

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing by Ohio Edison )  
Company, The Cleveland Electric )  
Illuminating Company, and The Toledo ) Case No. 16-481-EL-UNC  
Edison Company of a Grid Modernization )  
Business Plan )

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company, and The Toledo ) Case No. 17-2436-EL-UNC  
Edison Company Application for )  
Approval of a Distribution Platform )  
Modernization Plan )

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company, and The Toledo ) Case No. 18-1604-EL-UNC  
Edison Company to Implement Matters )  
Relating to the Tax Cuts and Jobs )  
Creation Act of 2017 )

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company, and The Toledo ) Case No. 18-1656-EL-ATA  
Edison Company for Approval of a Tariff )  
Change )

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**MEMORANDUM CONTRA OF INDUSTRIAL ENERGY USERS-OHIO  
TO MOTION TO VACATE AND CONDUCT NEW PROCEEDINGS**

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**DECEMBER 9, 2020**

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**MEMORANDUM CONTRA OF INDUSTRIAL ENERGY USERS-OHIO  
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On November 24, 2020, the Environmental Law & Policy Center (“ELPC”) filed a motion to vacate every order in the proceedings (which would vacate approval of the settlement requiring FirstEnergy to provide approximately \$900 million<sup>1</sup> in credits to

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<sup>1</sup> See Post-Hearing Brief of FirstEnergy at 9 (“As a result of the Stipulation, customers will benefit from total tax savings of approximately \$900 million . . .”).

customers) and conduct new proceedings in the above-captioned dockets. The Commission should deny its motion.

ELPC's cut-and-paste motion (filed in several different and unrelated proceedings) and accompanying memorandum in support do not make the case for why the decision in the proceedings should be vacated. Fundamentally, ELPC's position<sup>2</sup> in this case sought to increase by \$30 million the charges FirstEnergy collects from customers by modifying a comprehensive settlement joined by 12 different parties. The parties supporting the stipulation<sup>3</sup> covered diverse interests and included environmental groups, representatives of residential and industrial customers, competitive retail electric service providers, FirstEnergy, and Public Utilities Commission of Ohio ("Commission") Staff. As the Commission found, ELPC failed to demonstrate on the record that its request to modify the settlement was warranted.<sup>4</sup> Importantly, in the section of the Order in which the Commission described its decision not to adopt the \$30 million rate increase smart thermostat proposal, the Commission relied extensively on the arguments made by the Signatory Parties, as well as on the guidance provided in the Commission's PowerForward Roadmap.<sup>5</sup>

While ELPC had an opportunity to seek rehearing of the Commission's approval of the settlement, ELPC submitted a deficient application for rehearing that again failed to demonstrate that modification of the settlement to include ELPC's rate increase

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<sup>2</sup> Environmental Advocates Initial Brief at 28-36 (Mar. 1, 2019). ELPC's prior arguments were presented jointly with Ohio Environmental Council, and The Natural Resources Defense Council, collectively, the "Environmental Advocates." The Smart Thermostat Coalition submitted similar arguments.

<sup>3</sup> Stipulation (November 9, 2018).

<sup>4</sup> See *Opinion and Order* at 58-61, (July 17, 2019).

<sup>5</sup> *Id.* at 58-61.

proposal was warranted.<sup>6</sup> ELPC could have appealed the Commission's orders but did not do so.

Now, more than a year past the Commission's approval of the settlement in this matter, ELPC seeks to vacate every order of the Commission in this proceeding. The result of ELPC's draconian overreach would be to undo approval of a settlement providing approximately \$900 million in credits to customers related to the reduction in the federal corporate income tax rate. ELPC's motion is an untimely application for rehearing that simply seeks another opportunity for ELPC to advocate for an increase in the charges FirstEnergy assess on customers while undoing significant customer benefits contained in the Stipulation.<sup>7</sup> ELPC has failed to demonstrate that the extraordinary remedy it seeks is warranted. Accordingly, the motion should be denied.

Respectfully submitted,

/s/ Matthew R. Pritchard

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<sup>6</sup> Entry on Rehearing at 9 (September 11, 2019); see R.C. 4903.10.

<sup>7</sup> Stipulation (November 9, 2018).

## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Memorandum Contra of Industrial Energy Users-Ohio to Motion to Vacate and Conduct New Proceedings* was sent by, or on behalf of, the undersigned counsel for Industrial Energy Users-Ohio, to the following parties of record on this 9th day of December 2020, via electronic transmission, hand-delivery or U.S. mail, postage prepaid.

/s/Matthew R. Pritchard

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Summary: Memorandum Contra to Motion to Vacate and Conduct New Proceedings  
electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio