

**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	)	Case No. 16-743-EL-POR
Energy Efficiency and Peak Demand	)	
Reduction Program Portfolio Plans for	)	
2017 through 2019.	)	

---

**APPLICATION FOR REHEARING  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

The Public Utilities Commission of Ohio (“PUCO”) should modify its December 30, 2020 Entry to eliminate charges to customers for FirstEnergy’s “Economic Load Response” program. These charges are unlawful, per part of the alleged benefit of tainted House Bill 6.

Under House Bill 6, there are no longer energy efficiency or peak demand reduction mandates in Ohio. The law, codified in R.C. 4928.66(G)(3), requires the PUCO to terminate all utility energy efficiency charges that were previously used to meet those mandates.

The Entry violates this law by allowing FirstEnergy to continue charging customers for its Economic Load Response program. The Economic Load Response Program was approved and used by FirstEnergy to meet the former mandates. The PUCO lacks authority to allow FirstEnergy to keep charging customers for this program. Thus, the Entry should be modified and charges to customers for the Economic Load Response program should be terminated immediately.

Assignment of Error 1: The Entry is unlawful under R.C. 4928.66(G)(3) – from tainted House Bill 6 – because it allows FirstEnergy to keep charging customers for a peak demand response program. R.C. 4928.66(G)(3) prohibits any such charges to consumers now that the law contains no peak demand reduction mandates.

Assignment of Error 2: The Entry is unlawful under R.C. 4903.09 because it provides no explanation of the PUCO's reasoning for allowing FirstEnergy to continue charging customers for a peak demand response despite the prohibition under R.C. 4928.66(G)(3) – from tainted House Bill 6.

Respectfully submitted,

Bruce Weston (#0016973)  
Ohio Consumers' Counsel

/s/ Christopher Healey  
Christopher Healey (0086027)  
Counsel of Record  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7th Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-9571  
[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
(willing to accept service by email)

**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       ) Case No. 16-743-EL-POR  
Energy Efficiency and Peak Demand       )  
Reduction Program Portfolio Plans for       )  
2017 through 2019.                               )

---

**MEMORANDUM IN SUPPORT**

---

As the PUCO stated in its November 18, 2020 Order in this case, “The plain language of R.C. 4928.66(G)(3) is clear and unambiguous. Once the cumulative saving cap has been met on December 31, 2020, the EDU’s EE/PDR cost recovery riders must ‘terminate.’”<sup>1</sup> That means FirstEnergy’s charges to consumers must end. Indeed, sparing consumers from such charges was part of the public relations selling point (alleged consumer savings) for now-scandalous House Bill 6, with which FirstEnergy is only too familiar.

Despite this order, FirstEnergy filed tariffs that proposed to continue charging customers \$0.0003777 per kWh for its “Economic Load Response” program.<sup>2</sup> At this rate, residential customers are projected to pay more than \$6.2 million to subsidize this program in 2021:

<b>EDU</b>	<b>Rate</b>	<b>2021 kWh<sup>3</sup></b>	<b>Total Charge</b>
Ohio Edison	\$0.0003777	8,960,176,551	\$3,384,258.68
Toledo Edison	\$0.0003777	2,427,132,515	\$916,727.95
Cleveland Electric	\$0.0003777	5,134,657,270	\$1,939,360.05
			<b>\$6,240,346.69</b>

---

<sup>1</sup> Finding & Order ¶ 8 (Nov. 18, 2020).

<sup>2</sup> See Case No. 20-1673-EL-RDR, Revised Tariff Pages (Dec. 23, 2020).

<sup>3</sup> See Case No. 19-2080-EL-RDR, November 3, 2020 Tariff Updates, which provide projected kWh usage for 2021.

And despite ordering FirstEnergy to set its energy efficiency charges to zero, the PUCO approved FirstEnergy's continued charges for the Economic Load Response program, including \$6.2 million in charges to residential customers.<sup>4</sup> This was unlawful. These charges must be terminated.

## **I. ASSIGNMENTS OF ERROR**

**Assignment of Error 1: The Entry is unlawful under R.C. 4928.66(G)(3) – from tainted House Bill 6 – because it allows FirstEnergy to keep charging customers for a peak demand response program. R.C. 4928.66(G)(3) prohibits any such charges to consumers now that the law contains no peak demand reduction mandates.**

Under R.C. 4928.66(G)(3), when utilities have achieved full compliance with statutory energy efficiency and peak demand reduction mandates (which occurred at the end of 2020), they are required to terminate their energy efficiency and peak demand reduction charges to customers. The statute provides that “any electric distribution utility cost recovery mechanism authorized by the commission for compliance with [energy efficiency mandates] *shall terminate* except as 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 energy efficiency mandates] is deemed achieved.”

The PUCO approved FirstEnergy's request to continue charging customers for its Economic Load Response program.<sup>5</sup> But it should not have because the Economic Load Response program is a peak demand reduction program that FirstEnergy used to meet the now-terminated peak demand reduction mandates. The law says that all such charges must end.

It is unclear why the PUCO approved these charges because, as discussed below, the PUCO did not provide any support for allowing this charge to continue in its December 30, 2020

---

<sup>4</sup> Entry (Dec. 30, 2020).

<sup>5</sup> Entry (Dec. 30, 2020).

Entry.) But the program is directly related to compliance with the former mandates. The tariffs themselves say so, and these tariffs were approved by the PUCO.

One condition to nonresidential customers participating in the Economic Load Response program is that “the customer commits its demand response capability to Company for integration into Company’s R.C. § 4928.66 compliance programs.”<sup>6</sup> Another condition to participating in the Economic Load Response program is that “the Commission finds that the demand response capabilities of customers electing service under this rider shall count towards the Company’s compliance with the peak demand reduction benchmarks set forth in R.C. § 4928.66 ....”<sup>7</sup>

This language could not be any clearer: the Economic Load Response program was “authorized by the commission for compliance” with peak demand reduction mandates, and thus, the charges to customers for this program “shall terminate” under R.C. 4928.66(G)(3).<sup>8</sup>

Further, FirstEnergy’s own annual reports confirm that the Economic Load Response program was part of FirstEnergy’s compliance with mandates. For example, in FirstEnergy’s most recent report, it states that the report “addresses the Companies’ compliance with the energy efficiency (‘EE’) and peak demand reduction (‘PDR’) benchmarks set forth in O.R.C. § 4928.66(A).”<sup>9</sup> FirstEnergy then specifically references the Economic Load Response program as part of its demand response mandate compliance efforts: “The Companies’ Demand

---

<sup>6</sup> See Ohio Edison Co., Rider ELR, Sheet 101; Cleveland Electric Co., Rider ELR, Sheet 101; Toledo Edison, Rider ELR, Sheet 101 (all attached as exhibits hereto).

<sup>7</sup> *Id.*

<sup>8</sup> See R.C. 4928.66(G)(3).

<sup>9</sup> Case Nos. 20-724-EL-EEC, 20-725-EL-EEC, 20-726-EL-EEC, Portfolio Status Report (May 15, 2020), available at <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=6ce9bd1d-280a-42f3-87ab-13e91f7ca168> (click the first link under “Source File(s)”) (the “Annual Report”).

Reduction Program leveraged demand response resources including ... resources participating on the Companies' C/I Interruptible Load Reduction Tariff (ELR).”<sup>10</sup>

This shows that the Economic Load Response program was used for purposes of compliance with peak demand reduction mandates. Thus, R.C. 4928.66(G)(3) applies, prohibiting FirstEnergy from continuing to charge customers for it.

**Assignment of Error 2: The Entry is unlawful under R.C. 4903.09 because it provides no explanation of the PUCO's reasoning for allowing FirstEnergy to continue charging customers for a peak demand response despite the prohibition under R.C. 4928.66(G)(3) – from tainted House Bill 6.**

R.C. 4903.09 requires the PUCO to file “findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.” In approving FirstEnergy's charges to customers for its Economic Load Response program, the PUCO provided no explanation.

The Entry says the following and nothing else: “As to FirstEnergy's filing, we note that we are only approving the proposed compliance tariffs filed on December 23, 2020 in Case Nos. 20-1673-EL-RDR and 20-1748-EL-ATA, to the extent they establish revised charges for Rider DSE1 and set Rider DSE2 to zero.”<sup>11</sup> Rider DSE1 is the charge for the Economic Load Response program. The PUCO provides no explanation as to *why* it is approving the charges under Rider DSE1—the Entry simply says that it is doing so. This violates R.C. 4903.09 because there is no way for anyone to evaluate the basis for the PUCO's ruling. Maybe that is because there is no basis for such a ruling that transfers more of consumers' money to FirstEnergy, related to a House Bill 6 issue.

---

<sup>10</sup> *Id.*

<sup>11</sup> Entry ¶ 12 (Dec. 30, 2020).

## II. CONCLUSION

For the foregoing reasons, the PUCO must abrogate or modify the December 30, 2020 Entry. The PUCO must terminate the charges to consumers that the PUCO unlawfully authorized for the Economic Load Response program in connection with tainted House Bill 6.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ Christopher Healey  
Christopher Healey (0086027)  
Counsel of Record  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, 7th Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-9571  
[Christopher.healey@occ.ohio.gov](mailto:Christopher.healey@occ.ohio.gov)  
(willing to accept service by email)

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Application for Rehearing was served on the persons stated below via electronic transmission, this 29th day of January 2021.

/s/ Christopher Healey  
Christopher Healey  
Assistant Consumers' Counsel

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

### **SERVICE LIST**

[John.jones@ohioattorneygeneral.gov](mailto:John.jones@ohioattorneygeneral.gov)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)  
[mleppla@theoec.org](mailto:mleppla@theoec.org)  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)  
[dparram@bricker.com](mailto:dparram@bricker.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
[sechler@carpenterlipps.com](mailto:sechler@carpenterlipps.com)  
[callwein@keglerbrown.com](mailto:callwein@keglerbrown.com)  
[cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com)  
[eostrowski@firstenergycorp.com](mailto:eostrowski@firstenergycorp.com)

[leiterr@firstenergycorp.com](mailto:leiterr@firstenergycorp.com)  
[rendris@firstenergycorp.com](mailto:rendris@firstenergycorp.com)  
[Kjklaw@yahoo.com](mailto:Kjklaw@yahoo.com)  
[mrgladman@jonesday.com](mailto:mrgladman@jonesday.com)  
[stostado@jonesday.com](mailto:stostado@jonesday.com)  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
[perko@carpenterlipps.com](mailto:perko@carpenterlipps.com)  
[paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)  
[rkelter@elpc.org](mailto:rkelter@elpc.org)  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[swilliams@nrdc.org](mailto:swilliams@nrdc.org)

Attorney Examiner:  
[Lauren.augostini@puco.ohio.gov](mailto:Lauren.augostini@puco.ohio.gov)



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

**Commission of Ohio Docketing Information System on**

**1/29/2021 2:21:16 PM**

**in**

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

Summary: App for Rehearing Application for Rehearing by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.