BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM CONTRA OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY TO APPLICATIONS FOR REHEARING BY CONSERVATION GROUP AND THE INDUSTRIAL ENERGY USERS OF OHIO

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INTRODUCTION

Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies"), hereby file their Memorandum Contra the Second Application for Rehearing filed by the Environmental Law & Policy Center, Environmental Defense Fund, Natural Resources Defense Council, and Ohio Environmental Council (collectively "Conservation Groups") and the Application for Rehearing filed by the Industrial Energy Users of Ohio ("IEU") seeking modification of the Commission's Second Entry on Rehearing dated April 20, 2019, in the above-captioned case ("Second Entry").

As explained in more detail below, the Commission's Second Entry in this case with respect to the issues raised by Conservation Groups and IEU is reasonable and lawful. For the reasons set forth herein, the Commission should deny the Conservation Groups' and IEU's Applications for Rehearing.

ARGUMENT

I. The Commission correctly found that banked savings may trigger eligibility for shared savings.

IEU asserts that the Commission erred when it ruled that banked savings may be used to trigger shared savings.[1] IEU's arguments are based on the mistaken premise that the Commission permitted banked savings to be used to calculate shared savings. However, the Commission's Second Entry does not permit banked savings to be used in the calculation of the net benefits and financial incentive of shared savings. Rather, the Commission merely clarified that banked savings may be used in the eligibility or "trigger"

[1] Industrial Energy Users—Ohio's Application for Rehearing, p. 2.

phase. The "trigger" phase is independent from the calculation of the shared savings incentive amount—the "net benefits" phase.

To illustrate the difference between these two phases, consider a year in which an electric distribution utility ("EDU") has no energy efficiency program activity at all, and therefore meets its compliance mandate entirely through the use of banked savings. Having hit the compliance threshold, eligibility for shared savings will have been triggered. However, because banked savings are not part of the calculation of the shared savings incentive amount, the "net benefits" of the current year's energy efficiency results is zero. Banked savings will not, in fact, contribute to the calculation of the amount of net benefits to which a sharing percentage is applied. This independence holds true for any percentage of banked savings used to meet the compliance mandate.

The Commission adequately explained the reason for its decision, contrary to IEU's assertions.[2] The Commission not only cited the purpose of this rule amendment proceeding under R.C. 111.15(B), but also explained the basis for all of its decisions. Further, in describing "current Commission practice," IEU cites only to stipulations and "black-box settlements" which by their terms did not set precedent for other proceedings. IEU's assignment of error has no merit, and the Commission should deny its Application for Rehearing.

II. The Commission correctly ordered Market Potential Studies to be conducted at least every five years.

The Commission's new Rules require EDUs to perform Market Potential Studies ("MPSs") at least once every five years.[3] This enables an EDU to balance an MPS's cost

[2] Second Entry on Rehearing, para. 17, 43-44.
[3] Rule 4901:1-39-03(A).

and the MPS's value in ensuring good energy efficiency programs. In its first assignment of error, Conservation Groups argue that the Commission erred by requiring utilities to perform MPSs too infrequently.[4] Referencing utilities' historic filing of MPSs every three years in conjunction with the filing of portfolio plans, Conservation Groups argue that utilities should continue to submit MPS reports at least once every three years.[5]

Conservation Groups overlook the fact that the new Rules enable EDUs to perform MPSs more frequently than they did historically. Since the new Rules require EDUs to file new portfolio plans annually, EDUs could update their MPS reports as frequently as every year, if market conditions warrant. However, if market conditions do not change significantly, and a new MPS does not provide material benefits to justify the significant effort and cost, the EDU need not perform one. Thus, the new Rules give EDUs the flexibility to respond to market conditions when it is cost-effective, by filing updated MPS reports between one and five years apart. There is no evidence in the record to suggest that EDUs will fail to timely update their MPSs when market conditions warrant. Further, the minimum requirement to perform an MPS at least every five years is a sufficient backstop to prevent reliance on stale data.

Moreover, the Commission has approved a four-year plan for at least one Ohio EDU, requiring the EDU to file its next MPS report four years after its previous MPS report.[6] Conservation Groups were parties to this case and supported the four-year program

[4] Conservation Groups Second Application for Rehearing, p. 2.
[5] *Id*.
[6] *In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio Plan*, Case No. 16-574-EL-POR, Stipulation and Recommendation (filed Dec. 9, 2016), p. 3.

term. Conservation Groups do not explain why four years is an acceptable interval, but five years (with the flexibility to file as frequently as annually) is unreasonable.

The Commission's Second Entry establishing a five-year minimum requirement for updating MPS reports is reasonable and Conservation Groups' first assignment of error should be rejected.

III. The Commission approved appropriate program portfolio plan filing requirements.

Conservation Groups' second assignment of error argues that the Commission erred by not requiring more information to be included in annual program portfolio plan filings.[7] Conservation Groups contend that the additional information is necessitated by the new Rules' four-month interval between the program portfolio plan filing and the start of the program year."[8] Conservation Groups offer several pieces of information that they deem "key" to supporting "useful stakeholder input."[9] Conservation Groups' second assignment of error is both procedurally deficient and fails on its merits.

Conservation Groups' second assignment of error is procedurally deficient because their Second Application for Rehearing does not point to any changes made in the Commission's Second Entry to the four-month process for initial stakeholder input that were not already reflected in the Finding and Order issued on December 19, 2018. Indeed, Conservation Groups previously argued extensively against moving from pre-approval to a post-approval process without identifying additional information filing requirements necessary to support useful stakeholder input.[10] Furthermore, this very same argument that

[7] *Id*. p. 4.
[8] *Id*.
[9] *Id*. pp. 4, 5.
[10] Application for Rehearing of [Conservation Groups], filed January 18, 2019, pp. 7-16.

a four-month process without staggered filing dates would not allow sufficient time for discovery and meaningful participation was already raised and rejected in the first round of Applications for Rehearing.[11] The Commission has thoroughly considered this issue, and Conservation Groups have raised no new arguments for the Commission's consideration. Therefore, this request for rehearing should be denied.

Conservation Groups' second assignment of error also fails on its merits. Rule 4901:1-39-04 already requires extensive information to be filed with the annual plans. While Conservation Groups have identified additional information that they deem key to supporting useful stakeholder input,[12] there is no evidence that any other stakeholder has any use for this specific information. And if stakeholders need additional information or an opportunity to provide input, they are able to obtain both through the collaborative process. Imposing the additional burden Conservation Groups recommend on every EDU in every annual filing is inefficient and unwarranted.

Conservation Groups' second assignment of error should be rejected, and the Commission should deny Conservation Groups' Second Application for Rehearing.

[11] See, Application for Rehearing of the Office of Ohio Consumers' Counsel, filed January 18, 2019, at p. 4.
[12] Application for Rehearing of [Conservation Groups], pp. 5-6 (including more than a dozen new items).

CONCLUSION

For all of the foregoing reasons, the Commission should deny the Applications for Rehearing of Conservation Groups and IEU.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company has been filed with the Commission's Docket Information System this 20th day of May and is available for all interested parties.

/s/ *Robert M. Endris*
One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

Summary: Memorandum Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Applications for Rehearing by Conservation Groups and the Industrial Energy Users-Ohio electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company