

**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 Program Portfolio Plans for )  
2017 through 2019 )

Case No. 16-0743-EL-POR

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY'S  
MEMORANDUM CONTRA TO OCC'S MOTION TO MODIFY THE COMPANIES'  
EE/PDR PORTFOLIO PLANS AND REQUEST FOR EXPEDITED TREATMENT**

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## **I. INTRODUCTION**

OCC's Motion requests that the Commission, in extending the Companies' energy efficiency and peak demand reduction ("EE/PDR") plans through 2020 pursuant to Am. Sub. H. B. 6 ("HB 6"), should modify the EE/PDR plans to eliminate the opportunity for shared savings for calendar year 2020. OCC's Motion, however, is based on the incorrect premise that the Companies' eligibility for shared savings arises from their EE/PDR plans. To the contrary, the Companies' eligibility for shared savings actually arose and was authorized by the Commission's approval of the Companies' fourth electric security plan ("ESP IV").<sup>1</sup> HB 6 does not authorize the Commission to modify this provision of ESP IV. Further, OCC's assertion that shared savings is nothing more than "utility profits," with "no direct benefits to customers,"<sup>2</sup> is contradicted by the record evidence in this case. The record shows that shared savings creates a win-win situation for utilities and their customers, as customers retain the vast majority of the net benefits created by successful energy efficiency programs. Thus, the Commission should deny OCC's motion.

## **II. ARGUMENT**

### **A. The Commission Approved The Companies' Eligibility for Shared Savings in ESP IV.**

OCC's Motion to modify the Companies' EE/PDR Portfolio Plans for 2020 requests that the Commission eliminate the Companies' shared savings provision previously approved and adopted by the Commission. OCC argues that HB 6 allows the Commission to modify the Companies' EE/PDR Plans for 2020.<sup>3</sup> However, the Companies' eligibility for shared savings does not arise from the Companies' EE/PDR Plans. Rather, the source of the Companies' eligibility for shared savings is the Commission's approval of the Companies' Stipulated ESP IV,

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<sup>1</sup> Case No. 14-1297-EL-SSO.

<sup>2</sup> OCC Motion. at 2.

<sup>3</sup> *Id.*

which provides in no uncertain terms that the Companies' cost-effective EE programs shall be eligible for shared savings:

All costs incurred, including dedicated energy efficiency/demand response internal labor, for such programs shall be recovered through Rider DSE. Cost effective energy efficiency programs shall be eligible for shared savings. The after-tax annual shared savings cap shall be increased from \$10 million to \$25 million and shall continue to be recovered in Rider DSE.<sup>4</sup>

The Commission approved this provision in ESP IV.<sup>5</sup> While HB 6 may provide authority to modify provisions of an extended EE/PDR plan, it provides no authority to modify this provision of the Companies' Stipulated ESP IV.

OCC further incorrectly claims that "shared savings" is nothing more than "utility profits," which "goes straight to shareholders, with no direct benefits to customers."<sup>6</sup> OCC's assertion that customers see "no direct benefits" could not be further from the truth. As the record in this case established, this Commission-approved design means that "[t]he clear majority (no less than 87%) of the calculated benefits produced through cost effective management and delivery of energy efficiency programs *accrue to the Companies' customers.*"<sup>7</sup> Moreover, the shared savings calculation excludes any programs that are not cost-effective, as well as savings under the Customer Action Program, the historic Mercantile Customer Program, Energy Special Improvement District projects, and the Companies' T&D Upgrades Program.<sup>8</sup> The Commission has found on several occasions that shared savings benefits customers, most recently in approving the shared savings mechanism in the Companies' current EE/PDR plans. During a five-day evidentiary hearing of that case, OCC thoroughly litigated the issue, raising the same arguments

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<sup>4</sup> Case No. 14-1297-EL-SSO, Third Supplemental Stipulation and Recommendation, Section V.E.3.d (Dec. 1, 2015) (emphasis added).

<sup>5</sup> Case No. 14-1297-EL-SSO, Opinion and Order at 121 (Mar. 31, 2016).

<sup>6</sup> OCC Mot. at 2.

<sup>7</sup> Demiray Rebuttal Testimony at 3 (emphasis added).

<sup>8</sup> Case No. 16-743-EL-POR, Stipulation and Recommendation, Ex. B at Section 7.1, pp. 105-107.

and even introducing expert testimony, but the Commission was not persuaded. OCC's latest unfounded assertion that shared savings do not benefit customers should again be rejected.

Indeed, shared savings create a win-win situation for all involved, as participating customers enjoy lower electric bills, all customers benefit from the reduction to the costs of providing electric services, and the utility is permitted to retain a small portion of the net benefits. A successful shared savings provision thus encourages a utility to strive to exceed its statutorily mandated energy efficiency goals and maximize the net benefits created for customers. That is precisely why the Commission encouraged the Companies to develop a shared savings incentive mechanism in 2011, holding that "incentive mechanisms, including shared savings, are an effective means of aligning the utilities' and consumers' interests in implementing energy efficiency programs."<sup>9</sup>

The shared savings mechanism consistently approved by the Commission incents the Companies to strive to minimize costs and maximize customer benefit through the delivery of cost-effective energy efficiency programs. Moreover, the Companies' shared savings mechanism is materially consistent with the mechanisms for other Ohio utilities, which have also been approved by the Commission and will continue through 2020,<sup>10</sup> as well as with the mechanism approved by the Commission for the Companies' previous EE/PDR portfolio plans.<sup>11</sup>

#### **B. OCC Ignores the Companies' Obligation to Continue Running Energy Efficiency Programs Through 2020.**

OCC argues that Ohio's EE mandates "will soon end," meaning that "shared savings profits

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<sup>9</sup> Case No. 09-1947-EL-POR, Opinion and Order at 15 (Mar. 23, 2011).

<sup>10</sup> See, e.g., *In the Matter of the Application of the Ohio Power Company for Approval of its [EE & PDR] Program Portfolio Plan for 2017 through 2020*, Case No. 16-0574-EL-POR, Opinion and Order (Jan. 18, 2017). Notably, OCC has also challenged Duke Energy Ohio's recovery of shared savings, but has not challenged Ohio Power Company nor Dayton Power and Light Company shared savings recovery.

<sup>11</sup> Case No. 12-2190-EL-POR, Opinion and Order at 16 (Mar. 20, 2013).

should also end.”<sup>12</sup> HB 6, however, does not terminate the mandate for 2020. The Companies remain statutorily obligated to comply with the provisions of R.C. 4928.66(A)(1)(a)-(b), which require the achievement of certain benchmarks for calendar year 2020. Thus, OCC’s argument that shared savings should end because the energy efficiency mandates “will soon end” fails.

**C. No Justification Exists For Expedited Treatment Of OCC’s Motion.**

OCC asks for expedited treatment of its Motion, which it filed on December 9, 2019, so that the Commission can rule on the Motion at its December 18, 2019 meeting.<sup>13</sup> While the Companies do not oppose treatment of the motion under O.A.C. 4901-1-12(C), there is no excuse for OCC’s delayed action until one and a half weeks prior to the Commission’s meeting before raising this issue. Indeed, the Ohio Legislature passed HB 6 in July 2019—nearly five months ago. OCC could have raised this issue then. At minimum, OCC should have raised this issue in October (nearly two months ago), when HB 6 took effect. OCC provides no justification for its delay.

**III. CONCLUSION**

For the foregoing reasons, the Commission should deny OCC’s Motion in its entirety and should keep in place the Companies’ shared savings mechanism.

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<sup>12</sup> OCC Motion at p. 3.

<sup>13</sup> OCC Motion at p. 5.

December 16, 2019

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *The Companies' Memorandum Contra To OCC's Motion to Modify the Companies' EE/PDR Portfolio Plans and Request for Expedited Treatment* will be served on this 16th day of December, 2019 by the Commission's e-filing system to the parties who have electronically subscribed to this case and via electronic mail upon the following counsel of record:

/s/ Robert M. Endris

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/16/2019 5:06:41 PM**

**in**

**Case No(s). 16-0743-EL-POR**

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