

## **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  
ENERGY EFFICIENCY AND PEAK DEMAND  
REDUCTION PROGRAM PLANS FOR 2013  
THROUGH 2015.**

**CASE NO. 12-2190-EL-POR  
CASE NO. 12-2191-EL-POR  
CASE NO. 12-2192-EL-POR**

### **SIXTH ENTRY ON REHEARING**

Entered in the Journal on June 5, 2019

#### **I. SUMMARY**

{¶ 1} In this Sixth Entry on Rehearing, the Commission denies the application for rehearing filed by the Environmental Law & Policy Center, Ohio Environmental Council, and Natural Resources Defense Counsel.

#### **II. HISTORY OF THE PROCEEDING**

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or Companies) are electric distribution utilities as defined in R.C. 4928.01(A)(6) and public utilities as defined in R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} On July 31, 2012, FirstEnergy filed an application for approval of the Companies' energy efficiency (EE) and peak demand reduction (PDR) program portfolio plan for 2013 through 2015 pursuant to the Revised Code, Ohio Adm.Code 4901:1-39-04, 4901:1-39-05, 4901:1-39-06, and 4901:1-39-07, and the Commission's February 29, 2012 Entry in Case No. 12-814-EL-UNC. Thereafter, on March 20, 2013, the Commission issued an Opinion and Order approving the portfolio plan with modifications. Opinion and Order (Mar. 20, 2013).

{¶ 4} On April 19, 2013, FirstEnergy, Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and Nucor Steel Marion, Inc. (Nucor), each filed applications

for rehearing. In addition, a joint application for rehearing was filed by the Environmental Law and Policy Center (ELPC) and Ohio Environmental Council (OEC). On May 15, 2013, the Commission granted the applications for rehearing for further consideration of the matters specified in the applications for rehearing. Entry on Rehearing (May 15, 2013). Thereafter, on July 17, 2013, the Commission denied the application for rehearing filed by OCC and the joint application for rehearing filed by ELPC and OEC and granted, in part, and denied, in part, the applications for rehearing filed by FirstEnergy, IEU-Ohio, and Nucor. Second Entry on Rehearing (July 17, 2013) at 18-19.

{¶ 5} Sub. S.B. No. 310 (S.B. 310), effective on September 12, 2014, amended Ohio's renewable energy, energy efficiency, and peak demand reduction requirements. Section 6(A) of S.B. 310 provided that an electric distribution utility (EDU) that has a portfolio plan in effect on the effective date was permitted to seek an amendment to that portfolio plan, pursuant to Section 6(B) of S.B. 310. S.B. 310 also provided an opportunity for certain mercantile customers to opt out of an EDU's EE/PDR programs. R.C. 4928.6611.

{¶ 6} On September 24, 2014, FirstEnergy filed an application to amend its EE/PDR program portfolio plans for 2015 through 2016, pursuant to Section 6 of S.B. 310. Following a comment period, the Commission approved the Companies' application, subject to modifications. Finding and Order (Nov. 20, 2014).

{¶ 7} On December 22, 2014, FirstEnergy, OCC, The Ohio Manufacturers' Association Energy Group (OMAEG), and ELPC, OEC, Sierra Club, and Natural Resources Defense Council (NRDC) filed applications for rehearing regarding the Order. On January 14, 2015, the Commission granted the applications for rehearing for further consideration of the matters specified in the applications for rehearing. Fourth Entry on Rehearing (Jan. 14, 2015). Subsequently, on April 10, 2019, the Commission granted, in part, and denied, in part, the application for rehearing filed by the Companies and denied all other applications for rehearing. Fifth Entry on Rehearing (Apr. 10, 2019). In the Fifth Entry on Rehearing, among other issues, the Commission reversed our previous ruling and determined that energy

savings, both historic and prospective, provided by mercantile customers who opt out of the EDU's EE/PDR programs pursuant to R.C. 4928.6611, should be countable towards compliance with the EE/PDR benchmarks set forth in R.C. 4928.66.

{¶ 8} Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

{¶ 9} On May 10, 2019, ELPC, OEC, and NRDC (Environmental Advocates) filed a joint application for rehearing regarding the Fifth Entry on Rehearing. On May 20, 2019, FirstEnergy and IEU-Ohio each filed memoranda contra the applications for rehearing.

### III. DISCUSSION

{¶ 10} In the sole assignment of error in the April 10, 2019 application for rehearing, the Environmental Advocates claim that the Fifth Entry on Rehearing is unreasonable and unlawful because the Fifth Entry on Rehearing reversed a prior Commission decision and allows the Companies to count energy savings from customers toward compliance with the EE/PDR benchmarks, where those customers have opted out of FirstEnergy's EE/PDR programs and, therefore, such customers' load is not included in the Companies' compliance baseline.

{¶ 11} The Environmental Advocates argue that the statutory language of R.C. 4928.66 provides no basis for counting energy savings from customers not included in the EDU's compliance baseline. The Environmental Advocates also assert that there is no mechanism for an opt-out customer's energy savings, after opting out, to be funded by other customers.

{¶ 12} Further, the Environmental Advocates note that, in the Fifth Entry on Rehearing, the Commission expressed concern that excluding cost-effective energy savings from compliance with the EE/PDR benchmarks would require the Companies to obtain additional energy savings which may be less cost-effective and require the Companies to recover additional program costs. The Environmental Advocates note that the Commission

also expressed increasing concerns regarding the bill impacts on all customers resulting from the rising costs of compliance with the EE/PDR benchmarks. Fifth Entry on Rehearing at ¶ 14. However, Environmental Advocates claim that the Fifth Entry on Rehearing failed to recognize that, as long as energy savings are cost-effective, prohibiting the Companies from counting opt-out customers' energy savings will produce more savings for customers even if the utility is spending more on programs.

{¶ 13} IEU-Ohio, in its memorandum contra the application for rehearing, responds that R.C. 4928.662 requires the Commission to count all energy savings already approved by the Commission, including, for example, all energy savings committed under the mercantile customer application process and approved under the automatic approval process. Further, IEU-Ohio argues that the R.C. 4928.66(A)(2)(c) has always required that an EDU count energy savings achieved outside of the program portfolio plans towards compliance with the benchmarks set forth in R.C. 4928.66 and that this provision was not changed when the opt-out process was enacted in S.B. 310.

{¶ 14} In its memorandum contra the application for rehearing, FirstEnergy claims that the Commission acted reasonably and lawfully when it held that the Companies may count prospective savings of opt-out customers toward compliance with the EE/PDR benchmarks. Further, the Companies argue that Environmental Advocates raised no new arguments regarding this issue and that the Commission fully considered and rejected these same arguments in the Fifth Entry on Rehearing. Fifth Entry on Rehearing at ¶ 14. Consequently, the Companies argue that rehearing should be denied on that basis.

{¶ 15} The Commission finds that rehearing on this assignment of error should be denied. We disagree with Environmental Advocates' claim that the statutory language provides no basis for counting energy savings from customers not included in the EDU's compliance baseline. R.C. 4928.66(A)(2)(c) provides that compliance with the EE/PDR benchmarks "shall be measured by including the effects" of all "mercantile customer-sited energy efficiency." Likewise, R.C. 4928.662 states that energy efficiency savings achieved

through actions taken by customers “shall count toward compliance” with the EE/PDR benchmarks. However, there is no provision in either statute to exclude energy savings from customers because the customers have opted out of the EDU’s EE/PDR programs. Therefore, as IEU-Ohio points out, counting opt-out customers energy savings towards compliance with the EE/PDR benchmarks is consistent with both R.C. 4928.66(A)(2)(c) and 4928.662.

{¶ 16} Moreover, as we noted in the Fifth Entry on Rehearing, excluding opt-out customer energy savings would mean excluding cost-effective energy savings from the EE/PDR benchmarks. Fifth Entry on Rehearing at ¶ 14. For example, a mercantile customer may choose a cash rebate in exchange for committing its energy savings to the EDU. *In re a Mercantile Application Pilot Program Regarding Special Arrangements with Electric Utilities*, Case No. 10-834-EL-POR, Finding and Order (Sept. 15, 2010). If that mercantile customer opts out after receiving the cash rebate, the opt-out customer already has been compensated by the EDU and that compensation will be recovered from other customers. Excluding such customer’s energy savings from compliance towards the EE/PDR benchmarks may require the Companies to obtain additional energy savings, which may well be less cost-effective, to offset the excluded savings. As we noted in the Fifth Entry on Rehearing, the Commission has been increasingly concerned about the bill impacts on all customers given the rising compliance costs of meeting the EE/PDR benchmarks. Fifth Entry on Rehearing at ¶ 14 (citing *In re Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co.*, Case No. 16-743-EL-POR (Nov. 21, 2017) at 22-23). Environmental Advocates respond that, if the additional energy savings is cost-effective, customers of the Companies will save money. However, even if customers, *in the aggregate*, save money, *individual* customers may have to pay more depending on their usage and level of participation in the EE/PDR programs. Finally, we reiterate that our decision in the Fifth Entry on Rehearing was consistent with our recent rejection of a proposed rule which would have excluded opt-out customers’ energy savings from being counted towards compliance with the EE/PDR benchmarks. Fifth Entry on Rehearing at ¶ 14; *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, et al., Finding and Order (Dec. 19, 2018).

IV. ORDER

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the joint application for rehearing filed by Environmental Advocates be denied. It is, further,

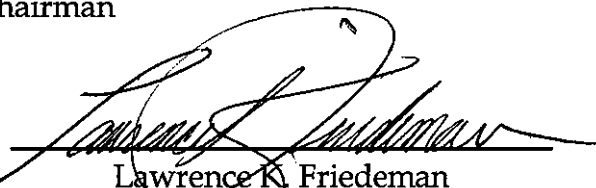
{¶ 19} ORDERED, That a copy of this Sixth Entry on Rehearing be served upon all parties of record.

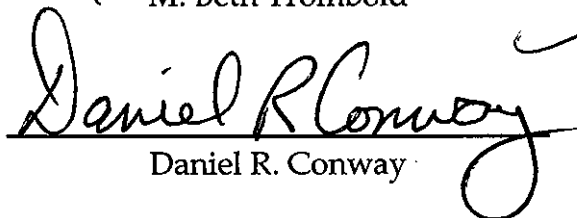
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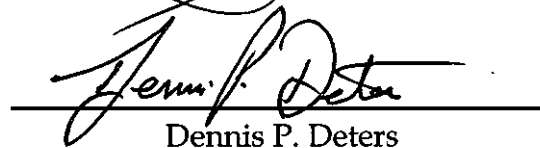
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Sam Randazzo, Chairman

  
M. Beth Trombold

  
Lawrence K. Friedeman

  
Daniel R. Conway

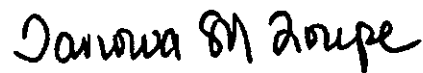
  
Dennis P. Deters

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Tanowa M. Troupe  
Secretary