

**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)	Case Nos. 12-2190-EL-POR
Edison Company for Approval of Their)	12-2191-EL-POR
Energy Efficiency and Peak Demand)	12-2192-EL-POR
Reduction Portfolio Plans for 2013 through)	
2015)	

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

I. INTRODUCTION

Pursuant to Ohio Revised Code (“R.C.”) 4903.10 and Ohio Admin. Code 4901-1-35, the Environmental Law & Policy Center, Ohio Environmental Council, and Natural Resources Defense Council hereby file this application for rehearing of the April 10, 2019 Fifth Entry on Rehearing (“Fifth Entry”) of the Public Utilities Commission of Ohio (“Commission”) in this case. The Fifth Entry resolved several outstanding issues regarding an application by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) to amend their energy efficiency and peak demand reduction program portfolio plan by eliminating certain programs and introducing two new programs.

The Fifth Entry is unlawful and unreasonable, as further explained in the accompanying Memorandum in Support, because it allows FirstEnergy to count savings from customers toward compliance with R.C. 4928.66 where those customers have opted out of FirstEnergy’s efficiency plan and are not included in the Companies’ compliance baseline, reversing the Commission’s prior decision on this issue.

May 10, 2019

Respectfully submitted,

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

The Environmental Law & Policy Center (“ELPC”), Ohio Environmental Council (“OEC”) and Natural Resources Defense Council (“NRDC”) (collectively, “Environmental Advocates”) respectfully seek rehearing of the May 10, 2019 Fifth Entry on Rehearing (“Fifth Entry”) of the Public Utilities Commission of Ohio (“Commission”) in this case. The Fifth Entry resolved several outstanding issues regarding an application by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) to amend their 2013-2015 energy efficiency and peak demand reduction program portfolio plan. Although that plan has now run its course, rendering a number of issues moot, the Commission did establish precedent on the question of counting energy savings for compliance with Ohio Revised Code (“R.C.”) 4928.66 where the savings are attributable to customers who have opted out of a utility’s efficiency programs. In the Fifth Entry, the Commission unreasonably and unlawfully ruled that a utility should be able to count such savings toward compliance with its energy savings target in R.C. 4928.66(A)(1)(a). That approach effectively lowers a utility’s statutory savings requirement, inconsistent with the language of R.C. 4928.66 and basic considerations of reasonableness.

The Fifth Entry reversed the Commission’s prior decision in its November 20, 2014 Finding and Order (“Order”), which held that where a customer opts out of a utility energy efficiency and peak demand reduction portfolio plan, the utility “should not be permitted to count savings from customers who have elected to opt out toward meeting the statutory benchmarks” under R.C. 4928.66. Order at 10. The Commission lawfully and reasonably rested this decision on the fact that R.C. 4928.66(A)(2)(a) excludes the load and usage of such opt-out customers from the calculation of a utility’s compliance baseline under R.C. 4928.66, and thus the provision as a whole “indicates that customers who elect to opt out are essentially excluded from consideration for purposes of EE/PDR programs and benchmarks.” *Id.* at 9-10. As a practical matter, the Commission’s original approach reasonably recognized that this exclusion from the baseline *already* lowers the utility’s compliance requirements.

However, the Fifth Entry reversed this decision and authorized a utility to apply a customer’s energy savings toward its compliance target even after that customer has opted out of an efficiency plan and the utility has lowered its compliance baseline accordingly, even “prospective” savings that occur after the customer is no longer participating in the programs. Order at 5. This is a double whammy in reducing the utility’s target for cost-effective energy savings – lowering the overall baseline on the front end and then reducing compliance requirements on the back end. The statutory language of R.C. 4928.66 provides no basis for the Commission’s approach of counting savings from customers not included in a utility’s compliance baseline. It is the equivalent of counting the savings of a utility’s customer after he or she moves to another state – once that customer’s usage is not part of the utility’s baseline, the customer’s savings should not be considered relevant to compliance with R.C. 4928.66.

The Commission rested this reversal on the grounds that “[e]xcluding opt-out customer energy savings would mean excluding cost-effective energy savings from the EE/PDR benchmarks,” when “[i]n many cases, the opt-out customer already has been compensated by the EDU and that compensation has been recovered from other customers.” Fifth Entry at 5. However, there is no mechanism for an opt-out customer’s savings *after* opting out to be funded by other customers. Although a utility might measure such savings through a program evaluating customer actions outside its energy efficiency programs, the law specifically provides that after a customer opts out, that customer is no longer “eligible to participate in, or directly benefit from, programs arising from electric distribution utility portfolio plans approved by the public utilities commission.” R.C. 4928.6613. Accordingly, any prospective savings from an opt-out customer may not by law be funded through the utility’s efficiency programs. Meanwhile, any prior savings from such a customer in excess of the annual targets under R.C. 4928.66 should have been banked by the utility, and thus would already be available for future compliance without any change in the Commission’s approach in the original Order.

The Fifth Entry also expresses the concern that “[e]xcluding cost-effective energy savings from compliance towards the EE/PDR benchmarks would require the Companies to obtain additional energy savings, which may well be less cost-effective,” thus requiring the utility to recover additional revenue. Fifth Entry at 5. The Fifth Entry emphasizes that “the Commission is increasingly concerned about the bill impacts on all customers given the rising compliance costs of meeting the EE/PDR benchmarks.” *Id.* This reasoning fails to recognize that, as long as energy savings are cost-effective (as required under the Commission’s rules), meeting the R.C. 4928.66 fully rather than offsetting it with opt-out customer savings will produce *more* savings for customers even if the utility is spending more on programs. Such cost-

effective energy savings will cost less than the customer would otherwise pay for the electricity saved, in addition to decreasing electricity prices for all customers by lowering overall market demand. Therefore, the effect of the Fifth Entry is to reduce the opportunities for customers who remain in energy efficiency programs to access cost-effective savings opportunities – effectively penalizing those customers for the choice of other customers to opt out. Accordingly, the Environmental Advocates respectfully request that the Commission grant rehearing and reconsider its decision to allow utilities to count prospective savings of opt-out customers toward compliance with R.C. 4928.66.

May 10, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Second Application on Rehearing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on May 10, 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Madeline Fleisher
Madeline Fleisher

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

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in

Case No(s). 12-2190-EL-POR, 12-2191-EL-POR, 12-2192-EL-POR

Summary: Text Second Application for Rehearing electronically filed by Mr. Robert Dove on behalf of The Natural Resources Defense Council and Environmental Law and Policy Center and Ohio Environmental Council