

**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 ) Case No. 16-743-EL-POR  
Edison Company for Approval of their )  
Energy Efficiency and Peak Demand )  
Reduction Program Portfolio Plans. )

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**MOTION TO MODIFY FIRSTENERGY’S 2020 ENERGY EFFICIENCY PLAN  
TO ELIMINATE CHARGES TO CONSUMERS FOR UTILITY PROFITS  
AND  
REQUEST FOR EXPEDITED TREATMENT  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Public Utilities Commission of Ohio (“PUCO”) should modify FirstEnergy’s energy efficiency portfolio for 2020 to eliminate charges to FirstEnergy consumers for profits on energy efficiency, sometimes referred to as “shared savings.” The PUCO has the authority under recently-passed House Bill 6 to take this action. It should do so to protect Ohio consumers from continuing to pay too much for utility-run energy efficiency programs.

The Office of the Ohio Consumers’ Counsel (“OCC”) respectfully requests that the PUCO (i) authorize FirstEnergy to continue offering customer-funded energy efficiency programs in 2020, (ii) modify FirstEnergy’s portfolio such that FirstEnergy no longer charges customers for utility profits (“shared savings”), and (iii) grant this motion under Ohio Adm. Code 4901-1-12(C) on an expedited basis so that the utility can implement OCC’s requested modifications effective January 1, 2020.

Respectfully submitted,

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*/s/ Christopher Healey*  
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December 9, 2019

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**MEMORANDUM IN SUPPORT**

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Customers can benefit from energy efficiency programs because those programs help customers lower energy usage, which lowers utility bills. Customers do not directly benefit when utilities charge them millions of dollars per year in “shared savings,” which is a code name for utility profits.

In its recently-filed letter, FirstEnergy stated that it will not be filing a new energy efficiency portfolio plan for 2020 because House Bill 6 “provides for the extension of the Companies’ existing energy efficiency/peak demand reduction portfolio plans and corresponding budgets.”<sup>1</sup>

The law (House Bill 6) might require FirstEnergy to continue its programs in 2020, but it does not require the PUCO to allow FirstEnergy to continue profiting off these programs on the backs of its customers. The PUCO should therefore exercise its authority under House Bill 6 (the relevant portions of which are now codified in R.C. 4928.66(F)) to modify FirstEnergy’s energy efficiency portfolio plan to eliminate utility profits.

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<sup>1</sup> FirstEnergy Correspondence (Dec. 2, 2019).

## I. RECOMMENDATIONS

### A. **House Bill 6 allows the PUCO to modify a utility’s portfolio for 2020. The PUCO should do so by eliminating charges to customers for “shared savings,” which really means utility profits.**

House Bill 6, as codified in R.C. 4928.66(F)(4), allows the PUCO to modify a utility’s 2020 energy efficiency portfolio. Under that statutory provision, the “terms and conditions of a portfolio plan extended [by the PUCO] shall remain the same *unless* changes are authorized by the commission.” Thus, the law explicitly provides the PUCO with authority to modify the terms and conditions of FirstEnergy’s portfolio plan. One term and condition of FirstEnergy’s portfolio plan is that it is allowed to charge customers for “shared savings,” which is another way of saying “utility profits.”<sup>2</sup>

Allowing utilities to profit from energy efficiency in Ohio has been a disaster. In the past ten years, customers have paid more than \$300 million in “shared savings” to their utilities. That money goes straight to shareholders, with no direct benefits to customers. What was originally intended to give the utilities an incentive to go above and beyond has become little more than easy money for the utility.

Further, utilities have been allowed to charge customers for “shared savings” (profits) as long as they exceed the statutory mandate, and the amount of profits increases as the utility goes higher and higher above the mandate. In other words, it is designed to give the utility an incentive not just to reach the statutory mandate, but to materially exceed that mandate.

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<sup>2</sup> Opinion & Order (Nov. 21, 2017) (approving “shared savings” for FirstEnergy for the 2017-2019 portfolio).

Under House Bill 6, the mandates will soon end (likely long before the end of 2020).<sup>3</sup> Thus, logic compels the conclusion that shared savings profits should also end. If profits are a reward for exceeding a mandate and there no longer is a mandate, then there is no need for a reward.

R.C. 4928.66(F)(4) allows the PUCO to stop the collection of unnecessary and excessive profits from FirstEnergy's customers in 2020. The PUCO should exercise its statutory authority under R.C. 4928.66(F)(4) to modify FirstEnergy's portfolio to eliminate shared savings.

**B. Shared savings is not part of a utility's energy efficiency portfolio "budget" under R.C. 4928.66(F)(2), so the PUCO is not required to allow utilities to continue charging customers for shared savings.**

FirstEnergy may argue in response that shared savings is part of its energy efficiency "budget," and thus that the PUCO lacks authority to eliminate shared savings. The PUCO should reject any such argument.

Under R.C. 4928.66(F)(2), the PUCO is required to extend FirstEnergy's current 2017-2019 energy efficiency portfolio through December 31, 2020, after which the portfolio terminates. When a portfolio is extended as such, "the existing plan's budget shall be increased for the extended term to include an amount equal to the annual average of the approved budget for all years of the portfolio plan in effect as of the effective date" of House Bill 6.<sup>4</sup>

Naturally, then, a question of statutory interpretation arises: What is a "budget"?

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<sup>3</sup> The mandates end when Ohio's electric utilities collectively reach 17.5% cumulative savings. According to the PUCO Staff's most recent report, utilities are expected to reach 17.29% savings by the end of 2019, which suggests that the 17.5% mandate will be reached very soon.

<sup>4</sup> R.C. 4928.66(F)(3).

The PUCO should reject any interpretation of the word “budget” to include utility profits (shared savings). Instead, it should interpret the word “budget” in R.C. 4928.66(F)(3) to mean only the costs of running the programs, and not the utility profits on those programs.

The Revised Code does not define the word “budget” for purposes of R.C. 4928.66(F). The word “budget,” in fact, is not used anywhere else in Revised Code chapter 4928. So we must look elsewhere to determine what the word “budget” means in this context. When we do so, all signs point to one conclusion: a utility’s profits on energy efficiency programs (“shared savings”) are not part of the energy efficiency “budget.”

First, the PUCO has used the word “budget” to mean cost of running the programs, not utility profits. In this case, the PUCO found that FirstEnergy filed a portfolio with “an annual budget of approximately \$89.5 million.”<sup>5</sup> That \$89.5 million amount was for the cost of running the programs and did not include any shared savings.<sup>6</sup>

Second, the PUCO’s rules require a utility to include a “budget” with its energy efficiency portfolio application, and that budget shall include “projected expenditures, identifying program costs to be borne by the electric utility and collected from customers, with customer class allocation.”<sup>7</sup> Shared savings is not a “cost to be borne” by FirstEnergy. When customers pay shared savings, they are not reimbursing FirstEnergy for a cost that it incurred; they are making an incentive payment to FirstEnergy that is

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<sup>5</sup> Case No. 16-743-EL-POR, Opinion & Order ¶ 33 (Nov. 21, 2017).

<sup>6</sup> Case No. 16-743-EL-POR, Stipulation and Recommendation Ex. A (Dec. 8, 2016) (showing a three-year budget of \$268.5 million over three years, which is \$89.5 per year, all of which is for program costs and not shared savings).

<sup>7</sup> Ohio Adm. Code 4901:1-39-04(C)(5)(i).

passed on the shareholders as profit. Thus, under the PUCO's rule, shared savings is not part of the utility's "budget."

Third, the everyday English language use of the word "budget" suggests that profits are not part of a budget. Webster's Dictionary defines a "budget" as "a plan for the coordination of resources and expenditures." Black's Law Dictionary similarly defines a "budget" as "a sum of money allocated to a particular purpose or project."<sup>8</sup> These everyday definitions accurately describe the budgeting process: project your costs and figure out if you have enough money to cover those costs. Profit is not a cost. It is a reward for good performance. Rewards for good performance are not part of the budgeting process, so shared savings (aka utility profits) are not part of a "budget."

In sum, while R.C. requires the PUCO to continue FirstEnergy's existing 2017-2019 plan using the "approved budget" from that plan, shared savings are not part of the "budget" and thus are not statutorily required to be approved.

## **II. REQUEST FOR EXPEDITED TREATMENT**

The PUCO should grant this motion on an expedited basis. Under House Bill 6 (R.C. 4928.66(F)), FirstEnergy's 2019 energy efficiency portfolio will be continued on January 1, 2020. As explained above, the PUCO has the authority to modify the portfolio by eliminating charges to customers for utility profits. To allow the PUCO an opportunity to rule on this motion at its December 18, 2019 meeting (presumably the last meeting before 2020), OCC respectfully requests that this motion be heard on an expedited basis.

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<sup>8</sup> In each of these dictionaries, there are various definitions of "budget," as the word can mean different things in different contexts. The two definitions provided are those that most accurately describe a utility's process of allocating funds to run energy efficiency programs.

### III. CONCLUSION

House Bill 6 allows FirstEnergy to keep running customer-funded energy efficiency programs in 2020, and OCC supports the continuation of those programs. But to protect consumers from paying too much for energy efficiency, the PUCO should exercise its statutory authority to order FirstEnergy to stop charging customers for utility profits (“shared savings”) for its 2020 programs.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion was served on the persons stated below via electronic transmission, this 9th day of December 2019.

/s/ Christopher Healey  
Christopher Healey  
Counsel of Record

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Motion Motion to Modify FirstEnergy's 2020 Energy Efficiency Plan to Eliminate Charges to Consumers for Utility Profits and Request for Expedited Treatment by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.