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. 16-743-EL-POR

COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY REGARDING RIDER ELR

I. INTRODUCTION

The Commission has requested comments on the question "whether, in consideration of the history, purpose and nature of Rider ELR, Rider ELR is an energy efficiency program established pursuant to the mandates contained in R.C. 4928.66 which should be terminated pursuant to R.C. 4928.66(G)." Fifth Entry on Rehearing ¶ 14 (Feb. 24, 2021). The "Rider ELR" referenced by the Commission is the Economic Load Response Program Rider in the tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the "Companies").[1] It is not an energy efficiency program established pursuant to the mandates of R.C. 4928.66.

While the Commission approved the most-recent version of Rider ELR in the Companies' fourth Electric Security Plan proceeding, Case No. 14-1297-EL-SSO ("ESP IV"), its roots predate the Companies' first Electric Security Plan proceeding, Case No. 08-935-EL-SSO ("ESP I"), as well as the R.C. 4928.66 mandates adopted in 127 Am. Sub. S.B. 221 ("SB 221"). The Companies'

[1] Ohio Edison Company, PUCO No. 11, Sheet 115; The Cleveland Electric Illuminating Company, PUCO No. 13, Sheet 115; The Toledo Edison Company, PUCO No. 8, Sheet 115.

Rate Stabilization Plan and Rate Certainty Plan approved in the mid-2000s included interruptible service tariffs, which were then incorporated as Rider ELR into the Companies' tariffs approved in ESP I. Indeed, the customers eligible for Rider ELR were those customers already taking service under the Companies' interruptible tariffs or interruptible contracts as of Feb. 1, 2008. The Commission has approved Rider ELR, the related interruptible credit provision in the Economic Development Rider ("Rider EDR")[2], and associated cost recovery in every ESP since.

Rider's ELR purpose is twofold. First, it protects the distribution and transmission system by enabling the Companies, American Transmission Systems Incorporated ("ATSI") or PJM Interconnection, L.L.C. ("PJM") to call an emergency curtailment event if an emergency situation exists that threatens the integrity of either the distribution or transmission system. Rider ELR plays an important role in maintaining bulk power system reliability.[3] Second, combined with the interruptible credit provision in Rider EDR(b), which is available only to customers taking service under Rider ELR, it functions as an economic development program that provides economic development support to Rider ELR customers for their curtailable load and benefits all customers by reducing overall capacity costs.

Rider ELR is an interruptible service and economic development program established pursuant to R.C. 4928.143. Although the peak demand reduction benefits of Rider ELR have been counted toward the Companies' compliance with the mandates in R.C. 4928.66, it is not, and has never been, an energy efficiency program established pursuant to R.C. 4928.66. Thus, neither Rider ELR, nor Rider DSE1, the mechanism under which the Rider ELR credits are authorized for

[2] *See* Rider EDR(b) in Ohio Edison Company, PUCO No. 11, Sheet 116; The Cleveland Electric Illuminating Company, PUCO No. 13, Sheet 116; The Toledo Edison Company, PUCO No. 8, Sheet 116.

[3] *See In the Matter of the Complaint of Material Sciences Corporation v. The Toledo Edison Company*, PUCO Case No. 13-2145-EL-CSS, Opinion and Order at ¶ 46 (May 15, 2019) (finding that "Toledo Edison's ELR Program helps ensure system reliability, particularly when an emergency situation exists that may jeopardize the integrity of either the distribution or transmission system in the area.").

recovery, is not a cost recovery mechanism authorized by the Commission for compliance with R.C. 4928.66 that must terminate pursuant to R.C. 4928.66(G)(3).

II. DISCUSSION

A. The history and purpose of Rider ELR demonstrate Rider ELR is not an energy efficiency program established pursuant to the mandates contained in R.C. 4928.66.

1. Pre-SB 221 period

Prior to the enactment of SB 221 in 2009 and the Companies' ESP I, Ohio Edison and Toledo Edison offered interruptible service riders and CEI offered interruptible service via contract to their customers. *See, e.g.*, Case No. 05-1125-EL-ATA *et al*., Ohio Edison Compliance Tariffs, Sheet Nos. 29, 73, 74, 75 (filed Jan. 6, 2006) (interruptible riders for General Service customers). An early form of Rider ELR was proposed by the Companies as an optional load response program in Case No. 07-796-EL-ATA, in which the Companies requested approval of a market-based SSO supply mechanism. *See* Case No. 07-796-EL-ATA, Application, pp. 21-23 and Exhibit E (July 10, 2007). But SB 221's mandate that the Companies request approval of an ESP or Market Rate Offer mooted this application and resulted in its withdrawal by the Companies. *See Id.*, Motion to Withdraw Application (Aug. 1, 2008).

2. ESP I

The Companies explained in their ESP I filing that the "general terms and conditions of Rider ELR are modeled after the current Ohio Edison interruptible tariffs." ESP I, Direct Testimony of Kevin T. Warvell, p. 22 (July 31, 2008) (Warvell Testimony). Rider ELR was available to customers then taking service under the Companies' interruptible tariffs or special contracts and approved by the Commission prior to February 1, 2008. *Id.* The Companies further explained that "Rider ELR is designed to be utilized with the interruptible credit provision" of the proposed economic development rider, which also would be available to interruptible customers taking service as of February 1, 2008. *Id.*, p. 23. The cost recovery mechanisms for both riders were proposed under R.C. 4928.143(B)(2)(i), under which ESPs could include, without limitation, "economic development, job retention, and energy efficiency programs." *See* ESP I, Direct Testimony of Gregory F. Hussing, pp. 8-11.

The Stipulation and Recommendation approved by the Commission in ESP I included Rider ELR as a load response program with both economic and emergency curtailment options. ESP I, Stipulation and Recommendation, p. 12 and Attachment B (Feb. 19, 2009). *See generally* ESP I, Second Opinion and Order, pp. 10, 23 (March 25, 2009). The Rider ELR credit was fixed at $1.95 per kW of curtailable load, and the Rider EDR(b) credit was fixed at $8.05 per kW of curtailable load, for a total of $10 per kW. *See Id.* and Compliance Tariffs, Sheets 101, 115 and 116 (filed March 27, 2009). The cost of the Rider ELR credit would be recovered through the DSE1 charge in Rider DSE, and the cost of the EDR(b) credit would be recovered through Rider EDR(e). *Id.* A witness for the Companies testified at hearing that, among other things, Rider ELR provided two benefits: it helped assure reliable service to all customers and avoided capacity costs for the Companies. ESP I, Tr. Vol. II, pp. 38-40 (Oct. 20, 2008).

Importantly, while the DSE1 charge was intended to "recover costs incurred by the Company associated with customers taking service under the Economic Load Response Rider (ELR) and Optional Load Response Rider (OLR)," the Commission authorized the DSE2 charge of Rider DSE in ESP I to recover the "costs incurred by the Company associated with the programs that may be implemented by the Company to secure compliance with the energy efficiency and peak demand reduction requirements of in Section 4928.66, Revised Code." Compliance Tariffs, Sheet 115, page 1 of 3. The DSE2 charge was set at $0.00 because no such compliance costs existed in March 2009. In fact, the Stipulation included a detailed process for developing cost-effective EE/PDR programs, starting with a market study to be completed by September 1, 2009 and a collaborative process, in order to comply with R.C. 4928.66's mandates. ESP I, Stipulation, pp. 23-30. In contrast, the DSE1 charge was populated for all rate classes because the Rider ELR load response program, which was not an EE/PDR program to comply with R.C. 4928.66, was up and running effective with the Commission's approval of ESP I. *See* Compliance Tariffs, Sheet 115, page 1 of 3.

3. ESP II and first EE/PDR Portfolio Plan

The Companies filed their first EE/PDR Portfolio Plan with the Commission in Case No. 09-1947-EL-POR on December 15, 2009, and the Commission approved the plan on March 23, 2011. While this case was pending, the Commission reviewed and approved the Companies' second Electric Security Plan in Case No. 10-388-EL-SSO ("ESP II"). *See* ESP II, Opinion and Order (Aug. 25, 2010). In ESP II, Rider ELR was amended to reflect the transition to PJM, to include a requirement that customers would commit their demand response capability to the Companies for integration into the Companies' R.C. 4928.66 compliance programs (once approved), and to increase the Rider ELR credit to $5 per kW of curtailable load. *See* ESP II, Compliance Tariffs, Sheet No. 101, 1st Revised Pages 1 of 5 and 2 of 5 (filed May 10, 2011). The Rider EDR(b) credit was correspondingly reduced to $5 per kW of curtailable load, maintaining the total credit of $10 per kW for customers participating in Rider ELR. *Id.*, Sheet 116, 1st Revised Page 1 of 5.

One industrial customer provided testimony, as summarized by the Commission in its Order, listing the many benefits of Rider ELR:

> Nucor claims that Riders ELR and OLR provide a broad array of benefits. These benefits include: avoided generation capacity cost savings (Nucor Ex. 1 at 12; MRO Tr. I at 116, MRO Tr. IV at 610); avoided energy cost savings; avoided transmission and distribution cost savings (Nucor MRO Ex. 1 at 27); savings from avoided reserve

> and transmission losses (id. at 29); reliability benefits (id. at 12-13); environmental benefits through the avoidance of the need for new peaking generation and additional transmission capacity (id.); avoidance of enormous negative rate impacts to Rider ELR customers (OEG MRO Ex. 1 at 11-12,14-15); and economic development and job retention benefits (Nucor MRO Ex. 1 at 12-13).

ESP II, Opinion and Order, p. 31. Similarly, another large industrial customer provided testimony that "Rider ELR provides Ohio's largest energy users with price and quality options to remain competitive, further economic development and job retention, and facilitate Ohio's competitiveness in the global market." *Id.* (citing R.C. 4928.02). The Commission noted that the continuation of Rider ELR had been one objective of several parties to the proceeding, and that termination of Rider ELR "would only harm large industrial consumers in this state." *Id.*, pp. 45-46. Thus, the Commission approved the continuation of Rider ELR and Rider EDR(b). *Id.*

When the Commission approved the Companies' first EE/PDR Portfolio Plan, certain parties sought to relitigate Rider ELR and the DSE1 charge as part of that proceeding. The Commission rejected this suggestion, noting "that, pursuant to our approval of the combined stipulation, as modified, in the 2010 ESP Case, FirstEnergy will continue Riders ELR and OLR through May 31, 2014." Case No. 09-1947-EL-POR, Opinion and Order, p. 12 (Mar. 23, 2011). The Commission did not approve Rider ELR and the DSE1 charge in the Companies' EE/PDR Portfolio Plan proceeding but, instead, simply noted that these provisions already had been approved in ESP II.

In contrast, the Commission did approve populating the DSE2 charge in Rider DSE. As stated in the Commission's Order, "The Companies propose modifying Rider DSE by implementing a new DSE2 charge in Rider DSE, through which the EE/PDR program costs would be recovered." *Id.*, pp. 7-8. As described in testimony filed by the Companies, the DSE2 charge was intended to recover R.C. 4928.66 compliance costs, while the DSE1 charge had a separate purpose:

> [Rider DSE] includes two separate charges, DSE1 and DSE2. . . . Rider DSE was approved through the Companies' Stipulated Electric Security Plan ("ESP") in March of 2009 for collection through the DSE2 charge of all costs associated with compliance with Revised Code ("R.C.") § 4928.66. Rider DSE also provides for the recovery through the DSE1 charge of the cost of credits paid to customers who take service under the Economic Load Response Program Rider and the Optional Load Response Program Rider.

Case No. 09-1947-EL-POR, Direct Testimony of Steven E. Ouellette, p. 4 (filed Dec. 15, 2009). It was clearly understood that the DSE2 charge in Rider DSE was the only cost recovery mechanism authorized by the Commission for compliance with R.C. 4928.66.

4. ESP III and ESP IV

Prior to the Commission's approval of the Companies' third Electric Security Plan in Case No. 12-1230-EL-SSO ("ESP III"), the Companies had been offering demand response from Rider ELR in the PJM capacity auction. As one component of ESP III, the Companies agree to continue this practice, with the revenues used to offset DSE1 costs. ESP III, Stipulation and Recommendation, p. 13 (April 13, 2012); ESP III, Opinion and Order, p. 37 (July 18, 2012). ESP III was intended largely as an extension of ESP II. Opinion and Order, p. 4. Certain parties argued that Rider ELR was more appropriate for review in the Companies' EE/PDR Portfolio Plan proceeding, but the Commission disagreed. *Id.*, pp. 35, 37. Once again, the Commission approved Rider ELR and cost recovery through the DSE1 charge of Rider DSE as reasonable components of an electric security plan.

The Commission also authorized Riders ELR and EDR(b) for inclusion in the Companies' ESP IV. ESP IV continued the split of a $5 per kW credit through Rider ELR and a $5 per kW credit through Rider EDR(b) to Rider ELR customers, but it discontinued the economic curtailment portion of Rider ELR. *See* ESP IV, Opinion and Order, p. 26 (March 31, 2016); Stipulation and Recommendation, p. 8 (Dec. 22, 2014). The Commission approved continued recovery of Rider ELR credits through the DSE1 component of Rider DSE through the term of ESP IV. ESP IV, Opinion and Order, p. 26 (March 31, 2016).

Similar to earlier ESPs, the Companies and other parties argued "that interruptible riders such as Rider ELR also benefit customers by promoting economic development and encouraging job retention in the region." *Id.*, pp. 70-71. Further, "interruptible tariff provisions such as Rider ELR benefit all customers by providing system reliability and stability. FirstEnergy adds that the availability of interruptible load during an emergency, such as an extreme weather event, may help prevent the need to resort to load-shedding, a clear benefit to both firm and non-firm customers." *Id.*, p. 72. Parties also noted that the increased reliability provided by Rider ELR "is a key component to meeting firm loads and maintaining a reliable grid, especially in the face of upcoming plant retirements" and that "interruptible resources can provide economic benefits by lowering the market price for all consumers during peak times and reducing the need for additional capacity resources to be constructed." *Id.* The twin purposes of Riders ELR and EDR(b) – system reliability and economic development – remained clear. While the ability to count interruptible load toward the Companies' peak demand response requirements under R.C. 4928.66 was not ignored, it was not the motivation for approval of these riders and their corresponding cost recovery mechanisms.

Indeed, in the Commission's Order approving the Companies' most recent EE/PDR Portfolio Plan, the Commission did not even mention Rider ELR, interruptible riders, or the DSE1 component of Rider DSE. Case No. 16-743-EL-POR, Opinion and Order (Nov. 21, 2017). The Companies' Portfolio Plans do include the "continuation of the existing program which captures demand reduction resulting from the Companies' Rider ELR as included in the Companies' Stipulated ESP IV and from PJM participating demand resources." Stipulated EE/PDR Plans, p. 21 (filed Dec. 21, 2017). The important distinction here is that one purpose of the Portfolio Plans is to capture, measure and verify the demand reduction benefits of Rider ELR, but the purpose of Riders ELR and EDR(b) is system reliability and economic development, and they were not authorized for compliance with R.C. 4928.66.

III. CONCLUSION

While the Companies' EE/PDR Portfolio Plans have terminated, as has the DSE2 charge in Rider DSE (subject to final reconciliation), Riders ELR and EDR(b) and their corresponding cost recovery mechanisms were not impacted by R.C. 4928.66(G). The Companies did not propose these riders for the purpose of compliance with R.C. 4928.66, and the Commission did not authorize them in ESP I, ESP II, ESP III and ESP IV for that purpose. Instead, the Commission authorized these riders to promote system reliability and economic development, and for costs recovery pursuant to R.C. 4928.143. As such, neither Riders ELR and EDR(b), nor the associated cost recovery mechanisms of Rider DSE1 and Rider EDR(e), respectively, are subject to termination pursuant to R.C. 4928.66(G)(3).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 26th day of March 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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