

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of)	
Chapters 4901:1-10 and 4901:1-21,)	
Ohio Administrative Code, Regarding)	Case No. 14-1411-EL-ORD
Electric Companies and Competitive)	
Retail Electric Service, to Implement)	
2014 Sub.S.B. No. 310.)	

INDUSTRIAL ENERGY USERS-OHIO’S REPLY COMMENTS

On November 5, 2014, interested parties filed initial comments in response to the Public Utilities Commission of Ohio’s (“Commission”) proposed rules to implement the requirement to identify on customer bills the costs of compliance with Ohio’s energy efficiency (“EE”) and peak demand reduction (“PDR”) mandates as required by R.C. 4928.65. The Commission’s proposed rules were largely supported (or not opposed) by the majority of the parties filing initial comments and, as indicated in the Industrial Energy Users-Ohio’s (“IEU-Ohio”) Initial Comments and discussed below, should be adopted without modification.

IEU-Ohio’s Reply Comments respond to several issues raised in the initial comments. Specifically, IEU-Ohio responds to the arguments of the Ohio Manufacturers’ Association Energy Group (“OMAEG”) and the Environmental Advocates¹ which unlawfully propose that the Commission modify its proposed rules

¹ The Environmental Advocates consist of the Environmental Law and Policy Center, the Sierra Club, the Natural Resources Defense Council, and the Ohio Environmental Council.

such that only a portion of the actual costs paid by customers to comply with Ohio's EE and PDR mandates are disclosed to customers. IEU-Ohio also responds to Ohio Power Company's ("AEP-Ohio") request to amend its portfolio plan to allow it to recover any costs it might incur in implementing the Commission's rules adopted in this proceeding and IEU-Ohio urges the Commission to address AEP-Ohio's request in a separate proceeding. IEU-Ohio responds to The Dayton Power and Light Company's ("DP&L") and Direct Energy Services, LLC, Direct Energy Business, LLC, and Direct Energy Business Marketing, LLC's ("Direct Energy") request for a reasonable implementation time to comply with the Commission's final rules, and while IEU-Ohio supports Direct Energy's proposed 90-day timeframe to implement the Commission's final rules, the Commission should direct the electric distribution utilities ("EDUs") and competitive retail electric serviced ("CRES") providers to include a bill insert disclosing the individual customer cost of the mandates beginning January 1, 2015, and continuing until the bill changes required by the Commission's rules are implemented. IEU-Ohio also recommends that the Commission not adopt the recommendation of OMAEG to include narrative language on individual customers' bills regarding alleged price suppression benefits.

I. ARGUMENT

A. The Environmental Advocates' and OMAEG's recommended methodology for calculating the individual customer cost of compliance with R.C. 4928.66 is contrary to R.C. 4928.65.

The Commission's proposed rules, in accordance with R.C. 4928.65, require an EDU to disclose the amount charged to each customer through the EE/PDR rider applicable to the customer. In their Initial Comments, the Environmental Advocates and

OMAEG oppose the Commission's proposed rules because they claim that the EDUs' EE/PDR riders contain costs unrelated to compliance with the EE/PDR mandates in R.C. 4928.66 and thus they conclude that the Commission's proposed methodology for disclosing the "individual customer cost" of these mandates overstates an individual customer's cost of compliance.² Accordingly, they propose that the Commission exclude certain amounts actually paid by customers (such as shared savings) from the disclosures required by R.C. 4928.65. The Commission should reject these proposed changes because they violate the plain language of R.C. 4928.65.

Among other things, R.C. 4928.65 directs the Commission to adopt rules that require each EDU to disclose the "individual customer cost" of compliance with the EE/PDR benchmarks. An individual customer's cost is not some abstract concept. Rather, the cost is concrete, readily identifiable through the applicable EE/PDR rider rate, and easily calculated by multiplying a customer's usage by the applicable EE/PDR rider rate. This is the exact process used by the EDUs each month in calculating the amount to charge each customer on its electric bill and this is what is required by the Commission's proposed rules.

The Environmental Advocates and OMAEG, however, suggest that the Commission arbitrarily ignore some of the amounts that are actually being charged to customers and treat, for example, shared savings that are being collected and paid for by customers as something other than a cost to individual customers. Commission Rule 4901:1-39-07, Ohio Administrative Code ("O.A.C."), addresses the EDUs' EE/PDR

² Environmental Advocates Initial Comments at 7-10; OMAEG Comments at 2-3.

and details what may be included as a cost in the EE/PDR and charged to individual customers:

- (A) With the filing of its proposed program portfolio plan, the electric utility may submit a request for recovery of an approved rate adjustment mechanism, commencing after approval of the electric utility's program portfolio plan, **of costs due to electric utility peak-demand reduction, demand response, energy efficiency program costs, appropriate lost distribution revenues, and shared savings.** Any such recovery shall be subject to annual reconciliation after issuance of the commission verification report issued pursuant to this chapter.
 - (1) The extent to which the cost of transmission and distribution infrastructure investments that are found to reduce line losses may be classified as or allocated to energy efficiency or peak-demand reduction programs, pursuant to division (A)(2)(d) of section 4928.66 of the Revised Code, shall be limited to the portion of those investments that are attributable to and undertaken primarily for energy efficiency or demand reduction purposes.
 - (2) Mercantile customers, who commit their peak-demand reduction, demand response, or energy efficiency projects for integration with the electric utility's programs as set forth in rule 4901:1-39-08 of the Administrative Code, may individually or jointly with the electric utility, apply for exemption from such recovery.
- (B) Any person may file objections within thirty days of the filing of an electric utility's application for recovery. If the application appears unjust or unreasonable, the commission may set the matter for hearing.

(Emphasis added). This Rule specifically identifies lost distribution revenue and shared savings as costs eligible to be charged to individual customers through an EDU's EE/PDR rider. In many instances, the inclusion of shared savings and lost distribution revenue in EDUs' EE/PDR riders is the result of settlements supported by OMAEG and the Environmental Advocates. Furthermore, as specified in Division (B) of this Rule, any objection to the inclusion of shared savings and lost distribution revenue as a cost

to be recovered through an EE/PDR rider must be filed within thirty days and in the appropriate proceeding where the EDU's application is filed.

Accordingly, OMAEG's and the Environmental Advocates' proposals fail to respect the explicit requirement of R.C. 4928.65 to identify the actual cost that is charged to individual customers and are contrary to the Commission rule that identifies the costs that may be charged to customers through an EDU's EE/PDR rider. Therefore, the Commission should reject their unlawful proposals.

B. The Commission should require the EDUs and CRES providers to implement the cost disclosures required by R.C. 4928.65 in a reasonable timeframe.

DP&L and Direct Energy request that the Commission provide sufficient time for them to implement the billing disclosures required by the rules the Commission ultimately adopts. DP&L requests six months, and Direct Energy requests 90 days to comply with the Commission's final rules.³ IEU-Ohio agrees that a reasonable amount of time should be provided to the EDUs and CRES providers to comply with the final rules adopted by the Commission. However, the EDUs and CRES providers have been on notice since June 2014, when Substitute Senate Bill 310 ("SB 310") was signed into law, that billing disclosures would be required. Given the 65-day timeframe for any final rules adopted by the Commission to clear the jurisdiction of the Joint Committee on Agency Rule Review ("JCARR") and subsequent 10-day period for final rules filed with the Secretary of State to become effective (totaling 75 days), IEU-Ohio recommends the Commission adopt Direct Energy's proposed 90-day timeframe to comply with the final

³ DP&L Comments at 3; Direct Energy Corrected Initial Comments at 7.

rules.⁴ However, IEU-Ohio recommends that the Commission direct the EDUs and CRES providers to include a bill insert disclosing the individual customer cost of the mandates beginning January 1, 2015, and continuing until the bill changes required by the Commission's rules are implemented.

C. AEP-Ohio's request to modify its portfolio plan to allow for recovery of additional costs should not be addressed in this proceeding.

In its Initial Comments, AEP-Ohio requests the Commission to authorize an amendment to its portfolio plan to allow AEP-Ohio to collect costs associated with implementing the Commission's rules in this case.⁵ A rulemaking proceeding is not the appropriate proceeding to address AEP-Ohio's request. Consistent with Commission precedent and its rules, requests to include additional costs in an EDU's EE/PDR rider should be addressed on a case-by-case basis for each utility and based upon the facts specific to each utility.⁶ Accordingly, the Commission should not approve or address cost recovery issues in this proceeding.

D. The Commission should not adopt OMAEG's request to include alleged price suppression benefits on individual customers' bills.

OMAEG requests that the Commission include additional narrative language on customers' bills regarding what it claims are potential benefits of EE/PDR programs. For example, OMAEG requests that the Commission adopt rules that require customer bills to include language regarding the alleged price suppression effects of EE

⁴ R.C. 111.15; see also JCARR Procedures Manual at 4, available at <http://www.jcarr.state.oh.us/assets/gen/november-3-2014-procedure-manual-442> (last accessed on Nov. 17, 2014).

⁵ See AEP-Ohio Initial Comments at 1-2.

⁶ See *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Entry on Rehearing at 11 (May 21, 2014); Rule 4901:1-39-07, O.A.C.

measures on wholesale electric market prices.⁷ As the Commission knows, the allegation that there are such price benefits was contested during the legislative process associated with SB 310 and, if there are such benefits, they flow to all participants in the wholesale market (not just the customers who are paying Ohio's mandate taxes). Also, OMAEG offers no specific recommendation on how such claimed price suppression benefits should be determined. Further, in the context of the claimed price suppression effects of renewable energy, the Commission recently found that "inserting price suppression benefits into the calculation" of the cost of renewable energy "would add a subjective element to an objective calculation."⁸ The Commission concluded that any price suppression benefit was too speculative to be afforded any weight. Moreover, the benefits, if any, of Ohio's EE and PDR mandates is a matter that the legislative study committee created by SB 310 has been tasked to address.⁹

Accordingly, the Commission should reject OMAEG's suggestion to adopt rules that require that a claimed price suppression benefit be netted against an EDU's cost of compliance.

II. CONCLUSION

For the foregoing reasons, IEU-Ohio urges the Commission to adopt its proposed rules. IEU-Ohio also recommends that during the timeframe the Commission adopts to allow the EDUs and CRES providers to make the billing changes required by the Commission's final rules that the Commission direct the EDUs and CRES providers to

⁷ OMAEG Initial Comments at 5-6, 8-10.

⁸ *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No 11-5201-EL-RDR, Opinion and Order at 33 (Aug. 7, 2013).

⁹ See Section 4 of SB 310, available at: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_310.

disclose to individual customers through a bill insert the individual customer cost of the mandates (calculated in accordance with the Commission's rules).

Respectfully submitted,

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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 *Industrial Energy Users-Ohio's Reply Comments* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 17th day of November 2014, *via* electronic transmission.

/s/ Matthew R. Pritchard

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/17/2014 3:26:04 PM

in

Case No(s). 14-1411-EL-ORD

Summary: Comments Reply Comments of Industrial Energy Users-Ohio electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio