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 Approval of a Decoupling Mechanism	))))	Case No. 19-2080-EL-ATA Case No. 19-2081-EL-AAM

MOTION TO INTERVENE AND COMMENTS
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

Pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11, the Ohio Manufacturers' Association Energy Group (OMAEG) respectfully moves the Public Utilities Commission of Ohio (Commission) to intervene in this matter with the full powers and rights granted to intervening parties. As demonstrated in the attached Memorandum in Support, OMAEG has real and substantial interests that may be adversely affected by the outcome herein, and which cannot be adequately represented by any other existing parties. Accordingly, OMAEG satisfies the standard for intervention set forth in Ohio statutes and regulations.

Therefore, OMAEG respectfully requests that the Commission grant this motion to intervene and that OMAEG be made a full party of record in these proceedings.

Respectfully submitted,

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MEMORANDUM IN SUPPORT AND COMMENTS

I. INTRODUCTION

On November 21, 2019, the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (FirstEnergy) filed an application for approval of a decoupling mechanism pursuant to R.C. 4928.471. R.C. 4928.471 was enacted as part of Am. Sub. H. B. 6 (HB 6), which was signed into law on July 23, 2019 and went into effect on October 22, 2019. R.C. 4928.471 authorizes an electric distribution utility (EDU) to file an application to implement a decoupling mechanism within thirty days of the effective date of the new law. On December 3, 2019, the Public Utilities Commission of Ohio (Commission) sought comments from interested parties regarding the establishment of a decoupling mechanism under R.C. 4928.471.[1] The Ohio Manufacturers' Association Energy Group (OMAEG) hereby moves to intervene in the above-captioned proceeding and provides comments regarding the application for approval of a decoupling mechanism as requested.

II. INTERVENTION

Ohio Adm. Code 4901-1-11 and Ohio Adm. Code 4901:1-38-05(F) permit intervention by an affected party who has a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that

[1] See Attorney Examiner Entry at ¶8 (December 3, 2019).

interest and whose interest is not adequately represented by an existing party. Similarly, R.C. 4903.221 authorizes intervention where a party: may be adversely affected by the proceeding; will contribute to a full development and equitable resolution of factual issues; and will not unduly prolong or delay the proceedings.

OMAEG is a non-profit entity that strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. OMAEG members and their representatives work directly with elected officials, regulatory agencies, the judiciary, and the media to provide education and information to energy consumers, regulatory boards and suppliers of energy; advance energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and advocate in critical cases before the Commission. Indeed, OMAEG has been a participant in other cases before the Commission involving implementation of new provisions in HB 6 over the past several months.[2] Here, OMAEG members purchase electric services from FirstEnergy and OMAEG has an interest in ensuring that any application to implement a decoupling mechanism approved by the Commission is just and reasonable and consistent with Ohio law.

For these reasons, OMAEG has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest. It is regularly and actively involved in Commission proceedings and, as in previous proceedings, OMAEG's unique knowledge and perspective will contribute to the full development and equitable resolution of the factual issues in this case. OMAEG's interest will not be adequately represented by other parties and its timely intervention will not unduly delay or prolong these proceedings.

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[2] See Case No. 19-1808-EL-UNC (OVEC Cost Recovery Proceedings); Case No. 17-1398-EL-POR (Comments Regarding Future of Energy Efficiency Programs).

Because OMAEG satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11, it is authorized to intervene in this proceeding with the full powers and rights granted by the Commission to intervening parties. As such, OMAEG respectfully requests that the Commission grant this motion to intervene and that OMAEG be made a full party of record.

III. COMMENTS

R.C. 4928.471 authorizes an EDU to file an application to implement a decoupling mechanism. The relevant statutory language states:

> (A) Except as provided in division (E) of this section, not earlier than thirty days after the effective date of this section, an electric distribution utility may file an application to implement a decoupling mechanism for the 2019 calendar year and each calendar year thereafter. For an electric distribution utility that applies for a decoupling mechanism under this section, the base distribution rates for residential and commercial customers shall be decoupled to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, **excluding program costs and shared savings**, and recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018. An application under this division shall not be considered an application under section 4909.18 of the Revised Code.
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> (B) The commission shall issue an order approving an application for a decoupling mechanism filed under division (A) of this section not later than sixty days after the application is filed. In determining that an application is not unjust and unreasonable, **the commission shall verify that the rate schedule or schedules are designed to recover the electric distribution utility's 2018 annual revenues as described in division (A) of this section and that the decoupling rate design is aligned with the rate design of the electric distribution utility's existing base distribution rates.** The decoupling mechanism shall recover an amount equal to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, **excluding program costs and shared savings**, and recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018. The decoupling mechanism shall be adjusted annually thereafter to reconcile any over recovery or under recovery from the prior year and to enable an electric distribution utility to recover the same level of revenues described in division (A) of this section in each year.

> (C) The commission's approval of a decoupling mechanism under this section shall not affect any other rates, riders, charges, schedules, classifications, or services previously approved by the commission. The decoupling mechanism shall remain in effect until the next time that the electric distribution utility applies for and the commission approves base distribution rates for the utility under section 4909.18 of the Revised Code.
>
> (D) If the commission determines that approving a decoupling mechanism will result in a double recovery by the electric distribution utility, the commission **shall not approve the application unless the utility cures the double recovery**.
>
> (E) Divisions (A), (B), and (C) of this section shall not apply to an electric distribution utility that has base distribution rates that became effective between December 31, 2018, and the effective date of this section pursuant to an application for an increase in base distribution rates filed under section 4909.18 of the Revised Code.

R.C. 4928.471 (emphasis added).

A. The Commission Should Ensure that there is No Double Recovery of Lost Distribution Revenue.

As required by R.C. 4928.471(D), the PUCO should ensure that there is no double recovery of costs through the decoupling mechanism, including lost distribution revenue. As explained in previous comments filed by OMAEG in Case Nos. 16-0574-EL-POR, et al.,[3] HB 6 requires the EDUs to continue their respective energy efficiency programs through December 31, 2020. If the cumulative energy savings collective achieved *as of December 31, 2020* is *less than* 17.5% of the baseline, the Commission is required to decide how to further implement the EE programs to reasonably reach 17.5%. R.C. 4928.66(G)(2)(b). Pursuant to R.C. 4928.66(G)(3), each EDU's cost recovery mechanism authorized by the PUCO for compliance with R.C. 4928.66 continues until full compliance with the statute is achieved, subject to final reconciliation. Given that FirstEnergy's Rider DSE2 recovers costs incurred by each distribution utility associated with the EE/PDR programs and its compliance with R.C.

[3] See *In The Matter Of The Application Of Ohio Power Company For Approval Of Its Energy Efficiency And Peak Demand Reduction Program Portfolio Plan for 2017 Through 2020*, Case Nos. 16-0574-EL-POR, et al., Comments of the Ohio Manufacturers' Association Energy Group (November 25, 2019).

4928.66, Rider DSE2 will continue until the termination of FirstEnergy's EE/PDR programs and through final reconciliation. FirstEnergy's Rider DSE2 states that costs recovered under Rider DSE2 include costs associated with "lost distribution revenues resulting from the implementation of such programs."[4] Therefore, FirstEnergy should not be able to collect in 2020 (and after) the same lost distribution revenue already collected in Rider DSE2 or that which will be collected in Rider DSE2 while the EE/PDR programs continue or during the reconciliation program. As long as Rider DSE2 is in effect, the decoupling mechanism (Conservation Support Rider (Rider CSR)) must exclude recovery of the same lost distribution revenue in order to prevent double recovery. Without further detail in the application and/or review of future filings, it is difficult to confirm that no double recovery will occur between Rider DSE2 and Rider CSR.

B. FirstEnergy is Claiming, Without Justification, $66 Million Per Year in Lost Distribution Revenue Recovery, which Is More Than the Cost of Running Efficiency Programs.

FirstEnergy's Application, Exhibit A, reports its 2018 revenue from the implementation of R.C. 4928.66, excluding program costs and shared savings, as:

- Ohio Edison - $24,780,874 (Rate RS), $4,295,483 (Rate GS) = $29,076,357 (total)
- Cleveland Electric Illuminating - $19,616,798 (Rate RS), $5,129,473 (Rate GS) = $24,746,271 (total)
- Toledo Edison - $10,914,024 (Rate RS), $1,585,707 (Rate GS) = $12,499,7321 (total)

For the three distribution utilities, FirstEnergy claims that its total revenue in 2018 for lost distribution revenue associated with energy efficiency and peak demand reduction (EE/PDR) programs equals $66,322,359. However, according to FirstEnergy, it only spent $63,984,000 on

[4] The Cleveland Electric Illuminating Company Tariff, PUCO No. 13, Sheet 115, 23rd Revised Page 1 of 3 (July 1, 2019); Toledo Edison Tariff, PUCO No. 8, Sheet 115, 23rdh Revised Page 1 of 3 (July 1, 2019); Ohio Edison Company Tariff, PUCO No. 11, Sheet 115, 23rd Revised Page 1 of 3 (July 1, 2019).

EE/PDR programs in total across its three distribution utilities in 2018.[5] That is to say, FirstEnergy claims it collects more money from ratepayers for lost revenue distribution than it does to run efficiency programs. And this is in addition to the millions more FirstEnergy collects for "shared savings" or profit.

The Commission should not accept FirstEnergy's calculation of the lost distribution revenue total of $66 million for its 2018 baseline as just and reasonable without justification and further review. FirstEnergy's Application lacks the necessary detail to evaluate whether FirstEnergy's calculation of its "revenue resulting from implementation of R.C. 4928.66, excluding program costs and shared savings," is just, reasonable, and accurate. There are several ways in which FirstEnergy may be over-collecting (and overstating) its lost distribution revenue. For example, FirstEnergy should be excluding mercantile self-direct costs, savings, and the associated distribution revenue from its lost distribution revenue calculation.

Additionally, according to the Revised Code, only lost distribution revenue from energy-efficiency programs associated with the "twelve-month period ending on December 31, 2018" is to be "decoupled to." As stated in the R.C. 4928.471, "the base distribution rates . . . shall be decoupled to the base distribution revenue and revenue resulting from *implementation of section 4928.66* of the Revised Code, . . ., *as of the twelve-month period ending on December 31, 2018*." Implementation of R.C. 4928.66 as of the twelve-month period ending on December 31, 2018, in plain language, means FirstEnergy's statutory obligation to achieve a 1% reduction in energy use from its baseline kWh. FirstEnergy's baseline kWh in 2018 would include adjustments for both mercantile self-direct exemptions and streamlined opt-out customers.

[5] "Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to the Public Utilities Commission of Ohio for the period January 1, 2018 to December 31, 2018", Table 2-2, https://dis.puc.state.oh.us/TiffToPDf/A1001001A19E15B55551A03201.pdf

Thus, FirstEnergy is only authorized to request to decouple rates to lost distribution revenue associated with 1% of its adjusted EE/PDR baseline. The statute does not allow for decoupling to lost distribution revenue associated with implementation of R.C. 4928.66 from 1) other twelve-month periods, 2) banked savings, 3) cumulative savings, 4) life-time savings, or 4) exceeding the annual statutory benchmark. According to FirstEnergy's Application, Exhibit A, its distribution utilities collected a total of $975 million in 2018 for base distribution revenue. At most then, lost distribution revenue for the 2018 year would be $9.75 million. But, in reality, it should be somewhat less due to baseline adjustments for the mercantile self-direct exemptions and the large-user opt-outs.

Importantly, while the difference between lost distribution revenue recovered in 2018 and 2019, according to FirstEnergy in Exhibit A, is only a few million dollars for 2020, this decoupling mechanism would create a dramatic increase in Rider CSR when decoupling for the 2021 year. This is because when Rider DSE2 terminates and no offset in revenues will be calculated (assuming that there is a full offset in years 2020 and 2021 and there is no double recovery occurring), the $66 million that FirstEnergy is claiming for lost distribution revenue will be completely shifted to Rider CSR. As a result, customers who opted out of the EE/PDR programs and Rider DSE2 previously, will now endure this financial cost for years to come, with no additional benefit.

Because of the disparity in lost distribution revenue calculations, and the potential significant impact on ratepayers in future years, the Commission should not approve FirstEnergy's request until workpapers are reviewed and the calculation is deemed to be just and reasonable.

C. The Commission Should Only Approve Decoupling Based on Actual Costs, Not Projections, and Provide Refunds to Customers.

FirstEnergy is requesting decoupled revenue of calendar year 2019 to calendar year 2018. However, according to FirstEnergy's exhibits attached to the Application, it is relying on projected revenues for both base distribution and lost distribution revenue for November and December 2019. Proposing decoupling costs based on projections defeats one of the purposes of decoupling, which is to charge or credit ratepayers for the difference between *actual* costs and an established revenue number. Therefore, the Commission should ensure that Rider CSR is reconciled annually based on actual costs, and that any refunds are passed back or credited to customers.

IV. CONCLUSION

As discussed above, OMAEG satisfies the criteria for intervention set out in R.C. 4903.221 and Ohio Adm. Code 4901-1-11 and 4901:1-38-05(F). OMAEG, therefore, respectfully requests that the Commission grants this motion, allows OMAEG to intervene with the full powers and rights granted by the Commission to intervening parties, and makes OMAEG a full party of record. OMAEG further requests that the Commission gives due consideration to the comments articulated herein.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on December 17, 2019.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

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Summary: Motion to Intervene and Comments of The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group