on Rehearing modifies the Order in a way that is adverse to ELPC's interests. *In re Application of Columbus Southern Power Co*., 128 Ohio St.3d 402, 2011-Ohio-958 N.E.2d 501, ¶¶ 12-13. Because the Entry on Rehearing is the first time the Commission held that the full costs of utility interruptible demand programs are related to R.C. 4928.66, this application is ELPC's only opportunity to seek reconsideration of that conclusion and to preserve our appeal rights. *See* R.C. 4903.10(B).

IV. ARGUMENT

A. The Demand Reduction Requirements Under R.C. 4928.66 Do Not Drive Interruptible Program Costs in Ohio.

It is unreasonable to read R.C. 4298.65 to require disclosure of interruptible program costs as "costs of compliance" with R.C. 4928.66 because the costs of those programs in large part have no relation to the statutory PDR benchmarks. The initial Order explained that a disclosure of the "costs of compliance" with the state PDR standard under R.C. 4928.65 "must be an accurate reflection of the costs actually being borne by customers related to the EE and PDR requirements." Order at 19. A factual analysis of utility interruptible programs shows that they often provide demand reductions significantly exceeding the statutory PDR requirements. Therefore, these costs are not in fact "related to . . .the PDR requirements" and should not be disclosed on that basis, regardless of whether the Commission believes they were intended to provide peak demand reduction benefits, economic development benefits, or both.[1] Order at 19.

The example of Ohio Power Company ("AEP") neatly demonstrates that only a small amount of the peak demand reductions produced by utility interruptible programs are related to compliance with R.C. 4928.66. As documented in AEP's most recent portfolio status report, R.C. 4928.66 required it to achieve 425.3 megawatts ("MW") of peak demand reduction in 2014. *In the Matter of the Annual Portfolio Status Report by Ohio Power Company*, Case No. 15-919-EL-EEC, 2014 Portfolio Status Report, Vol. I (May 15, 2015) at 8. AEP achieved 422.6 MW of this benchmark through its EE programs and transmission and distribution improvements, since those programs reduce overall energy use including at times of peak demand. Meanwhile, AEP's interruptible program produced 242.5 MW of peak demand reduction in 2014, of which only 2.7 MW (approximately 1%) went toward compliance with R.C. 4928.66. While one may speculate as to the considerations driving the significant scope of this program (and the resulting costs), the fact that AEP utilized only a tiny fraction of the demand resources generated by its interruptible program to meet the 2014 PDR target shows that the bulk of the demand reductions under this program are certainly not "related to" R.C. 4928.66.

FirstEnergy,[2] another Ohio utility with a large-scale interruptible program, likewise does not appear to rely significantly (if at all) on its own interruptible program to achieve compliance

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[1] There are certainly a number of Commission decisions that describe economic development as a key purpose of utility interruptible programs. *See, e.g.*, *AEP ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 40; *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 11-346-EL-SSO, et al., Opinion and Order (Aug, 8, 2012) at 26. Indeed, Duke's interruptible program costs are recovered through its "Economic Competitiveness Fund Rider," not its EE/PDR rider. *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, Opinion and Order (Apr. 2, 2015) at 76.

[2] "FirstEnergy" refers collectively to the utilities the Cleveland Electric Illuminating Company, Ohio Edison Company, and Toledo Edison Company.

with R.C. 4928.66. FirstEnergy's 2014 PDR benchmark was 565.90 MW**.** *In the Matter of the FirstEnergy EE/PDR Program Portfolio Status Report*, Case No. 15-0900-EL-EEC, 2014 Portfolio Status Report (May 15, 2015) at 4. Like AEP, FirstEnergy achieves a significant portion of that requirement through EE programs – 186.68 MW, or almost a third, in 2014. *Id.* at 6. FirstEnergy also relies on its Demand Reduction Program ("DRP"), which has two components. First, FirstEnergy may obtain credit toward its PDR benchmark based on demand reduction resources resulting from third-party CSP programs in its territory. *In re FirstEnergy*, Case Nos. 12-2190 et al., Ohio Edison Portfolio Plan (July 31, 2012) at 53. Second, FirstEnergy may directly achieve peak demand reduction through its own interruptible program, administered under its Riders ELR and OLR. In 2014, the DRP produced 991.99 MW of peak demand reduction. Case No. 15-0900-EL-EEC, 2014 Portfolio Status Report at 6.

While FirstEnergy does not disclose how much of the demand reduction under the DRP comes from each program component, third-party programs are likely to produce most if not all of the demand reduction necessary for FirstEnergy to achieve its PDR requirements. As a point of reference, over 950 MW of demand reduction resources cleared the main 2014-2015 capacity auction for PJM's ATSI zone, which overlaps significantly with FirstEnergy territory. PJM, 2014/2015 RPM Base Residual Auction Results at 9, https://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/20110513-2014-15-base-residual-auction-report.ashx. Moreover, FirstEnergy proposed last year to allow Riders ELR and OLR to expire in 2016, without any suggestion that those interruptible riders are essential to FirstEnergy's compliance with its PDR obligations. *In re FirstEnergy*, Case No. 14-1297-EL-SSO, Application (Aug. 4, 2014) at 12.

FirstEnergy spent less than $4,000 on administering the DRP in 2014. Case No. 15-0900-EL-EEC, 2014, Portfolio Status Report at 7. Meanwhile, FirstEnergy paid over $15 million in credits under its Rider ELR interruptible program in the first half of 2014 alone. Case No. 13-2173-EL-RDR, 2014 Rider DSE Report, Ex. A at 1. Where FirstEnergy appears to be able to meet its obligations under R.C. 4928.66 through a program component that costs under $4,000, there is no reasonable basis to deem millions of dollars that the utility is spending on its interruptible program to be "costs of compliance" with the state PDR standard.

As documented above, the amount of interruptible load procured through utility programs in Ohio may far exceed the amount needed to satisfy R.C. 4928.66. Yet under Ohio Admin. Code 4901:1-10-35 as approved in the Entry on Rehearing, the significant cost of the credits for this interruptible load would be attributed to the state EE/PDR standard. That result is an unlawful and unreasonable application of the statutory term "costs of compliance," and as a practical matter it will undercut customers' ability to understand the extent to which R.C. 4928.66 is actually driving the size of their bills.

B. A Ruling in Our Favor Would Not Create Any Inconsistency with the Commission's Decision in Case No. 13-2385.

The Entry on Rehearing cited the rehearing order in the *AEP ESP 3 Case* as the Commission's basis for reversing its position on this issue. However, the *AEP ESP 3 Case* decision concerned an entirely different issue that should not affect the Commission's interpretation of R.C. 4928.65. AEP had asked to shift recovery of its interruptible program costs from its EE/PDR rider to its economic development rider, in order to avoid a potential scenario where customer opt-outs from the EE/PDR rider would result in costs spiraling upward for remaining participants. *AEP ESP 3*, Entry on Rehearing at 10. The Commission declined to approve that request, based on its expectation that the potential problem described by AEP would not occur given the design of the interruptible program. *Id.* at 12. Thus, the Commission's decision dealt with the issue of whether AEP's rider design would affect the successful implementation of its interruptible program, not with the issue of what was driving the costs of that program. Therefore, the Commission's decision in the *AEP ESP 3 Case* is not applicable to its implementation of R.C. 4928.65 here.

IV. CONCLUSION

For the reasons set forth above, ELPC respectfully requests that the Commission grant rehearing and return to the approach set forth in its original Order excluding interruptible program costs from utility bill disclosures under R.C. 4928.65. That approach is consistent with the facts showing that utilities do not rely significantly on their interruptible programs for compliance with R.C. 4928.66. In the alternative, ELPC requests that the Commission leave this issue open for further consideration in individual proceedings for utility bill formatting, to allow for the presentation of evidence as to the extent to which utility interruptible programs have any relationship with Ohio's PDR standard.

Dated: July 31, 2015

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Second Application for Rehearing has been electronically filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on July 31, 2015.

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