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 Their Energy Efficiency and Peak Demand Reduction Portfolio Plans for 2017 through 2019.	)))))))	Case No. 16-743-EL-POR

COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, THE TOLEDO EDISON COMPANY

I. INTRODUCTION

Am. Sub. House Bill 6 ("H.B. 6"), signed into law on July 23, 2019, provides for the orderly termination of mandated energy efficiency and peak demand reduction ("EE/PDR") savings requirements. In its October 23, 2019 Entry, the Public Utilities Commission of Ohio ("Commission") posed two questions regarding H.B. 6's statewide statutory cap of 17.5% cumulative energy savings:

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 electric distribution utilities ("EDUs") to continue to spend ratepayer provided funds on energy efficiency programs after the statutory cap has been met.

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "Companies"), respectfully submit these responses to the Commission's questions. As explained further below, if the Commission performs the statutory cap test in the manner and at the time dictated by H.B. 6, and determines that the 17.5% statutory cap has been met, the Commission should terminate mandated

EE/PDR programs. However, H.B. 6 requires the Commission to make the statutory cap calculation after December 31, 2020.

II. RESPONSES TO COMMISSION'S QUESTIONS

A. Question 1: Whether the Commission Should Terminate the Energy Efficiency Programs Once the Statutory Cap of 17.5% Has Been Met

The Companies agree that once the Commission has determined, in accordance with the process and timing detailed in H.B. 6, that the cumulative energy savings collectively achieved by all EDUs is at least 17.5%, the Commission should take steps to terminate mandated EE/PDR portfolio plans. It is important to observe, however, that the calculation required by H.B. 6 requires the Commission to make the cumulative energy savings determination after December 31, 2020.

1. H.B. 6 requires the Commission to perform the statutory cap calculation after December 31, 2020

H.B. 6 provides for the termination of Commission-approved cost recovery mechanisms for compliance with R.C. 4928.66 upon the date that full compliance with the EE/PDR savings requirements in division (A)(1)(a) of R.C. 4928.66 shall be deemed to have been achieved, except as necessary for reconciliation.[1] See R.C. 4928.66(G)(3). Full compliance with the EE/PDR savings requirements of division (A)(1)(A) shall be deemed to have been achieved if the Commission determines under H.B. 6 that the statutory cap of 17.5% has been met. See R.C. 4928.66(G)(2)(a).[2] As explained below, H.B. 6 requires the Commission to perform the statutory cap calculation after December

[1] H.B. 6 provides that the cost recovery mechanisms "shall terminate except as may be necessary to reconcile the difference between revenue collected and the allowable cost of compliance associated with compliance efforts occurring prior to the date upon which full compliance with division (A)(1)(a) of this section is deemed achieved." R.C. 4928.66(G)(3).

[2] Division (G)(2)(b) also requires the Commission to follow the process set forth in Division (G)(1). See R.C. 4928.66(G)(2)(b).

31, 2020, using actual sales data through calendar year 2020.

In determining whether the 17.5% statutory cap has been met, the Commission must follow the process set forth in division (G)(1) of R.C. 4928.66. See R.C. 4928.66(G)(2)(a). Division (G)(1) requires the Commission to make the statutory cap calculation "as of December 31, 2020" but "not later than February 1, 2021." R.C. 4928.66(G)(1). Division (G)(1) further requires the Commission, in calculating whether cumulative energy savings have reached the statutory cap, to use an energy savings baseline that is based on total kilowatt hours sold by all EDUs in the calendar years 2018, 2019, and 2020. R.C. 4928.66(G)(1)(b).

Because the statutory cap calculation must be performed "as of December 31, 2020," and because the calculation must use a baseline that includes actual sales data for calendar year 2020, the Commission necessarily must perform the statutory cap calculation required by division (G)(1) after December 31, 2020. Consistent with this timing of the Commission's statutory cap calculation, H.B. 6 requires the Commission to extend the Companies' existing EE/PDR portfolio plans through December 31, 2020, see R.C. 4928.66(F)(2), and requires the Commission to increase the existing plan's budget for the extended year, while keeping all terms and conditions the same, see R.C. 4928.66(F)(3).

2. Determining whether to terminate EE/PDR programs based on the 17.5% statutory cap calculation after December 31, 2020 provides for an orderly conclusion to EDUs' portfolio plans mandated by R.C. 4928.66

The continuance of EE/PDR portfolio plans through December 31, 2020 will provide for an orderly conclusion to over ten years of mandated EE/PDR programs and avoid negative consequences that would result from an abrupt termination. For instance, EDUs and contracted vendors have already prepared and planned to meet the statutory mandate of one percent incremental energy savings for 2020, in reliance on H.B. 6 provisions that extend the Companies' existing EE/PDR plans through December 31, 2020. Also, H.B. 6's orderly termination of mandated EE/PDR portfolio plans will be less disruptive for customers, efficiency vendors and business owners operating in Ohio's EE/PDR industry, as well as their employees. Uncertainty in the timing of the termination of mandated EE/PDR portfolio plans will result in less efficient investment, staffing, inventory, and negatively impact other business decisions.

In addition, H.B. 6's extension of existing EE/PDR portfolio plans through December 31, 2020 provides for a full processing of pending program activity under a known schedule. For example, rebate-eligible major appliance purchases such as central air conditioners involve a lag between purchase, installation and application for rebates. Longer time lags also exist between scheduling, performance of energy audits, and implementation of audit-recommended efficiency measures. And even longer time lags are involved in commercial and industrial customer capital investment decisions involving efficient equipment purchases, installations and process improvements. These customers have and are making investment decisions today with the full expectation that their projects will be rebated throughout 2020 based on the specific language provisions of H.B. 6. H.B. 6's continuation of existing EE/PDR portfolio plans through December 31, 2020 allows cohesive messaging and orderly program operations throughout the full spectrum of program marketing and implementation channels, providing for the necessary notice for informed consumer choices.

If the Commission directed an early termination of mandated EE/PDR portfolio plan programs prior to December 31, 2020, it would alter expectations and cause market disruptions. If the Commission did make such a determination, it must allow sufficient time to smoothly and efficiently implement process and contractual changes necessary to wind down all portfolio plan program operations, and must allow for EDUs to recover all related costs.

B. Question 2: Whether It Is Appropriate for the EDUs to Continue to Spend Ratepayer Provided Funds on Energy Efficiency Programs After the Statutory Cap Has Been Met

1. Voluntary EE/PDR Programs which an EDU has proposed and the Commission has approved should remain available

As the Companies explained above, the Commission's determination of whether the statutory cap has been met under H.B. 6 must occur after December 31, 2020. If the statutory cap has been met, then the question of whether it is appropriate for the EDUs to continue to spend ratepayer provided funds on EE/PDR programs depends on the nature of the program. The Companies agree that it would not be appropriate for the EDUs to continue to spend ratepayer funds on the existing EE/PDR portfolio plan programs which the Commission has approved for an EDU to comply with the mandates of R.C. 4928.66. However, voluntary EE/PDR programs proposed by an EDU outside of R.C. 4928.66 should remain an available option subject to the merits of the proposed programs and Commission approval.

Voluntary efficiency programs have existed for years and have been approved because the Commission found them to be cost effective, beneficial to customers and in furtherance of state policies. (*See,* for example, *In the Matter of the Application of East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates and*

Charges (consolidated with other cases), Case No. 07-829-GA-AIR, Opinion and Order, October 23, 2008, p. 22-23 ("To that end, the Commission has recognized that DSM program designs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with Ohio's economic and energy policy objectives.") Such programs should remain a viable option for EDUs and their customers in lieu of the mandates now set to expire, with full and timely cost recovery for EDUs.

2. Continuation of the Companies' cost recovery mechanism that includes compliance with R.C. 4928.66 is necessary for fulfillment of obligations under the Companies' stipulated ESP IV

As mentioned above, H.B. 6 provides for the termination of Commission-approved cost recovery mechanisms for compliance with R.C. 4928.66 upon the date that full compliance with the EE/PDR savings requirements in division (A)(1)(a) of R.C. 4928.66 shall be deemed to have been achieved. See R.C. 4928.66(G)(3). The Companies' Commission-approved cost recovery mechanism that includes recovery of costs to comply with R.C. 4928.66 is the Demand Side Management and Energy Efficiency Rider (Rider DSE). While H.B. 6 requires the Commission, upon determining that the 17.5% statutory cap has been met, to terminate the R.C. 4928.66 cost recovery mechanism except as may be necessary for a final reconciliation or revenues and costs, the Companies' Rider DSE is more than the Companies' cost recovery mechanism for compliance with R.C. 4928.66. Thus, while recovery of mandated EE/PDR program costs must cease under Rider DSE as described above, the Rider DSE mechanism must continue to exist for other purposes, particularly including the fulfillment of obligations under the Companies' most recent electric security plan, ESP IV. See Case No. 14-1297-EL-SSO.

In ESP IV, the Commission authorized the use of Rider DSE for the recovery of costs the Companies incur to meet ESP IV obligations that are not for compliance with R.C. 4928.66. In their ESP IV stipulation, to the parties agreed to, and the Commission approved, demand-side management or energy efficiency related programs separate and apart from their Commission-approved EE/PDR portfolio plan. The Commission approved the Companies' recovery of the costs of these stipulated commitments through Rider DSE. For instance, the Commission approved the ESP IV stipulation provision regarding additional energy efficiency audits for commercial and industrial customers through 2024, and the recovery of costs through Rider DSE:

> The number of ASHRAE Level II Energy Efficiency Audits for C&I customers to be performed by the Companies under section V.B.4 of the Stipulation is modified as follows: 58 in 2016; 100 per year in 2017 through 2023; and 42 in 2024. All costs the Companies incur to conduct the audits shall be recovered through Rider DSE.[3]

Similarly, the Companies need Rider DSE to recover the costs of their "Community Connections" program, which pre-dates the enactment of R.C. 4928.66.[4]

Accordingly, while any portion of the Rider DSE cost recovery mechanism associated with the Companies' portfolio plans approved in compliance with the mandates of R.C. 4928.66(A) would terminate once the Commission has determined the

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[3] *In the Matter of the Application of [Companies] for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Third Stipulation and Recommendation, December 1, 2015, Section V.G.4.b(ii).

[4] *See*, for example, *In the Matter of the Application of [Companies] for Authority to Increase Rates for Distribution Service*, Case No. 07-551-EL-AIR, Opinion and Order, January 21, 2009, p. 44 (providing for an increase in funding for the Community Connections program as "DSM").

17.5% statutory cap is satisfied in accordance with H.B. 6, Rider DSE must continue to exist in order for the Companies to recover costs of meeting their commitments under ESP IV.

III. CONCLUSION

The Companies agree that the Commission should terminate mandated EE/PDR programs once the Commission determines, in accordance with H.B. 6, that the statutory 17.5% cap has been met. H.B. 6 requires that calculation to occur after December 31, 2020, consistent with H.B. 6's extension of existing EE/PDR portfolio plans through December 31, 2020. This ensures an orderly termination of the EE/PDR mandates of R.C. 4928.66 and is in the best interest of customers, EE/PDR vendors, and EDUs. Once the Commission has determined that the statutory cap of 17.5% has been met, after December 31, 2020, the Commission should terminate mandated EE/PDR programs, while allowing customers to participate in EDUs' voluntary EE/PDR programs. The Companies should recover all costs associated with any voluntary programs approved by the Commission, and all costs associated with energy efficiency related commitments from their ESP IV.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that these Comments were filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 25th day of November, 2019.

/s/ *Robert M. Endris*_____________
One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

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Summary: Comments Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company electronically filed by Mr Robert M Endris on behalf of Ohio Power Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company