

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo)
Edison Company For Approval of Their) Case No. 16-0743-EL-POR
Energy Efficiency and Peak Demand)
Reduction Program Portfolio Plans for)
2017 through 2019)

**APPLICATION FOR REHEARING BY
THE ENVIRONMENTAL LAW & POLICY CENTER, NATURAL RESOURCES
DEFENSE COUNCIL, OHIO ENVIRONMENTAL COUNCIL, AND
ENVIRONMENTAL DEFENSE FUND**

Pursuant to Ohio Revised Code (“R.C.”) 4903.10 and Ohio Admin. Code 4901-1-35, the Environmental Law & Policy Center, Natural Resources Defense Council, Ohio Environmental Council, and Environmental Defense Fund file this Application for Rehearing of the November 21, 2017 Opinion and Order (“Order”) in this proceeding. The Order approved the Energy Efficiency and Peak Demand Reduction Program Plan proposed by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy” or “Companies”), as modified by the December 9, 2016 Stipulation and Recommendation (the “Stipulation”). However, the Order modified this Stipulation in one important way: it imposed an annual cost cap of approximately \$107 million on recovery of program costs and shared savings from customers under the Plan. As further explained in the accompanying Memorandum in Support, that limitation on costs is unlawful and unreasonable because the Commission failed to consider the overall impact of the cap on customer bills, focusing solely and exclusively on the amount of FirstEnergy’s energy efficiency rider.

December 21, 2017

Respectfully submitted,

/s/ Madeline Fleisher

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**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING BY
THE ENVIRONMENTAL LAW & POLICY CENTER, NATURAL RESOURCES
DEFENSE COUNCIL, OHIO ENVIRONMENTAL COUNCIL, AND
ENVIRONMENTAL DEFENSE FUND**

The Environmental Law & Policy Center, Natural Resources Defense Council, Ohio Environmental Council, and Environmental Defense Fund (collectively, “Environmental Intervenors”) seek rehearing of the November 21, 2017 Opinion and Order (“Order”) in this proceeding. The Order approved the Energy Efficiency & Peak Demand Reduction Program Plans (“Plans”) proposed by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy” or “Companies”), as modified by the December 9, 2016 Stipulation and Recommendation (the “Stipulation”). At the same time, the Order modified this Stipulation to impose an annual cost cap of approximately \$107 million on recovery of program costs and shared savings from customers under the Plan as “a reasonable measure given the rising EE/PDR rider amounts billed to customers.” Order at 22. The result of this Order is likely to be less spending on cost-effective energy efficiency and higher overall bills for FirstEnergy’s customers. The Order is therefore unlawful and unreasonable.

I. STANDARD OF REVIEW

R.C. 4903.10 enables parties to seek rehearing of any aspect of a final order by the Public Utilities Commission of Ohio (“Commission”) that is “unreasonable or unlawful.” In addition, on rehearing the Commission must be mindful of compliance with R.C. 4903.09, which provides:

[I]n all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

The Ohio Supreme Court has explained that R.C. 4903.09 means that “the PUCO’s order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.” *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 312, 513 N.E.2d 337 (1987). In fact, “[a] legion of cases establish that the commission abuses its discretion if it renders an opinion on an issue without record support.” *Indus. Energy Users-Ohio v. PUC*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30 (citations and internal quotation marks omitted).

II. FACTS

In the Order, the Commission approved a cost cap on program spending and shared savings of approximately \$107 million, calculated as four percent of FirstEnergy’s 2015 operating revenues as reported on FERC Form 1. Order at 23. Assuming FirstEnergy is able to earn its maximum shared savings incentive payment of \$15.6 million, this leaves an annual program budget of about \$91.4 million. Order at 21; Co. Ex. 17, Miller Rebuttal Test. at 8. That budget requires FirstEnergy to cut approximately \$4.1 million from its projected average annual budget of \$95.5 million for 2018 and 2019. Env. Int. Ex. 1, Neme Rebuttal Test. at 14. For

context, that is approximately the same as the entire three-year budget for residential appliance rebates, and close to the annual budget for residential lighting rebates under the Stipulation.

Joint Ex. 1, Stipulation, Ex. A.

III. ARGUMENT

The Commission approved the annual cost cap as “a reasonable measure given the rising EE/PDR rider amounts billed to customers.” Order at 22. That is a valid concern, which is why Environmental Intervenors have always supported the establishment of a program budget and prudence review of any costs over that budget limit. However, the cost cap approved in this case is not a reasonable way to address rising rider costs for one simple reason: the Order failed to address concerns raised in the record that the cost cap may have the opposite effect of what the Commission intends – namely, that it may very well result in higher bills for customers.

FirstEnergy’s energy efficiency rider, Rider DSE2, is a small part of a customer’s electricity bill – around \$2-\$3 per month for a typical residential customer using 750 kWh per month, or about 2-3% of a bill that is generally between \$103 and \$106 per month. Tr. II at 446:18-447:9; Co Ex. 14, Ohio Utility Rate Survey (Dec. 1, 2015) (average residential electric bill for Akron, Toledo, Cleveland). A far larger portion of FirstEnergy’s customers’ bills is driven by the amount that the customer pays per kilowatt hour for generation and distribution service. Yet the Commission, in concluding that an energy efficiency cost cap would be “a reasonable measure given the rising EE/PDR rider amounts billed to customers,” overlooked the important impacts that efficiency programs can have on reducing customer usage and volumetric rates.

By law, a utility’s energy efficiency plan must be cost effective, which means that it must cost less than the generation it replaces. Ohio Admin. Code 4901:1-39-04(B). When utilities

spend more on efficiency, customers spend less on generation and overall costs go down. **It is indisputable that when the Commission caps spending on efficiency it translates to higher customer bills overall because higher cost megawatts replace lower cost “negawatts.”**

As an illustration, the energy savings available to participants in FirstEnergy’s efficiency programs through steps as simple as purchasing new LED light bulbs significantly outweigh the cost of the energy efficiency rider. Env. Int. Initial Br. at 6 & n.2. However, the Commission has not accounted for such savings in considering the effects of reducing energy savings opportunities by capping energy efficiency spending. Order at 22-23. The sum total of the Order’s discussion of this issue is the statement that:

Although FirstEnergy, OPAE, and the Environmental Intervenors argue that cost-effective EE/PDR programs will ultimately result in lower bills for ratepayers, this Commission must weigh the potential ultimate program benefits against the bill impacts to customers in the 2017-2019 Portfolio Plan period.

Order at 23. But even within the 2017-2019 Plan period, the facts show that customers may lose money to the extent the cost cap results in reduced energy-saving opportunities. For example, as outlined in Environmental Intervenors’ brief, a customer installing ten LED lightbulbs through FirstEnergy’s residential lighting program would save \$50 *per year* – more than the \$24-\$36 yearly cost of the energy efficiency rider during each of the plan years. Env. Int. Initial Br. at 6 & n.2. The long-term benefits of these measures, which are projected to last for 15 years, only tip the scales even further. *See, e.g.*, Stipulation, Ex. B (Revised Plans), Ohio Edison App. C-1 at 2 of 8. Fundamentally, the Commission cannot reasonably reach any conclusion as to the bill impacts of the cost cap, even within the plan period itself, without assessing whether and how much it may limit direct customer bill savings. But the Order provides no such assessment.

The Order likewise never accounts for the effects of FirstEnergy’s energy efficiency programs in reducing energy and capacity prices for all customers, regardless of whether they

participate directly in the programs. The Commission *itself* has previously affirmed in a letter to the Ohio legislature that energy efficiency reduces wholesale electricity market prices by lowering overall demand, thus allowing customers to avoid paying for the highest priced sources of power. ELPC Ex.1, Staff Report to Energy Mandate Study Committee at 12; Env. Int. Initial Br. at 6. Nowhere does the Order mention or evaluate the argument that limiting energy efficiency spending may increase all customers' bills by reducing this acknowledged price suppression effect.

In omitting any evaluation of each of these aspects of a cost cap, the Order falls short of the requirements of R.C. 4903.09 to provide "facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion." *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337. Approval of a cost cap without grappling with its likely real-world effects is simply not reasonable.

IV. CONCLUSION

The Order's imposition of an inflexible cost cap, limiting both program spending and shared savings, represents a sea change from the existing efficiency planning process of setting a reasonable budget for cost-effective program offerings to achieve the utilities' statutory energy savings benchmarks. That change in policy requires a careful consideration of the likely effects of this new approach and the appropriate level of a cost cap if one is applied. The Order failed to provide such an evaluation, and is therefore unreasonable and unlawful.

December 21, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing has been electronically filed with the Public Utilities Commission of Ohio and has been served upon all parties to the case via electronic mail on December 21, 2017.

/s/ Madeline Fleisher
Madeline Fleisher

This foregoing document was electronically filed with the Public Utilities

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Summary: App for Rehearing Application for Rehearing by the Environmental Law & Policy Center, Natural Resources Defense Council, Ohio Environmental Council, and Environmental Defense Fund electronically filed by Madeline Fleisher on behalf of Natural Resources Defense Council and Environmental Law and Policy Center and Ohio Environmental Council and Environmental Defense Fund