

**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.)

**COMMENTS
(INCLUDING RECOMMENDATION TO CLARIFY FIRSTENERGY’S TARIFFS TO
ENSURE REFUNDABILITY OF CHARGES)
BY
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

One of the public relations selling points for tainted House Bill 6 was the claim of consumer savings. Contrary to consumer savings, FirstEnergy has fashioned a proposal to continue charging customers for its “Economic Load Response” program.¹ FirstEnergy’s charge makes residential consumers (among others) subsidize large nonresidential customers who participate in the program. At this rate,² residential customers can be projected to pay more than \$6.2 million to subsidize this program in 2021 (if large nonresidential consumers continue to participate in the program). The PUCO should put a halt to FirstEnergy charging customers more money for subsidizing energy efficiency and peak demand response programs (for industrial customers) that were supposedly coming to an end with the scandalous legislation (H.B. 6).

We were hopeful when, in its November 18, 2020 Order in this case, the PUCO said favorable words about ending such charges: “The plain language of R.C. 4928.66(G)(3) is clear

¹ See Case No. 20-1673-EL-RDR, Revised Tariff Pages (Dec. 23, 2020).

² \$0.0003777 per kWh

and unambiguous. Once the cumulative saving cap has been met on December 31, 2020, the EDU’s EE/PDR cost recovery riders must ‘terminate.’”³ Note that, indeed, the “cumulative savings cap” has been met. That means the FirstEnergy subsidy charges to consumers should end.

Despite this order, FirstEnergy filed tariffs that did *not* reset its energy efficiency rider rate to zero. Instead, FirstEnergy proposed continued charges under the energy efficiency rider for its Economic Load Response program. As stated, that program makes residential consumers provide subsidies to large nonresidential customers who participate in the program.

The PUCO then approved FirstEnergy’s proposed subsidy charges.⁴ Here is a breakdown of the charges to consumers that the PUCO approved:

EDU	Rate	2021 kWh⁵	Total Charge
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
			\$6,240,346.69

The PUCO’s approval of charges to customers was unlawful. These charges must be terminated. FirstEnergy should not be allowed to walk away from tainted H.B. 6 with even a penny of this consumer money.

II. RECOMMENDATIONS FOR CONSUMER PROTECTION

The PUCO granted an opportunity for comments, in response to OCC’s January 29, 2021 application for rehearing. In our application for rehearing, we asserted that it is illegal for the

³ Finding & Order ¶ 8 (Nov. 18, 2020).

⁴ Entry (Dec. 30, 2020).

⁵ See Case No. 19-2080-EL-RDR, November 3, 2020 Tariff Updates, which provide projected kWh usage for 2021.

PUCO to allow FirstEnergy to continue charging consumers for the Economic Load Response program.⁶ Per the PUCO's invitation on our rehearing application, we are commenting.

Ohio's energy efficiency mandates recently ended, under tainted House Bill 6. The end occurred because Ohio's electric distribution utilities collectively achieved energy savings greater than the 17.5% standard referenced in House Bill 6.⁷ R.C. 4928.66(G)(3) requires energy efficiency charges to customers to end:

Upon the date of full compliance with [statutory energy efficiency mandates] is deemed achieved ..., any electric distribution utility cost recovery mechanisms authorized by the commission for compliance with this section shall terminate except as may be 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 [statutory energy efficiency mandates] is deemed achieved. No such cost recovery mechanism shall be authorized by the commission beyond the period of time required to complete this final reconciliation.

There is key statutory language for purposes of the current case. The statutory requirement is that "any electric distribution utility cost recovery mechanisms authorized by the commission for compliance with this section *shall terminate*" except as necessary for a final reconciliation of past costs.⁸

Despite this language, the PUCO allowed FirstEnergy to continue charging customers for its Economic Load Response program.⁹ But it should not have. The law requires charges for this program to *end* because charges for the Load Response program are collected from customers

⁶ Application for Rehearing by Office of the Ohio Consumers' Counsel (Jan. 29, 2021).

⁷ R.C. 4928.66(G)(2) ("If the cumulative energy savings collectively achieved as determined by the commission ... is at least seventeen and one-half per cent of the baseline ..., then full compliance ... shall be deemed to have been achieved ..."); Finding & Order ¶ 1 (Feb. 24, 2021) (utilities achieved 19.8% savings by 12/31/20).

⁸ R.C. 4928.66(G)(3) (emphasis added).

⁹ Entry (Dec. 30, 2020).

through a “cost recovery mechanism[] authorized by the commission for compliance with” Ohio’s now defunct energy efficiency mandates.

A. Customers can only participate in the Economic Load Response program if they agree that any demand response savings from their participation will be used to meet Ohio’s now-defunct energy efficiency mandates.

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.”¹⁰ 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”¹¹ These requirements are found in the Economic Load Response tariffs.¹²

This language shows that 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).¹³ Indeed, based on the tariff language, it would seemingly be impossible for any customer to continue to qualify for the program because there are no longer any mandates.

B. Savings from the Economic Load Response program were used to meet FirstEnergy’s energy efficiency mandates.

FirstEnergy’s own annual reports confirm that the Economic Load Response program was part of its compliance with mandates. For example, in FirstEnergy’s recent report, it stated

¹⁰ See Ohio Edison Co., Rider ELR, Sheet 101; Cleveland Electric Co., Rider ELR, Sheet 101; Toledo Edison, Rider ELR, Sheet 101.

¹¹ *Id.*

¹² *Id.*

¹³ See R.C. 4928.66(G)(3).

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).”¹⁴ FirstEnergy then specifically referenced the Economic Load Response program as part of its demand response mandate compliance efforts: “The Companies’ Demand Reduction Program leveraged demand response resources including ... resources participating on the Companies’ C/I Interruptible Load Reduction Tariff (ELR).”¹⁵

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.

C. If charges to customers for the Economic Load Response program do continue (which they should not), the charges should be nonbypassable.

When Ohio’s energy efficiency mandates were still operative, large nonresidential customers were allowed to opt out of paying for the energy efficiency programs.¹⁶ Under FirstEnergy’s energy efficiency rider tariff, this opt out applies so that these same large nonresidential customers do not pay for the Economic Load Response program.¹⁷ That means the remaining customers pay even more for the subsidy.

Because there are no longer any energy efficiency mandates, the statutory provision allowing customers to opt out of energy efficiency (R.C. 4928.6610 through R.C. 4928.6613) no

¹⁴ 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”).

¹⁵ *Id.*

¹⁶ See R.C. 4928.6610-4928.6613 (providing that only certain large nonresidential customers may opt out, and upon their opt out, they do not pay for the programs).

¹⁷ See Tariff Sheet 115, page 2 (“The DSE1 charges set forth in this Rider are avoidable for ... a customer, as that term is defined in Section 4928.6610, Revised Code, which elects to opt out of the Company’s portfolio plan as that term is defined in Section 4928.6610, Revised Code.”).

longer applies. Thus, customers who previously opted out of paying for energy efficiency programs should no longer be opted out of paying for the Economic Load Response program (if it is allowed to continue).

D. Customers should receive a refund for any charges they paid for the Economic Load Response program since January 1, 2021.

Since January 1, 2021, customers have been paying charges (\$0.000377 per kWh) under FirstEnergy's energy efficiency rider. For the reasons described above, those charges were unlawful. Customers should receive a refund for any amounts they paid after December 31, 2020, which is when charges for energy efficiency were required to end under House Bill 6.

The PUCO should make a clarification in FirstEnergy's tariffs. The tariffs should be changed so that the referenced reconciliation refunds include refunds for a future finding by the PUCO or Supreme Court that the charges are inappropriate.

III. CONCLUSION

Tainted House Bill 6 requires the PUCO to end all charges to customers for compliance with energy efficiency and peak demand reduction mandates. That includes ending the subsidy charges for FirstEnergy's Economic Load Response program, which are charged to customers under FirstEnergy's Demand Side Management and Energy Efficiency Rider.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served on the persons stated below via electronic transmission, this 26th day of March 2021.

/s/ Christopher Healey
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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: Comments Comments (Including Recommendation to Clarify FirstEnergy's Tariffs to Ensure Refundability of Charges) by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.