

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission's Review )<br>of its Rules for Energy Efficiency )<br>Programs Contained in Chapter 4901:1-39 )<br>of the Ohio Administrative Code )<br>)                     | Case No. 12-2156-EL-ORD |
| In the Matter of the Commission's Review )<br>of its Rules for the Alternative Energy )<br>Portfolio Standard Contained in Chapter )<br>4901:1-40 of the Ohio Administrative )<br>Code )<br>) | Case No. 13-651-EL-ORD  |
| In the Matter of the Amendment of Ohio )<br>Administrative Code Chapter 4901:1-40, )<br>regarding the Alternative Energy Portfolio )<br>Standard, to Implement Am. Sub. S.B. )<br>315 )       | Case No. 13-652-EL-ORD  |

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**ENVIRONMENTAL LAW & POLICY CENTER, ENVIRONMENTAL DEFENSE  
FUND, NATURAL RESOURCES DEFENSE COUNCIL, AND OHIO  
ENVIRONMENTAL COUNCIL MEMORANDUM CONTRA APPLICATIONS FOR  
REHEARING BY OHIO ELECTRIC DISTRIBUTION UTILITIES**

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Pursuant to Ohio Admin. Code 4901-1-35(b), the Environmental Law & Policy Center, Environmental Defense Fund, Natural Resources Defense Council, and Ohio Environmental Council (collectively, “Conservation Groups”) file this Memorandum Contra the Applications for Rehearing by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“FirstEnergy”); Duke Energy Ohio, Inc. (“Duke”); Ohio Power Company (“AEP Ohio”); and the Dayton Power & Light Company (“DP&L”) (collectively, “Ohio EDUs”) in this proceeding. Each of the Ohio EDUs seeks codification of the ability to rely on banked savings from previous years in order to trigger “shared savings” incentive payments. *See* FirstEnergy Rehearing App. at 2-3; Duke Rehearing App. at 6; AEP Ohio and DP&L Rehearing App. at 11. Such a change in the rules would represent a significant shift from

existing Commission policy, and would preclude the future use of shared savings mechanisms designed to ensure the Ohio EDUs minimize reliance on banked savings while providing customers with robust, cost-effective energy efficiency programs in each year.

As explained in the Conservation Groups' Rehearing Application, a definition of shared savings in Rule 4901:1-39-01 that categorically excludes banked savings from calculation of a shared savings trigger may not always be reasonable, including where it discourages the Ohio EDUs from designing portfolio plans that maximize long-term benefits to customers.

Conservation Groups' Rehearing App. at 16-17. However, it would also be unreasonable to categorically allow the use of banked savings to trigger shared savings in all circumstances.

As the Commission has previously explained, “[a]s the mandated [energy savings] benchmark rises every year,” each Ohio EDU “must continue to find ways to encourage energy efficiency. If it has a large bank of accrued savings to rely on, the motivation to push energy efficiency programs in following years diminishes.” Case No. 14-457-EL-RDR, Finding and Order (May 20, 2015) at 5. This astute observation underlines the fact that, while there may be circumstances where it is reasonable to allow Ohio EDUs to earn shared savings while relying on a limited amount of banked savings as a small element of an otherwise robust, cost-effective portfolio plan, that is not always going to be the case. An Ohio EDU could just as easily propose a portfolio plan that does a poor job “encourag[ing] energy efficiency” that will cost-effectively displace more expensive generation resources in a given year, yet seek shared savings under a rule that allows the EDU to rely on past years' banked savings. Additionally, if an Ohio EDU has banked savings that it has already used to earn shared savings in a prior year, there is a risk of the Ohio EDU “double-counting” to earn shared savings in two years based on efficiency programs run in only one year. Therefore, rather than codifying any particular approach to this

issue, the Commission should leave the question open for resolution in the full context of a given portfolio plan proceeding.

January 28, 2019

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra 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 January 28, 2019.

/s/ Madeline Fleisher  
Madeline Fleisher

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 12-2156-EL-ORD, 13-0651-EL-ORD, 13-0652-EL-ORD**

Summary: Memorandum Conservation Groups' Memorandum Contra Rehearing Applications by the Ohio Electric Distribution Utilities electronically filed by Madeline Fleisher on behalf of Environmental Law & Policy Center and Natural Resources Defense Council and Ohio Environmental Council and Environmental Defense Fund