

**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)
Edison Company for Authority to Provide) Case No. 23-0301-EL-SSO
for a Standard Service Offer Pursuant to)
R.C. § 4928.143 in the Form of an Electric)
Security Plan)

**APPLICATION FOR REHEARING BY
ENVIRONMENTAL LAW & POLICY CENTER,
CITIZENS UTILITY BOARD OF OHIO, AND
OHIO ENVIRONMENTAL COUNCIL**

Pursuant to Ohio Revised Code Section 4903.10 and Ohio Administrative Code 4901-1-35, the Environmental Law & Policy Center, Citizens Utility Board of Ohio, and Ohio Environmental Council file this Application for Rehearing of the May 15, 2024 Opinion and Order (Order) in this proceeding. The Order modified and approved the Application for a fifth Electric Security Plan (ESP V) filed by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (FirstEnergy or the Companies). Importantly, the Order approved the Low-Income Energy Efficiency and Energy Education programs, and rejected the Residential Rebate and Energy Solutions for Business programs. The Order also rejected the Demand Response for Residential program and directed FirstEnergy to develop and propose a smart thermostat rebate program with an annual budget of \$2 million for the entire five-year term of ESP V. As further explained in the accompanying Memorandum in Support, the Order is unlawful and unreasonable because the Commission failed to base its decision to reject the Residential Rebate and Demand Response for Residential programs on facts in the record.

Dated: June 14, 2024

Respectfully submitted,

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Provide for a Standard Service Offer)
Pursuant to R.C. § 4928.143 in the Form)
of an Electric Security Plan)

**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING BY
ENVIRONMENTAL LAW & POLICY CENTER,
CITIZENS UTILITY BOARD OF OHIO, AND
OHIO ENVIRONMENTAL COUNCIL**

I. INTRODUCTION

In their Application for a fifth Electric Security Plan (ESP V), Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (FirstEnergy or the Companies) proposed a portfolio of energy efficiency and demand response programs (EE/PDR plan), which included four residential programs and one non-residential program. Order at ¶¶ 208-09; Co. Ex. 5 at 5-25. The Companies' EE/PDR plan would have an average annual total cost of \$72.1 million and result in up to \$637.9 million in estimated benefits over the lifetime of the programs. Order at ¶ 211; Co. Ex. 5 at 4. The EE/PDR plan programs would help customers to reduce their energy usage and associated costs, including specifically during peak periods, and would reduce stress on the grid during these peak periods, thereby resulting in cost savings from avoided grid investments. Order at ¶ 211; Co. Ex. 5 at 4-7, 9, 26-30.

In its May 15, 2024 Opinion and Order (Order) in this proceeding, the Commission approved two of the Companies' residential EE/PDR plan programs: the Low-Income Energy

Efficiency and Energy Education programs. Order at ¶ 229. The Commission rejected the remaining two residential and one non-residential programs: the Residential Rebate, Demand Response for Residential, and Energy Solutions for Business programs. Order at ¶¶ 230-32. In place of the Demand Response for Residential program, the Commission directed FirstEnergy to develop and propose a smart thermostat rebate program with an annual budget of \$2 million for the entire five-year term of ESP V. Order at ¶ 232.

As discussed further below, the Commission’s rejection of the Residential Rebate and Demand Response for Residential programs is unreasonable and unlawful. Rather than basing its decision on facts in the record, the Commission relied on its own prior decisions in other proceedings where it similarly ignored the record regarding the benefits of utility run efficiency programs. The Environmental Law & Policy Center (ELPC), Citizens Utility Board of Ohio (CUB Ohio), and Ohio Environmental Council (OEC) request rehearing and reconsideration of the Commission’s Order on these programs, and recommend the Commission approve them.

II. STANDARD OF REVIEW

Ohio Revised Code (R.C.) Section 4903.10 enables parties to seek rehearing of any aspect of a final order by the Public Utilities Commission of Ohio (Commission) that is “unreasonable or unlawful.” In addition, on rehearing the Commission must be mindful of compliance with R.C. 4903.09, which provides:

[I]n all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

The Ohio Supreme Court has explained that R.C. 4903.09 means that “the PUCO’s order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion.” *MCI Telecommunications Corp. v. Pub. Util.*

Comm., 32 Ohio St.3d 306, 312, 513 N.E.2d 337 (1987). In fact, “[a] legion of cases establish that the commission abuses its discretion if it renders an opinion on an issue without record support.” *Indus. Energy Users-Ohio v. PUC*, 117 Ohio St.3d 486, 493, 885 N.E.2d 195 (2008) (citations and internal quotation marks omitted).

III. ARGUMENT

In rejecting both the Residential Rebate and Demand Response for Residential programs, the Commission relied on its decisions in prior proceedings rather than any factual record specific to FirstEnergy’s proposed programs. Although the Commission’s Order cited recent cases where the Commission rejected similar utility energy efficiency programs, the Commission did not cite any facts or analysis of the costs and benefits of such programs in those cases either. *See, e.g., Columbia Rate Case*, Opinion and Order at ¶¶ 50-56 (Jan. 26, 2023) (discussing and approving a stipulation that rejected all but the low-income component of the utility’s proposed energy efficiency program portfolio, without discussing the benefits and costs of the rejected programs, or citing to any facts showing comparable offerings by the competitive market).

FirstEnergy supports its Residential Rebate and Demand Response for Residential proposals with significant savings analysis by its witness Edward Miller, who runs FirstEnergy Corporation’s energy efficiency and demand response programs in several states. Co. Ex. 5 at 1-3. In contrast, the opponents’ testimony contains no analysis of the program proposals that refutes Mr. Miller’s analysis of the program benefits compared to the costs. Regarding the Residential Rebate program, as well as the Energy Solutions for Business program,¹ the Order agreed with “several of the points” raised by these opponents and, without any further specificity, found that

¹ Consistent with our focus throughout this proceeding, in this application for rehearing we address only the two rejected residential programs because of their importance to reducing residential ratepayers’ bills, although we find similar deficiencies in the Order’s rejection of the non-residential Energy Solutions for Business program.

“they are better suited for the competitive market” Order at ¶ 230. The Order went on to state: “Ultimately, we agree with Staff witness Braun that the approach adopted in this Opinion and Order, which relies more heavily on the competitive market than utility programs to offer energy efficiency products, is consistent with the approach the Commission has adopted in recent cases while still offering low-income customers the opportunity to participate in energy efficiency programs that the competitive market may not provide (Staff Ex. 3 at 8-9).” Order at ¶ 231. However, neither the Order nor Staff witness Braun cited to any facts or analysis regarding the Residential Rebate program; they cited only to recent Commission cases. Order at ¶ 231 (citing Commission decisions in the Columbia Rate Case, AEP Ohio Rate Case, and DEO Alternative Rate Plan Case); Staff Ex. 3 at 5 (“Staff finds that this approach is consistent with previous Commission Orders (for example, Columbia Gas of Ohio’s most recent base distribution rate case) that have provided a framework of what the Commission finds to be appropriate energy efficiency programs at this time.”). Ultimately, there is no record evidence that supports the Commission’s circular logic.

In addition to requesting that the Commission reconsider its decision on the Residential Rebate program, we also request reconsideration on the Demand Response for Residential program. Although the Commission correctly concluded that the record justifies a smart thermostat rebate program, it failed to explain its decision regarding the Demand Response for Residential program. The Order simply stated: “We do not find that this program should be adopted.” Order at ¶ 232. The Order provided no factual rationale for its rejection. It went on to “direct the Companies to develop and propose a smart thermostat rebate program with an annual budget of \$2,000,000 for the entire five-year term of ESP V, which represents a program of appropriate size and scale to be offered to FirstEnergy’s residential customers at this time.” Order at ¶ 232. The

Commission based its decision to require a smart thermostat rebate program on record evidence showing that “smart thermostats are an essential tool which can facilitate market-based solutions for energy efficiency,” as well as its recent decision to approve a smart thermostat demand response program in the AEP Ohio ESP V case. Order at ¶ 232. While the Commission correctly justified its direction to the Companies to develop a smart thermostat rebate program based on the factual record, along with its recent precedent, it did not similarly justify its rejection of the Demand Response for Residential program. Although the Order highlighted the lower cost of the required smart thermostat rebate program (\$2 million) as compared to the proposed Demand Response for Residential program (approximately \$3.5 million), noting affordability as an important consideration, it did not discuss program benefits, or whether it considered modifying the budget or other elements of the Demand Response program instead of fully rejecting it. Order at ¶ 232. In fact, the Order indicated that AEP Ohio’s recently approved program, which includes a demand response component, should serve as a model for FirstEnergy in establishing its smart thermostat rebate program. Order at ¶ 233.

The Order fails to show in any detail the facts in the record upon which the Commission based its rejection of FirstEnergy’s proposed Residential Rebates and Demand Response for Residential programs. Therefore, the Order on these programs is unreasonable and unlawful because it fails to satisfy the Commission’s obligation to justify its decision, in sufficient detail, on the factual record. *See Indus. Energy Users-Ohio*, 117 Ohio St.3d at 493; *MCI Telecommunications Corp.*, 32 Ohio St.3d at 312.

IV. CONCLUSION

As the Commission recognized in its Order, it is not statutorily precluded from considering the EE/PDR plan; rather, important statutory provisions allow for such voluntary programs, if approved by the Commission. Order at ¶ 228. When evaluating voluntary programs like the

EE/PDR plan, the Commission must analyze the facts in the record. In rejecting the Residential Rebate and Demand Response for Residential programs based solely on its own prior decisions where it also failed to consider the facts, the Commission failed to meet this obligation. Therefore, ELPC, CUB Ohio, and OEC request rehearing and reconsideration of the Commission's Order on these programs, and recommend the Commission approve them.

Dated: June 14, 2024

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served via electronic transmission upon the parties this 14th day of June 2024.

/s/ Erica McConnell

Erica McConnell

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: App for Rehearing Application for Rehearing and Memorandum in Support electronically filed by Erica McConnell on behalf of Environmental Law & Policy Center and Citizens Utility Board of Ohio and Ohio Environmental Council.