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. 16-0574-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 Plans For 2017 Through 2019.	Case No. 16-0743-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 2018-2020.	Case No. 17-1398-EL-POR

COMMENTS OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. INTRODUCTION

On October 23, 2019, the Public Utilities Commission of Ohio (Commission) issued an Entry explaining that Am. Sub. House Bill 6 (HB 6) requires the electric distribution utilities (EDUs) to continue their respective energy efficiency programs through Dec. 31, 2020, and it also reduces the total cumulative savings requirement to a statewide collective benchmark of 17.5%.

Given the progress made toward achieving the statutory requirement of 17.5%, the Commission solicited 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 statutory cap has been met.

Entry at ¶5 (October 23 2019).

Pursuant to the Commission's Entry, the Ohio Manufacturers' Association Energy Group (OMAEG) hereby submits comments regarding the appropriate steps to be taken with respect to energy efficiency programs once the statewide benchmark of 17.5%, as set by HB 6, is achieved.

II. COMMENTS

A. Energy Efficiency Programs Should Not Be Terminated Prior to December 31, 2020.

R.C. 4928.66(A)(1)(a) requires EDUs to implement energy efficiency (EE) programs that achieve annual energy savings beginning in 2009. The savings requirements were prescribed for years 2009 through 2014. In years 2015 and 2016, the EDU was further required to achieve energy savings "equal to the result of subtracting the cumulative energy savings achieved since 2009 from the product of multiplying the baseline for energy savings by four and two-tenths of one percent. If the result is zero or less for the year for which the calculation is being made, the utility shall not be required to achieve additional energy savings for that year, but *may achieve additional energy savings for that year*." R.C. 4928.66(A)(1)(a)(emphasis added). Then the law specifically requires an additional one percent of the baseline for years 2017 through 2020.

R.C. 4928.66(F)(2) states: "If an electric distribution utility has a portfolio plan in effect as of the effective date of the amendments to this section by H.B. 6 of the 133rd general assembly and that plan expires before December 31, 2020, the commission *shall* extend the plan through that date" with all of the same terms and conditions. R.C. 4928.66(F)(2) and (4)(emphasis added). R.C. 4928.66(F)(2) then requires that "[a]ll portfolio plans *shall* terminate on that date." R.C. 4928.66(F)(2).

R.C. 4928.66(G)(1) requires the Commission, not later than February 1, 2021, to determine the cumulative energy savings collectively achieved since 2009 by all of the utilities *as of December 31, 2020*. R.C. 4928.66(G)(1)(emphasis added). The calculation is to include energy savings that were estimated to be achieved *as of December 31, 2020*. R.C. 4928.66(G)(1)(a)(emphasis added). After the Commission determines that the cumulative energy savings collectively achieved *as of December 31, 2020* is *at least* 17.5% of the baseline, full compliance with R.C. 4928.66(A)(1)(a) shall be deemed to have been achieved notwithstanding any provision of this section to the contrary. R.C. 4928.66(G)(2)(a). 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)(emphasis added).

Collectively, these provisions plainly envision that the EDUs will have EE Programs in place through December 31, 2020. If the EDU had a portfolio plan in effect on October 22, 2019 (i.e., the date HB 6 took effect) that ended prior to December 31, 2020, it was to be extended through December 31, 2020. If an EDU's EE Program was scheduled to run beyond December 31, 2020, HB 6 requires that it end on December 31, 2020. R.C. 4928.66(F)(2). Given that all of the Ohio EDUs either had EE Programs in effect on October 22, 2019 that expired prior to December 31, 2020 or EE Programs that continued through December 31, 2020, all of the EDUs' EE Programs should continue through December 31, 2020 and terminate on December 31, 2020.

Furthermore, R.C. 4928.66(G) specifically requires the Commission to calculate the cumulative energy savings collectively achieved since 2009 by all of the utilities *as of December 31, 2020* and to determine whether the cumulative energy savings collectively achieved as of that date is *at least* 17.5% of the baseline. The statute recognizes that as of December 31, 2020, the cumulative energy savings from the EDUs' EE Programs may be greater than 17.5% and if so, at that time, compliance with R.C. 4928.66(A)(1)(a) is deemed to have been achieved. Just as R.C. 4928.66(A)(1)(a) recognizes that an EDU "may achieve additional energy savings for that year," nothing prevents or precludes a utility from achieving more additional energy savings, the 17.5% benchmark delineated by HB 6 is a statutory floor, not a statutory cap.

The statute also does not state that all EE Programs must end immediately when the 17.5% is reached. In fact, the analysis is that the energy savings will be calculated through December 31, 2020, utilizing an energy savings baseline that is the average of the total kilowatt hours sold by all of the EDUs in the state in calendar years 2018, 2019, 2020. The statute further recognizes that, at the end of calendar year 2020, the cumulative savings may be greater than 17.5% (i.e., the benchmark requires the cumulative energy savings collectively achieved to be *at least* 17.5% by December 31, 2020).

Moreover, Ohio Adm. Code Chapter 4901:1-39 provides rules "for the implementation of electric utility programs that will encourage innovation and market access for cost-effective energy efficiency and peak-demand reduction, achieve the statutory benchmark for peak-demand reduction, *meet or exceed* the statutory benchmark for energy efficiency, and provide for the participation of stakeholders in developing energy efficiency and peak-demand reduction programs for the benefit of the state of Ohio." Ohio Adm. Code 4901:1-39-02(emphasis added).

The rules implementing the statutory provisions also expressly recognize that the EDUs may exceed the statutory benchmarks for energy efficiency savings.

"The Commission is a creature of statute and can exercise only the authority conferred upon it by the General Assembly." *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 88, 706 N.E.2d 1255 (1999); see also *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 537, 620 N.E.2d 835 (1993) (internal citations omitted). As a creature of statute, the Commission is not permitted to unilaterally write additional words or phrases into Ohio law. Where the language of a statute is plain and unambiguous, there is no occasion to resort to the rules of statutory interpretation and the Commission should simply apply the statutory language as written. *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 8. Additionally, if a statute is clear and unambiguous, the Commission "may not delete words used or insert words not used." *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, 896 N.E.2d 979, ¶ 45 (2008); *Columbia Gas Transm. Corp. v. Levin*, 2008-Ohio-511, ¶ 19, 117 Ohio St. 3d 122, 125, 882 N.E.2d 400, 406 (citations omitted).

Here, the statutory language is clear and unambiguous. The statute plainly anticipates a continuation of EE Programs through 2020, when there will be a determination of whether or not the cumulative statewide 17.5% benchmark has been achieved. Nothing prevents or precludes a utility from achieving more energy savings than the 17.5% benchmark delineated in HB 6 as the 17.5% is a minimum, not a cap. Accordingly, the Commission should apply the statute as written and continue the EE Programs through December 31, 2020.

B. It is Appropriate and Prudent for EDUs to Offer Cost-Effective Energy Efficiency Programs in 2020 After the Statutory Benchmark of 17.5% Has Been Achieved.

In addition to the legal arguments raised above, there are several policy reasons why it is not only appropriate for an EDU to continue to offer efficiency and peak demand reduction (EE/PDR) programs (EE/PDR Programs) once the statutory statewide energy savings benchmark of 17.5% has been met, but it is also prudent, at least through 2020.

1. Energy EE/PDR Programs are required to pass a cost-effectiveness test, and are, therefore, an appropriate and prudent use of ratepayer funds.

EDU EE/PDR Programs were expressly continued or extended through 2020 by HB 6. Each of these EDU programs was approved by the PUCO contingent on meeting cost-effectiveness tests which demonstrate that programs provide net cost benefits to ratepayers. Specifically, EE/PDR Programs are required to pass the Total Resource Cost (TRC) and the Utility Cost Tests (UTC). Thus, it is appropriate for EDUs to offer EE/PDR Programs funded by ratepayers as the programs are cost-effective and have the effect of providing benefits to customers by lowering total electricity costs for all customers.

2. The Mercantile Opt-Out Reserves the Right for Mercantile Customers to Decide Whether to Fund and Participate in the EDU EE/PDR Programs.

HB 6 also provided an expanded opt-out of the EE/PDR Programs. R.C. 4928.6610; see also R.C. 4928.6611. Mercantile customers are now provided the choice to pay the cost of and participate in the EE/PDR Programs, or to forgo paying for the programs and lose the ability to receive direct program benefits. While all ratepayers of Ohio receive the universal benefit of price suppression from EE/PDR Programs, direct benefits in the form of project rebates can be less equitable. However, Ohio law now gives customers the express choice on whether to participate in and pay for their EDU's EE/PDR Program. During the life of the EE/PDR Programs, the statute clearly provides the mercantile customer class the power and discretion on whether to fund a

PUCO-approved EDU EE/PDR Program. This customer protection is another reason why it is appropriate for EDUs to continue offering EE/PDR Programs. Moreover, because mercantile customers are provided this power of choice, if the Commission were to terminate the EE/PDR Programs early, it would deprive customers who wish to participate in EE/PDR Programs of the opportunity and choice to participate.

3. Many Manufacturers and Other Customers May Have Already Planned Capital Projects Based on the Availability of EE/PDR Programs in 2020.

Some manufacturers and other mercantile customers may elect to not opt-out of the EE/PDR Programs and to continue paying into and participating in the EE/PDR programs in 2020. In fact, many manufacturers and other mercantile customers now integrate EDU EE/PDR Program rebates and other programs into their operations and energy management decisions, including capital budgeting. For example, manufacturers typically require a two-year simple payback for retrofit and capital budget energy savings projects to be funded with internal capital. An EE/PDR Program rebate can improve the cost-effectiveness of certain efficiency projects from, for example, a three or four-year simple payback to two years. This is the primary mechanism by which EE/PDR Programs increase the adoption of energy efficiency among customers. That said, manufacturers and other businesses typically allocate their capital budget funds in an annual capital budget approval process. EE/PDR Program rebates are usually accounted for in this capital budget process, even if a project application has yet to be submitted to the EDU. As such, manufacturers and businesses may be relying on the EE/PDR Programs that have been approved and the plain language of Ohio law that extended the EDU EE/PDR Programs through 2020 in making certain business decisions as to whether to move forward with a project. Thus, it would be inappropriate for the Commission to terminate the EE/PDR Programs prior to December 31, 2020, as it could disrupt businesses' allocation of internal capital, in addition to depriving manufacturers and other businesses of their choice to continue participating in EDU EE/PDR Programs.

4. Previously Approved EE/PDR Programs Have PJM Capacity Commitments to Achieve in 2020.

EDUs with EE/PDR Programs previously approved through 2020 have been bidding capacity resources from the EE/PDR Programs into the PJM capacity auctions. Cleared EE/PDR capacity lowers the cost of capacity to all customers, improves electric grid reliability, and provides a source of revenue to the EDU EE/PDR Programs, offsetting ratepayer funds.[1] If the EE/PDR Programs were terminated early, costs to Ohio ratepayers would be increased as the EDU would be required to purchase back the forgone EE/PDR capacity in future incremental capacity auctions. Moreover, some of this capacity buy-back may need to occur after December 31, 2020, and thus a risk of extending customers' costs – without benefits – into 2021 exists. Quite clearly, it is appropriate and prudent for the EDUs to continue their EE/PDR Programs in order to fulfill their PJM capacity commitments, and thus lower electricity capacity costs for customers.

5. EDUs Are Still Required by Law to Achieve an Additional 0.75% of Peak Demand Reduction in the Calendar Year 2020.

Lastly, it is appropriate for EDUs to continue their EE/PDR Programs after the statutory statewide collective benchmark of 17.5% has been met because EDUs are required by law to continue running PDR Programs in 2020. The law requires EDUs to achieve 0.75% reduction in their three-year average baseline of peak demand, in the calendar year of 2020: "In 2017 and each year thereafter through 2020, the utility shall achieve an additional seventy-five hundredths of one per cent reduction in peak demand." R.C. 4928.66(A)(1)(b).

Unlike the energy efficiency reduction requirements for kWh, the peak demand reduction

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[1] See, e.g., *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 2018-2020*, Case No. 17-1398-EL-POR, Opinion and Order at 6 (December 20, 2017).

requirements are not cumulative, and there is no banking of previous year's demand reduction for collective compliance. Compliance with the law requires each EDU to deliver an additional 0.75% in peak demand reduction for the calendar year of 2020. Presently, the EDU's each have approved or extended program plans through 2020 to achieve the 0.75% peak demand reduction requirement that is integrated with their EE Programs. It is, therefore, appropriate to allow the EE/PDR Programs to continue in 2020 so that each EDU can meet its annual PDR requirement.

III. CONCLUSION

For the reasons set forth herein, the Commission should apply the statute as written and continue the EDUs' cost-effective EE/PDR Programs through December 31, 2020. Utilizing data through 2020, the Commission can then make its determination as to whether or not the statewide collective energy savings benchmark of 17.5% has been achieved. Nothing in R.C. 4928.66, however, prevents or precludes a utility from achieving more energy savings than the 17.5% benchmark delineated in HB 6 as the 17.5% is a minimum, not a cap. Accordingly, it is both appropriate and prudent for the EDUs to continue to offer cost-effective EE/PDR Programs in 2020 after the statutory benchmark of 17.5% has been achieved.

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