BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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 No. 16-574-EL-POR
In The Matter of the Application of Duke Energy Ohio, Inc. for Approval of Its 2017-2019 Energy Efficiency and Peak Demand Reduction Program Portfolio Plan.	)	Case No. 16-576-EL-POR
In The Matter of the Application of The Ohio Edison Company, The Cleveland Electric Illuminating Company, And the Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 Through 2020.	)	Case No. 16-743-EL-POR
In The Matter of the Application of The Dayton Power and Light Company For Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 Through 2020.	)	Case No. 17-1398-EL-POR

COMMENTS
OF OHIO PARTNERS FOR AFFORDABLE ENERGY

November 25, 2019

Introduction

On October 23, 2019, The Public Utilities Commission of Ohio ("PUCO" or "Commission") issued an Entry requesting comments on the implications of the recently passed HB 6 on the future of Energy Efficiency and Peak Demand Reduction Program Portfolio Plans through 2020, when the actions of the General Assembly terminate the energy efficiency and peak demand mandates, and the riders that fund compliance with the standards. "The Commission requests comments from interested persons regarding the appropriate steps to be taken with respect to energy efficiency programs once the statewide cap of 17.5 percent, set by Am.Sub.House Bill 6, ("HB 6") has been met." Entry of October 23, 2019 at ¶ 1. Specifically, the Commission requests comments on "(1) whether the Commission should terminate the energy efficiency programs once the statutory cap of 17.5 percent has been met; and (2) whether it is appropriate for the EDUs to continue to spend ratepayer provided funds on energy efficiency programs after the cap has been met." Entry of October 23, 2019 at ¶ 5.

Ohio Partners for Affordable Energy ("OPAE") views the plan language of the statute as clearly authorizing and requiring a continuation of Energy Efficiency Peak-Demand Response Portfolios ("EE/PDR Portfolios" or "portfolio plans") through 2020 under R.C. 4928.66.

Argument

I. The Commission is Required to Continue EE/PDR Portfolios through 2020.

Under Am.Sub.House Bill 6 ("HB 6"), EE/PDR mandates and the authority to recover expenses required to comply with the mandates terminate, with some exceptions, at the end of 2020. The mandates are specifically continued through 2020, with a required 1 percent annual increase. R.C. 4928.66(A)(1)(a). After the end of 2020, the Commission is to determine whether portfolio plans have achieved a 17.5 percent reduction in energy use from the applicable baseline. If the electric distribution utilities ("EDUs") have collectively met the standard at the end of 2020, the mandate terminates. If it has not been met, the Commission "shall determine the manner in which further implementation of energy efficiency programs shall occur as may be reasonably necessary for collective achievement of cumulative energy savings equal to seventeen and one-half percent, and not more…." R.C. 4928.66(G)(2)(b)(i). When the 17.5 percent standard is met, or as of a date certain established by the Commission, the mandate and the authority for funding portfolio plans under R.C. 4928.66 terminates, subject to reconciliation.

A. The Statute Extends the Expiration Date for All Portfolio Plans in Effect on the Act's Effective Date

The statute makes clear that all EE/PDR Portfolios exist through 2020. R.C. 4928.66(F)(2), states clearly that "[i]f an electric distribution utility has a portfolio plan in effect as of the effective dates of the amendment to this section of H.B. 6…and that plan expires before December 31, 2020, the commission *shall* extend the plan through that date. *All portfolio plans terminate on that date.*" [Emphasis added.] HB 6 further dictates the size of any portfolio extended will be the average size of the portfolio plan for all years of the plan in effect. R.C. 4928.66(F)(3). The General Assembly's intent is clear: Portfolio plans are required through 2020. It would be inconsistent with the statute to terminate EE/PDR Portfolios prior to December 31, 2020.

B. The Statute Requires Electric Distribution Utilities to Honor Contracts Entered into as a Part of the EE/PDR Portfolios.

EDUs are currently implementing EE/PDR Portfolios. Providers, including OPAE, have multiyear contracts in place with EDUs that run through 2020. OPAE has subcontracted with a number of agencies to deliver the programs, and has hired staff to manage the programs, relying on the existing contracts.

The General Assembly anticipated this situation. R.C. 4928.66(F)(3) states, in relevant part, "[u]pon…full compliance with…this section is deemed achieved…, any electric utility cost recovery mechanisms authorized by the commission for compliance with this section shall terminate except as necessary to reconcile the difference between revenue collected and the allowable cost of compliance efforts occurring prior to the date upon which full compliance with division (A)(1)(a) of this section is deemed achieved*."* This is consistent with the approach taken by the General Assembly in other provisions of Title 49 to ensure the sanctity of contract. See R.C. 4928.641(A).

Short-circuiting the contracts that providers hold under the portfolio plans would have a harmful economic impact. OPAE estimates that its provider network includes around 1,100 direct or contract employees. Electric utility funding accounts for 12.6 percent of our funding, which is roughly 140 jobs, including two of members of the OPAE staff. Entities which, like OPAE, make business decisions based on existing contracts prior to the introduction and passage of HB 6 should be allowed to recover funding for the services provided through 2020. Terminating the portfolios and the contracts early will not only cost 140 jobs in the low-income programs alone, but will also increase agency costs resulting from the layoffs.

C. The State Requires Electric Distribution Utilities to Meet a 17.5 Percent Reduction in Energy Use Based on a Three-Year Average Covering the Years 2018 thru 2020, Which Requires a Continuation of EE/DSM Portfolios Through 2020.

HB 6 establishes a new mandate of a 17.5 percent reduction in energy use statewide. The statute also specifies that the baseline for determining whether the 17.5 percent mandate is achieved is to be set based on "the average of the total kilowatt hours sold by all electric distribution utilities in this state in calendar years 2018, 2019, and 2020." R.C. 4928.66(G)(1)(b). Since we do not know the amount of kilowatt hours sold in 2019 or 2020 as of yet, the average cannot be calculated prior to the end of 2020. The General Assembly requires the calculation be made before February 1, 2021. R.C. 4928.66(G)(1). See generally, Ohio Legislative Service Commission, Office of Research and Drafting, H.B. 6, Final Analysis at 21. In addition, the state also specifically permits the Commission to use savings estimates to determine whether compliance has been achieved, but includes no comparable language or provision authorizing the use of an estimated baseline. R.C. 4928.66(G)(1) (a) & (b). The statutory language clearly anticipates a continuation of programs through 2020, when there will be a determination of whether or not the 17.5 percent mandate has been met.

D. The General Assembly Made a Policy Decision to Shift Ratepayer Funds to Subsidize Two Nuclear Powerplants, New Solar Facilities, and Two Coal-Fired Powerplants Built in the 1950s, Not to Terminate EE/PDR Portfolios Prior to the End of 2020.

From the beginning of the debate over HB 6, one of the primary justifications for the legislation was that it would result in lower electricity rates for customers. See Sponsor Testimony of State Representative Jamie Callender Before the House Energy and Natural Resources Committee at 1 (April 16, 2019). Sponsor Testimony of State Representative Jamie Callender Before the Senate Energy and Public Utilities Committee at 1 (June 11, 2019). Key to this was ensuring that the authority to recover ratepayer funding for the renewable energy and EE/PDR Portfolios expired prior to shifting ratepayer funding to the generation subsidies created by the bill. As a result, the General Assembly authorized funding for EE/PDR Portfolios to continue through December 2020, followed by a traditional reconciliation process overseen by the Commission. At that point, the new monthly customer charge begins and is levied through December 31, 2027, unless certain contingencies occur. Were the EE/PDR rider to disappear prior to the imposition of the new subsidy rider, the latter would be an increase in rates, not a reduction. Rep. Callender's testimony does not allege that the energy efficiency portfolios are not producing cost-effective savings for customers; the Commission, after all, reviews that every year for every utility as a part of approving cost recovery and has acknowledged the cost-effectiveness of the portfolios, which have almost always exceeded savings targets.

The General Assembly viewed the programs to be 'expensive' and a majority supported shifting a smaller amount of ratepayer funds to subsidize existing powerplants, and ultimately some future solar projects, as better public policy. That occurs in 2021. Had the General Assembly desired the EE/PDR programs terminate sooner, it could have said so explicitly. The statute is clear the programs will terminate at the end of 2020.

II. The Commission Should Approve Continuation of Energy Efficiency Programs After the Statutory Cap has Been Met Because the Relevant Statutes Require Continuation of the Portfolios; the Programs are Beneficial to All Customers; and, the Programs are Cost Effective.

Utilities, electric and gas, provide a service. Customers are generally uninterested in kilowatt hours or cubic feet of natural gas. They want to flip a switch and have the lights go on, and the heating and cooling to work. The goal of regulation is to ensure reliable service at a just and reasonable price, in an environmentally sound manner. In Ohio, the price is determined by a combination of market and regulation, with generation and commodity pricing primarily a function of wholesale markets.

Energy efficiency remains the least expensive option to provide customers with the service they expect. Efficiency has no reliability issues, reduces air and water pollution, and contributes to resiliency. According the AEP Ohio's most recent portfolio filing, the levelized cost of energy efficiency per kilowatt hour is 3.2 cents. Case No. 19-1099-EL-EEC, *In the Matter of the Annual Portfolio Status Report Under Rule 4902:2-39-05(C), Ohio Administrative Code, by Ohio Power Company,* (May 15, 2019), Vol. 1 of 4 at 9. The Dayton Power and Light Company reported the levelized cost per kilowatt hour of 3.45 cents. Case No. 19-775-EL-POR, *In the Matter of The Dayton Power and Light Company's Portfolio Status Report* (May 15, 2019), calculated using data on pp. 5, 7. The results are similar for other electric utilities.

The focus of discussion on energy efficiency in recent years has really centered on two issues: mandates and cost. In passing HB 6, the General Assembly made a decision that the total costs of the renewable energy and the energy efficiency mandates were too high, but did not attack the efficacy of the EE/PDR program. There was tremendous pushback by some in the business community, especially the legacy industrial concerns, against being forced to subsidize efficiency efforts. HB 6 continues the trend of allowing more and more large users or aggregations of smaller users to opt out of the efficiency programs. A recent issue brief from the American Council for an Energy Efficiency Economy notes that well over half of large companies lack an energy efficiency plan or corporate targets. Ungar, Lowell, and Andrew Whitlock, *Saving Money While Meeting Climate Goals* (November 22, 2019), https://aceee.org/sites/default/files/eecs-smmcg.pdf.

HB 6 requires that the existing programs remain in place and the programs with portfolios that would expire in 2019 are continued. That alone justifies continuing the programs through 2020. The Commission has affirmed the cost effectiveness of the programs, so the benefits of the programs have been confirmed.

The General Assembly has made a decision that it is better to spend ratepayer funds on subsidizing two Ohio nuclear plants and two 1950s era coal-fired powerplants rather than fund energy efficiency and demand response programs that are proven to save customers money. The General Assembly established a timeline for program terminations and implementation to ensure that the riders recovering the costs of portfolio plans were terminated prior to the levying of the charges necessary to subsidize the powerplants because customers had been promised a reduction in overall costs on a per kilowatt hour basis. Funding for EE/PDR Portfolios terminates at the end of 2020, allowing for reconciliation of the riders. (Note: Ohio EDUs recover the costs through project riders that recover costs as incurred. Therefore, there will only need to be a true-up of costs and recovery after the programs shut down and render their final bills.)

It is likely that there will be no need to extend the program to achieve the 17.5 percent mandate. Ohio's EDUs run solid program portfolios that have benefited customers by achieving significant reductions in energy usage, and peak energy usage. All customers have benefited from these savings, regardless of whether they have directly participated in the program or not. Over the past ten years, a majority of utility customers have benefited from the programs. Most residential customers have bought discounted light bulbs in the past decade, received energy education, and benefited from reduced prices for high efficiency appliance. The General Assembly selected a termination date of December 31, 2020 for the mandates, not a premature termination for what have proven to be very effective programs.

Respectfully Submitted,

/S/ Colleen L. Mooney

Colleen L. Mooney
Reg. No. 0015668
Ohio Partners for Affordable Energy
P.O. Box 12451
Columbus, OH 43212-2451
Telephone: (614) 488-5739
e-mail: cmooney@opae.org
(electronically subscribed)

CERTIFICATE OF SERVICE

A copy of the foregoing Comments of Ohio Partners for Affordable Energy will be served electronically by the Commission's Docketing Division on parties who are electronically subscribed to these cases on this 25th day of November 2019.

/s/Colleen Mooney, Attorney
Colleen L. Mooney
cmooney@opae.org
(electronically subscribed)

stnourse@aep.com
Elizabeth.Watts@duke-energy.com
Michael.schuler@aes.com
cdunn@firstenergycorp.com
eostrowski@firstenergycorp.com
mrgladman@jonesday.com
stostado@jonesday.com
Kjklaw@yahoo.com
Jeremy.grayem@icemiller.com
mpritchard@mwncmh.com
mkurtz@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
bojko@carpenterlipps.com
paul@carpenterlipps.com
jdortch@kravitzllc.com
rkelter@elpc.org
mleppla@theoec.org
jfinnigan@edf.org
swilliams@nrdc.org
mwarnock@bricker.com
dborchers@bricker.com
dparram@bricker.com
christopher.healey@occ.ohio.gov
rdove@keglerbrown.com
dstinson@bricker.com
joe.oliker@igs.com
cendsley@ofbf.org
lcurtis@ofbf.org
John.Jones@ohioattorneygenral.gov