BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Approval of its Program Portfolio Plan.	)	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 Illumination Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 Through 2019.	)	Case No. 16-743-EL-POR
In the Matter of the Application of Dayton Power and Light Company for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2018-2020	)	Case No. 17-1398-EL-POR

INDUSTRIAL ENERGY USERS-OHIO'S COMMENTS

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INDUSTRIAL ENERGY USERS-OHIO'S COMMENTS

The Public Utilities Commission of Ohio ("Commission") has solicited comments on compliance with requirements contained in Amended Substitute House Bill 6 ("HB 6"). Among other things, HB 6 reduces cumulative EE reductions to a statewide 17.5% benchmark by the end of 2020. HB 6 also contains provisions that allow the Commission to terminate the EDUs' portfolio plans before December 31, 2020, if the statewide cumulative 17.5% benchmark has been achieved. In its October 23, 2019 Entry in the above-captioned matters, and in response to HB 6, the Commission asked parties to respond to the following questions:

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 statutory cap has been met?***

On November 19, 2019, Staff filed comments and therein estimated that through the end of 2019 Ohio's electric distribution utilities ("EDU") will have reached cumulate EE reductions of 17.29%.

R.C. 4928.66(G)(3) specifies that the existing EE/PDR riders "shall terminate" once the 17.5% cumulative target is met. Given that the cumulative 17.5% EE benchmark will be met, or should be deemed as achieved under R.C. 4928.66(G)(2)(b)(ii), effective December 31, 2019, Industrial Energy Users-Ohio ("IEU-Ohio") urges the Commission to take the following actions:

- Terminate all EE/PDR cost-recovery mechanisms on December 31, 2019, except as necessary for a final reconciliation of the allowable cost of compliance;
- Prohibit the EDUs from entering into any new contracts for services related to their portfolio plans;
- Direct the EDUs to eliminate any internal EE/PDR expenses effective December 31, 2019, except as necessary to conduct a final wind up of the portfolio plans; and

- Direct each EDU to review whether any ongoing contracts can be terminated early to minimize the potential for any future costs under the contracts from being imposed on customers.

IEU-Ohio's recommended course of action would not affect compliance actions the EDUs or customers have taken in 2019. That is, EDUs should be able to recover costs associated with 2019 compliance actions and customers should receive rebates/refunds for EE/PDR actions taken and submitted to the EDUs by the end of 2019 through a final reconciliation to occur in 2020. Beyond the final reconciliation in 2020, the law and State policy command that the mandates and associated cost recovery mechanisms cease, and customers be provided the opportunity to look to the competitive marketplace for EE/PDR solutions that meet customers' respective price, terms, conditions, and needs.

I. Relevant Statutory Provision: R.C. 4928.66(G)

(1) Not later than February 1, 2021, the commission shall determine the cumulative energy savings collectively achieved, since 2009, by all electric distribution utilities in this state as of December 31, 2020. In determining that cumulative total, the commission shall do both of the following:

> (a) Include energy savings that were estimated by the commission to be achieved as of December 31, 2020, and banked under division (G) of section 4928.662 of the Revised Code;
>
> (b) Use an energy savings baseline that is the average of the total kilowatt hours sold by all electric distribution utilities in this state in the calendar years 2018, 2019, and 2020. The baseline shall exclude the load and usage described in division (A)(2)(a)(i), (ii), and (iii) of this section. That baseline may also be reduced for new economic growth in the utility's certified territory as provided in division (A)(2)(a) of this section and adjusted and normalized as provided in division (A)(2)(c) of this section.

(2)

> (a) If the cumulative energy savings collectively achieved as determined by the commission under division (G)(1) of this section is at least seventeen and one-half per cent of the baseline described in division (G)(1)(b) of this section, then full

compliance with division (A)(1)(a) of this section shall be deemed to have been achieved notwithstanding any provision of this section to the contrary.

(b) If the cumulative energy savings collectively achieved as determined by the commission under division (G)(1) of this section is less than seventeen and one-half per cent of the baseline described in division (G)(1)(b) of this section, then both of the following shall apply:

(i) 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, of the baseline described in division (G)(1)(b) of this section.

(ii) Full compliance with division (A)(1)(a) of this section shall be deemed to be achieved as of a date certain established by the commission notwithstanding any provision of this section to the contrary.

(3) Upon the date that full compliance with division (A)(1)(a) of this section is deemed achieved under division (G)(2)(a) or (b) of this section, any electric distribution utility cost recovery mechanisms authorized by the commission for compliance with this section 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. No such cost recovery mechanism shall be authorized by the commission beyond the period of time required to complete this final reconciliation.

II. COMMENTS[1]

A. The EE Mandate will either be achieved or should be deemed achieved pursuant to R.C. 4928.66(G)(2)(b)(ii) as of December 31, 2019.

IEU-Ohio urges the Commission to exercise its discretionary authority under R.C. 4928.66(B)(2)(b)(ii) and deem compliance with the EE mandate fully achieved as of a

[1] Although the Commission's Entry did not specifically request comments on compliance with the final 2020 cumulative peak-demand reduction mandate of 7.75%, the EDUs have all reported cumulative savings in excess of the 7.75% final PDR target. More specifically, through compliance year 2017 and based on each EDU's 2017 compliance baseline: Duke reported cumulative PDR savings in excess of 18.25% (*see* Case 18-396); AEP-Ohio reported cumulative PDR savings in excess of 10.75% (*see* Case 18-835); DP&L reported cumulative PDR savings in excess of 7.75% (*see* Case 18-742); and FirstEnergy reported cumulate PDR savings in excess of 16% (*see* Case 18-841). Accounting for the EDUs' 2018 PDR savings reported earlier this year, and the 2019 savings achieved to date but not yet reported will only further increase the amount each EDU has over-complied with the PDR mandate.

date certain of December 31, 2019 because actual compliance with the 17.5% target will either be met or so close to actual achievement as to not warrant any portfolio plans continuing into the future. Absent Commission action to deem compliance with the EE mandate achieved, the status quo would require all parties wait until the EDUs file annual portfolio compliance reports in March to determine actual savings achieved through the end of 2019. In the meantime, Duke's and FirstEnergy's portfolio plans would be extended by operation of law and all the EDUs would incur additional and unnecessary costs. Accordingly, the Commission should deem compliance with the EE mandates met as of a date certain of December 31, 2019.

R.C. 4928.66(G)(1) requires the Commission to undertake a review of the EDUs' collective statewide EE reductions. If the statewide cumulative EE reductions are 17.5% or greater then compliance with the EE mandate has been fully achieved. R.C. 4928.66(G)(2)(a). If the 17.5% cumulative statewide EE mandate is met or exceeded, the Commission is required to terminate the EE/PDR cost-recovery mechanisms, except for a final reconciliation of allowable compliance costs. R.C. 4928.66(G)(3).

If the statewide cumulate EE reductions are less than 17.5% the Commission can either (i) determine what additional EE programs should continue in order to reach the 17.5% mandate target, or (ii) the Commission can establish a date certain upon which full compliance with the EE mandate is deemed achieved. R.C. 4928.66(G)(2)(b). The Commission's authority to establish a date-certain deeming full compliance with the EE mandate having been achieved is absolute. R.C. 4928.66(B)(2)(b)(ii) (the Commission can establish a date-certain for full compliance to be deemed achieved "notwithstanding any provision of this section to the contrary.")

Staff has filed comments indicating that based on actual and estimated EE reductions as of the end of October 2019, the cumulative statewide reductions achieved and forecasted through the end of 2019 are approximately 17.29%. Staff's report on actual and estimated savings was based on information provided to Staff by the EDUs.

The EDUs have effectively reached the final cumulative EE reduction requirement of 17.5%. There is no need to extend costly programs into 2020 to achieve any remaining sliver of EE reductions needed to reach the 17.5% target. Moreover, IEU-Ohio recognizes that both AEP-Ohio and DP&L have portfolio plans authorized through 2020, and it could take some time to wind up their 3rd party contracts, which could provide incremental EE savings in 2020, inching even closer to, or even surpassing, the cumulative 17.5% requirement. Accordingly, the Commission should exercise its authority under R.C. 4928.66(G)(2)(b)(ii) and deem compliance with the EE mandate achieved as of a date certain of December 31, 2019.

B. With the 17.5% EE Mandate being achieved or deemed achieved effective December 31, 2019 there is no need to extend, pursuant to R.C. 4928.66(F)(2), Duke's and FirstEnergy's EE/PDR plans that expire December 31, 2019; instead a final reconciliation should be conducted

R.C. 4928.66(F)(2) would extend all EE/PDR portfolio plans that expire prior to December 31, 2020 to that date, impacting both Duke's and FirstEnergy's portfolio plans that are set to expire at the end of 2019. However, R.C. 4928.66(G)(2)(a) and (G)(2)(b)(ii) authorize the Commission to terminate EE/PDR portfolio plans, notwithstanding any other provisions of R.C. 4928.66 once the EDUs achieve or have been deemed to have achieved a collective statewide EE reduction of 17.5%. As discussed above, either the mandate will be achieved or should be deemed achieved at the end of 2019. There is no need, therefore, to extend either Duke's or FirstEnergy's EE/PDR plans. The

Commission should terminate their respective portfolio plans on December 31, 2019 and order a final reconciliation of the allowable cost of compliance through their respective EE/PDR riders pursuant to R.C. 4928.66(G)(3).

C. Pursuant to R.C. 4928.66(G)(2)(a) and (G)(2)(b)(ii) the Commission should terminate DP&L's and AEP-Ohio's EE/PDR plans effective December 31, 2019, should direct both EDUs to cease incurring any internal EE/PDR not associated with winding up their portfolio plans, and should direct both EDUs to expeditiously work to end any existing 3rd party contracts

Upon compliance with the 17.5% EE mandate the Commission "shall terminate" any EE/PDR riders "except as necessary to reconcile the difference between revenue collected and the allowable cost of compliance efforts prior to the date upon which full compliance with the [EE mandate] is achieved." R.C. 4928.66(G)(3). To minimize any debate over the "allowable cost of compliance" the Commission should direct AEP-Ohio and DP&L (both have EE/PDR portfolio plans authorized through 2020) to expeditiously wind up their respective portfolio plans. Both should be directed to exercise any regulatory-out or change-in-law provisions in contracts with 3rd party vendors that allow contracts to be terminated effective December 31, 2019, or as soon thereafter as possible. The Commission should also direct each of these EDUs to cease incurring effective December 31, 2019, any internal costs associated with the EE/PDR portfolio plans except as necessary to work on winding up the portfolio plan. The Commission should then conduct the final reconciliation of the allowable cost of compliance and thereafter terminate DP&L's and AEP-Ohio's EE/PDR riders.

III. CONCLUSION

Ohio law requires EDUs to achieve cumulative energy efficiency (EE) reductions of 17.5% and cumulative peak demand response (PDR) reductions of 7.75%. Both of these government mandates will be achieved or effectively achieved by December 31, 2019. The Commission should exercise its authority and terminate all EE/PDR portfolio plans and associated cost-recovery riders effective December 31, 2019, except as may be necessary for a final reconciliation of the allowable costs of compliance with these mandates.

Respectfully,

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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 was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 25th day of November 2019, *via* electronic transmission.

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