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 Plans for 2017 to 2019.	))))))	Case No. 16-743-EL-POR

REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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I. INTRODUCTION

The Initial Comments resoundingly demonstrate that FirstEnergy's Economic Load Response ("ELR") Program is not, and never was, part of FirstEnergy's energy efficiency and peak demand reduction portfolio plan ("EE/PDR").[1] The conclusion reached by nearly all commenters is the same result the Public Utilities Commission of Ohio ("Commission") reached in FirstEnergy's most recent electric security plan ("ESP") case, where the Commission repeatedly rejected arguments that the ELR Program was part of FirstEnergy EE/PDR portfolio plan. The Commission ruled there that the ELR Program is an economic development and job retention provision of the ESP that produces reliability benefits, reducing all customers capacity costs, that also produced *ancillary* peak demand reduction benefits.

[1] As used herein, "FirstEnergy" refers collectively to the Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company.

The Office of the Ohio Consumers' Counsel ("OCC") is the only party that disagrees. Importantly, OCC offers nothing for the Commission to reverse its prior findings from FirstEnergy's most recent ESP proceeding. OCC does not challenge that the ELR Program was authorized as a term of the ESP and not as a term of the portfolio plan. OCC does not challenge that the primary purpose of the ELR Program is as an economic development and job retention tool. OCC does not challenge that the ELR Program produces reliability benefits. OCC does not challenge that the ELR Program reduces capacity costs for all customers.

Instead, OCC only focuses on the ancillary peak demand reduction benefits produced by the ELR Program, claiming that these ancillary EE/PDR benefits that were counted towards mandate compliance must mean the ELR Program was part of a portfolio plan. Ironically, however, OCC is also on record, including multiple times in this case, that programs like the ELR Program should not be considered part of EE/PDR portfolio plans.

For example, in its June 14, 2016 Objections in this proceeding, OCC identified a number of programs that were run outside of FirstEnergy's EE/PDR plan and that counted towards statutory EE/PDR compliance.[2] OCC was, correctly, identifying that these programs that produced EE/PDR compliance savings were not part of portfolio plans and should therefore not count towards any shared savings FirstEnergy might receive.[3]

In pre-filed testimony in this case, OCC's witness again asserted that EE/PDR measures undertaken "outside" of the EE/PDR portfolio plan were not part of

[2] OCC Objections at 17-20.

[3] *Id.*

FirstEnergy's EE/PDR portfolio programs and therefore should not count towards FirstEnergy's ability to collect shared savings incentives.[4]

On brief in this case, OCC again recognized that there are many EE/PDR items that are done outside of an EE/PDR portfolio plan and "merely count" towards an electric distribution utility's ("EDU") EE/PDR mandate compliance.[5] OCC's brief specifically called out the mercantile customer self-direct program as one such program that could count towards EE/PDR mandate compliance but was not part of the EE/PDR portfolio plan. Of course, mercantile customers participating in the self-direct program were required to "commit" their EE/PDR savings to an EDU to be counted towards compliance with the EE/PDR statutory mandate.[6] This is the same theory that OCC seeks to attach here in its failed attempt to demonstrate that the ELR Program is part of the portfolio plan.

In fact, OCC has recognized in multiple cases that actions undertaken outside of an EE/PDR portfolio plan can produce EE/PDR savings that are inappropriate to be counted towards EE/PDR mandate compliance and, importantly, were not part of an EE/PDR portfolio plan.[7]

The Commission should deny OCC's application for rehearing and its request to terminate the ELR Program and its funding mechanism, Rider DSE1.

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[4] Direct Testimony of Richard F. Spelman on Behalf of the Office of the Ohio Consumers' Counsel at 42 (Sep. 13, 2016); Supplemental Testimony of Richard F. Spelman on Behalf of the Office of the Ohio Consumers' Counsel at 52 (Jan. 10, 2017).

[5] OCC Post-Hearing Brief at 31-33 (Feb. 21, 2017).

[6] *See In the Matter of a Mercantile Application Pilot Program Regarding Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders*, Case No. 10-834-EL-EEC, Entry at 1-2 (Sep. 15, 2010).

[7] *See In the Matter of the Application of the Dayton Power and Light Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2018 through 2020*, Case Nos. 17-1398-EL-POR, *et al.*, OCC Objections at 8-9 (Aug. 14, 2017); *see also In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency/Peak Demand Reduction Portfolio Plan*, Case No. 16-574-EL-POR, OCC Objections at 22-24 (Aug. 15, 2016).

II. ARGUMENT

As described by multiple parties in their initial comments, the roots of the ELR Program and the subsequent Commission proceedings addressing it predate the statutory mandate for EE/PDR portfolio plans. The value of interruptible programs in general, and the ELR Program specifically, is to promote economic development and system reliability. And as stated by Industrial Energy Users-Ohio ("IEU-Ohio"), FirstEnergy, Nucor Steel Marion, Inc., and Ohio Energy Group ("OEG") in their initial comments, the Commission has already addressed this question and determined that the ELR Program is not a part of FirstEnergy's EE/PDR portfolio plan, but instead is an economic development program.

A. FirstEnergy has a long history of interruptible programs that were authorized for economic development, job retention, and reliability purposes, and which predate the EE/PDR statutory mandate. OCC has not offered anything to demonstrate that the ELR Program is not an economic development and job retention term of an ESP.

FirstEnergy has offered interruptible service to its customers since before the energy efficiency and peak demand reduction statutory mandates were passed by the Ohio legislature.[8] Similar interruptible programs date back even further, at least as far back as the 1970s.[9] The specific ELR Program at issue here was approved in FirstEnergy's first electric security plan, before FirstEnergy had even submitted its first EE/PDR portfolio plan for approval, and was most recently authorized in FirstEnergy's current ESP proceeding.[10]

[8] FirstEnergy Comments at 3.

[9] OEG Comments at 16.

[10] Nucor Steel Comments at 11.

While FirstEnergy was indeed able to use the ELR Program to meet its compliance requirements, the true intention of the program, and of interruptible programs like it that came before, is two-fold: system reliability and economic development.

As FirstEnergy stated in its initial comments, the ELR Program protects the distribution and transmission system by allowing it, American Transmission Systems Incorporated, or PJM Interconnection, LLC ("PJM"), to call emergency curtailment events if an emergency situation exists that threatens the integrity of either system.[11] The value of this ability cannot be overstated. This process was tested during the 2014 polar vortex event; as described by OEG, PJM was able to maintain a reliable grid in part by having FirstEnergy require 33 customers to curtail load during that event, protecting the system and providing reliable service to all customers on the grid.[12]

In addition to its value in protecting system reliability for all customers, the ELR Program also acts as an economic development program. The savings realized by customers participating in the ELR Program allow those customers to reduce their operating costs and bring jobs to the region that could otherwise very well be cost-prohibitive.[13] Not only does the ELR Program provide economic support to the participants, but by allowing FirstEnergy to employ those participants to curtail load when necessary, it helps keep costs down for all customers.

The Commission itself has recognized that programs of the same nature as FirstEnergy's ELR Program have been in place for decades.[14] And once FirstEnergy's

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[11] FirstEnergy Comments at 2.

[12] OEG Comments at 15.

[13] *Id.* at 18-19.

[14] *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143,*

EE/PDR portfolio plan was put into place, FirstEnergy's filings and Commission approval thereof have recognized the distinction between the EE/PDR portfolio plan and the ELR Program.

The ELR Program is an economic development and job retention provision of the ESP, and OCC has not offered anything to demonstrate that the ELR Program was part of the EE/PDR portfolio plan.

But OCC's comments themselves give away the game for OCC. OCC states that FirstEnergy's use of the ELR Program for compliance with R.C. 4928.66 shows that it was "*used* for purposes of compliance."[15] OCC does not provide any language from any Commission order to show that the Commission authorized the ELR Program and its cost recovery mechanism for compliance with the EE/PDR mandates, because there is no such language. Simply because FirstEnergy was able to leverage the demand reduction resources that were a byproduct of the ELR Program to meet their compliance requirements, does not mean that the program was intended, nor that the Commission approved it for, compliance purposes with the energy efficiency mandates.

B. OCC's initial comments contradict its own arguments in this and other cases that there are many programs that produced EE/PR savings that were not part of EE/PDR portfolio plans.

While completely ignoring the basis for which the ELR program was authorized, OCC asserts that the ELR Program was part of the EE/PDR portfolio plan because peak demand savings from ELR participants were committed to FirstEnergy towards mandate compliance. The argument is without merit.

Revised Code, in the Form of an Electric Security Plan, Case Nos. 14-1297-EL-SSO et al., Fifth Entry on Rehearing at 146 (October 12, 2016); *see also* Eighth Entry on Rehearing at 70 (August 16, 2017).

[15] OCC Comments at 5.

Initially, as noted above, OCC is on record in multiple cases, including this case, noting that many items produced EE/PDR savings that were used to achieve compliance, but which were not part of a portfolio plan. This prior position by OCC made sense, because allowing EDUs to count EE/PDR savings actually being achieved reduced the cost for all customers. Most notably because it is directly on point, was OCC's identification on the record in this case of the mercantile self-direct program as one such program that produced EE/PDR savings but which was not part of an EE/PDR portfolio plan.

The EE/PDR mercantile self-direct program allowed a mercantile customer to undertake its own EE/PDR measures, and in exchange for committing such EE/PDR savings to the EDU, the mercantile customer could receive a cash incentive payment or exemption from an EE/PDR cost recovery mechanism.[16] OCC established on the record in this proceeding, that these types of programs, that included EE/PDR savings committed to the EDU, were not part of FirstEnergy's EE/PDR portfolio plan. Although the mercantile self-direct program was directly related to EE/PDR savings, OCC (correctly) identified that it was not part of an EE/PDR portfolio plan. The ELR Program, unlike the mercantile self-direct program, is not primarily related to EE/PDR savings. The ELR Program is even more removed from a portfolio plan than the mercantile self-direct program, which OCC already recognized was not part of a portfolio plan.

OCC has made similar arguments in other EE/PDR portfolio plan cases. OCC argued previously that DP&L's "Non-Programmatic Savings" offering and AEP Ohio's

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[16] OCC Initial Brief at 33 (*citing* OCC Ex. 9B (Spellman Direct) at 55:10-16); *see also In the Matter of a Mercantile Application Pilot Program Regarding Special Arrangements with Electric Utilities and Exemptions from Energy Efficiency and Peak Demand Reduction Riders*, Case No. 10-834-EL-EEC.

"Energy Efficiency Assessment Survey" both operated outside of the respective utility's EE/PDR portfolio plan, and therefore should not be considered in the calculation of that utility's statutory compliance (or for shared savings).[17] In both instances, however, there was no objection to counting the savings from outside the EE/PDR portfolio plan for statutory compliance.

OCC's current comments ignore its own position and the factual record it established in this very proceeding. OCC's current comments fail to demonstrate that the ELR Program was part of FirstEnergy EE/PDR portfolio plan.

C. R.C. 4928.66(G)(3) provides no basis for adjusting the ELR Program or cost-recovery through the DSE1 charge.

R.C. 4928.66(G)(3) provides that upon the EDUs collecting achieved cumulative savings of 17.5%, the EE/PDR portfolio plan cost recovery mechanisms shall terminate, subject to a final reconciliation. FirstEnergy's EE/PDR portfolio plan cost recovery mechanism was the DSE2 charge, which has been terminated in compliance with this section. None of the costs associated with the ELR Program were recovered through the DSE2 charge; half are recovered through the Economic Development Rider and half through the DSE1 charge. Although it shares a similar name, the DSE1 charge has completely segregated costs, and always had its rates separately calculated from the DSE2 charge.

Accordingly, while OCC is correct that the Commission was required to terminate EE/PDR portfolio plan cost recovery under R.C. 4928.66(G)(3), the Commission has done exactly that by terminating the DSE2 charge. Outside of the final cost reconciliation, there

[17] *In re Application of Dayton Power & Light Co.*, Case Nos. 17-1398-EL-POR, *et al.*, OCC Objections at 8-9; *In re Application of Ohio Power*, Case No. 16-574-EL-POR, OCC Objections at 22.

is no further action required by the Commission, or further authority provided to the Commission to act, under R.C. 4928.66(G)(3).

III. CONCLUSION

The ELR Program is not a part of FirstEnergy's EE/PDR portfolio plans and is therefore not subject to the statutory provisions eliminating the EE/PDR portfolio plans and associated cost recovery mechanisms. The history of the ELR Program is as an interruptible service, and the value it provides is to increase economic development, job retention, and system reliability. The Commission has previously confirmed that the ELR Program produces these benefits and was authorized as an economic development and job retention provision of an ESP. The Commission has also previously rejected the argument that the ELR Program is part of FirstEnergy's EE/PDR portfolio plan. There is no basis for the Commission to reverse its own findings. As such, the Commission need take no action under R.C. 4928.66(G)(3) with respect to the ELR Program.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Reply Comments of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for Industrial Energy Users-Ohio, to the following parties of record on this 12th day of April 2021, *via* electronic transmission, hand-delivery or U.S. mail, postage prepaid.

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