

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of                     )  
Ohio Power Company for Approval of its        ) Case No. 16-574-EL-POR  
Energy Efficiency and Peak Demand             )  
Reduction Program Portfolio Plan for         )  
2017 Through 2020.                                 )

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**REPLY OF  
NATURAL RESOURCES DEFENSE COUNCIL, THE OHIO ENVIRONMENTAL  
COUNCIL, AND ENVIRONMENTAL LAW AND POLICY CENTER IN SUPPORT OF  
OHIO POWER COMPANY’S MOTION FOR APPROVAL OF ITS WIND-DOWN PLAN  
FOR ENERGY EFFECIENCY AND PEAK DEMAND RESPONSE PROGRAMS**

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On August 10, 2020 Ohio Power Company (“AEP”) filed a Motion for Approval of its Wind-Down Plan for Energy Efficiency and Peak Demand Response Programs (the “Motion”).<sup>1</sup> In the Motion, AEP requested to continue some of its energy efficiency programs through December 31, 2020 as opposed to ending them on September 30, 2020 per the Commission’s prior Finding and Order.<sup>2</sup>

AEP seeks to extend certain non-direct rebate programs through December 31, 2020 despite the Commission’s Finding and Order that non-direct rebate programs should begin to wind-down on September 30, 2020.<sup>3</sup> The non-direct rebate offerings AEP is seeking to extend are the Home Energy Report, Automated Benchmarking, and the “It’s Your Power” application (the “IYP”).<sup>4</sup> AEP is seeking to terminate incentives through the IYP on September 30, 2020 but wishes to continue operating the IYP through December 31, 2020 under the EE/PDR portfolio to protect customers’ investment in their smart thermostats.<sup>5</sup> AEP proposes to continue offering the

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<sup>1</sup> Pub. Util. Comm. Case No. 16-574-EL-POR, the Motion (Aug. 10, 2020.)

<sup>2</sup> Id., Finding and Order at ¶44 (Feb. 26, 2020.)

<sup>3</sup> The Motion at p. 3.

<sup>4</sup> Id. at p. 5.

<sup>5</sup> Id. at p. 6.

IYP after December 31, 2020 as a part of their pending gridSmart Phase 3 filing and not as a part of an EE/PDR portfolio.<sup>6</sup> Finally, to effectuate the continuity of the IYP and continue delivering its benefits and functionality to customers AEP has requested the authority to establish a regulatory deferral.<sup>7</sup> In addition to the loss of functionality for customers, AEP cites to the pending uncertainty surrounding Substitute Amended House Bill 6 (“HB 6”), passed on July 23, 2019 and effective on October 22, 2019, which terminates the EE/PDR portfolios on December 31, 2020. However, HB 6 is currently proceeding through the legislative process for repeal, through three separately introduced pieces of legislation.<sup>8</sup>

On August 25, 2020, the Office of the Ohio Consumers’ Counsel (“OCC”) filed a Memorandum Contra to the Motion. Pursuant to Ohio Admin. Code 4901-1-12 Natural Resources Defense Council, Environmental Law and Policy Center, and Ohio Environmental Council (collectively, “Environmental Intervenors”) hereby file this Reply in Support of AEP’s Motion.

## **I. ARGUMENT**

The OCC opposes AEP’s request and claims it is procedurally improper.<sup>9</sup> To support this assertion, OCC cites to dicta in a Columbia Gas (“Columbia”) case in which Columbia did not even seek a deferral.<sup>10</sup> Instead, in that Finding and Order, the Commission specifically noted that Columbia was not seeking a deferral.<sup>11</sup> The next sentence then directs Columbia, should it

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<sup>6</sup> Id. at 7.

<sup>7</sup> Id.

<sup>8</sup> [Senate Bill 346](#), [House Bill 738](#), and [House Bill 746](#).

<sup>9</sup> OCC’s Memo Contra at p. 3.

<sup>10</sup> Id. at fn. 6.

<sup>11</sup> See *In re Motion of Columbia Gas of Ohio, Inc. to Suspend Certain Procedures & Process During the COVID-19 State of Emergency*, Case No. 20-637-GA-UNC, Finding & Order ¶44 (May 20, 2020). (We note that, as OCC acknowledges, Columbia has not requested, as a component of its motion, authority to defer or recover expenses related to the state of emergency.)

consider seeking deferral authority, to track the costs associated with the State of Emergency.<sup>12</sup>

Finally, the Commission notes, that nothing in its current Finding and Order guarantees recovery of costs or approval of deferral authority because such approval would be considered in a separate application.<sup>13</sup>

In this case, AEP is not seeking recovery.<sup>14</sup> AEP specifically stated, “[t]he Company will seek recovery of the regulatory asset in the gridSMART Phase 3 case or another appropriate case”.<sup>15</sup> There is nothing procedurally improper about requesting the ability to rack expenses for the purposes of a regulatory deferral in the case from which those expenses originate. Just as the Commission directed Columbia to track expenses without guaranteeing recovery in Columbia’s State of Emergency docket the Commission can authorize AEP to track and defer expenses while withholding judgment on whether that deferral was proper and recoverable. Further, OCC explicitly acknowledged that energy efficiency is good for customers.<sup>16</sup> Those benefits should be maintained as long as possible especially considering the pending repeal of the law that would require AEP to terminate them early.

The Commission is charged with ensuring the integrity of the public utility rate system in Ohio and guaranteeing the rates collected are just and reasonable. The Commission already determined the programs AEP is seeking to continue through December 31, 2020 are just and reasonable, and beneficial to customers. Yet HB 6, which the Governor has called to be repealed and is the subject of three pending repeal bills, eliminates these benefits on December 31, 2020.<sup>17</sup>

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<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> The Motion at p. 7.

<sup>15</sup> Id.

<sup>16</sup> OCC’s Memo Conta at p. 3.

<sup>17</sup> <https://www.dispatch.com/news/20200723/gov-mike-dewine-calls-for-quick-repeal-and-replacement-of-hb-6> and see fn.8.

AEP's Motion simply asks that the Commission not impose a premature and artificial termination deadline on previously Commission approved programs. This request is reasonable and in the interests of customers as it will capture the maximum benefits allowed under the law. Especially considering, the law which is currently set to terminate those programs on December 31, 2020, may be repealed before that date.

The Environmental Intervenors support AEP's request to continue the specified programs up through December 31, 2020. AEP's request for a deferral is no guarantee of recovery which will be considered in an appropriate future proceeding. Additionally, by supporting AEP's request for a deferral the Environmental Intervenors are not waiving their right to challenge recovery of that deferral in the appropriate proceeding. The Commission has the opportunity to maximize the benefits to customers and protect them from a premature and potentially unnecessary wind-down by allowing AEP to continue its programs through December 31, 2020.

## **II. CONCLUSION**

For all these reasons, the Environmental Intervenors support AEP's Motion and respectfully request the Commission authorize AEP to continue its programs, with deferral authority in the case of IYP, through December 31, 2020.

September 1, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Application for Rehearing has been electronically filed with the Public Utilities Commission of Ohio and has been served upon all parties to the case via electronic mail on September 1, 2020.

/s/ Robert Dove  
Robert Dove

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

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Summary: Reply In Support of Ohio Power Company's Motion for Approval of Its Wind-Down Plan for Energy Efficiency and Peak Demand Response Programs electronically filed by Mr. Robert Dove on behalf of Natural Resources Defense Council and Environmental Law and Policy Center and Ohio Environmental Council