

**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 : Case No. 16-743-EL-POR  
EDISON COMPANY FOR APPROVAL OF THEIR :  
ENERGY EFFICIENCY AND PEAK DEMAND :  
REDUCTION PROGRAM PORTFOLIO PLANS FOR :  
2017 THROUGH 2019. :

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**REPLY COMMENTS OF  
THE OHIO ENERGY GROUP**

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The Ohio Energy Group (“OEG”) submits these Reply Comments in response to Comments filed by the Office of the Ohio Consumers’ Counsel (“OCC”).

**I. R.C. 4928.66(G) Is Inapplicable To Rider ELR.**

OCC claims that R.C. 4928.66(G)(3) requires termination of the Economic Load Response Rider (“Rider ELR”) because the load served under that rider was used for compliance with R.C. 4928.66 benchmarks.<sup>1</sup> As OEG already explained in extensive detail in its initial Comments, while it is true that the Rider ELR load was used to help satisfy the R.C. 4928.66 mandates, Rider ELR was not “*authorized by the commission for compliance with [R.C. 4928.66].*” Rather, Rider ELR was authorized for system reliability and economic development purposes through the Electric Security Plan (“ESP”) process pursuant to R.C. 4928.143, providing peak demand reduction savings only as a secondary benefit. Rider ELR is therefore

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<sup>1</sup> OCC Comments at 4-5.

fundamentally different than the slate of EE/PDR portfolio programs that were adopted solely for purposes of compliance with the R.C. 4928.66 benchmarks, as the Commission has repeatedly recognized.<sup>2</sup>

## **II. Rider ELR Remains Effective During The Term Of ESP IV Provided Customers Continue To Comply With The Still Applicable Eligibility Provisions.**

OCC argues that because two of the seven Rider ELR eligibility provisions have been rendered moot by H.B. 6, the entire ELR tariff is now invalid. The first provision requires ELR customers to commit their peak demand reduction capabilities to the Companies for compliance with R.C. 4928.66. The second provision requires that the Commission find that those capabilities will count for compliance.<sup>3</sup>

OCC is not correct. Rider ELR remains valid during the term of ESP IV provided that customers continue to comply with the still applicable eligibility criteria. The Companies' Electric Service Regulations recognize that rates "*may be terminated, amended, supplemented or otherwise changed from time to time.*"<sup>4</sup> And, provided it is consistent with the intent of the parties, the law favors severing invalid or moot provisions, while giving effect to the remaining

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<sup>2</sup> In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 37 and 56; In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (October 12, 2016) at 146; In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO, Eighth Entry on Rehearing (August 16, 2017) at 69-70.

<sup>3</sup> OCC Comments at 4.

<sup>4</sup> Electric Service Regulations at 2 of 21 (General Provisions, Section B - Revisions).

provisions.<sup>5</sup> Rider ELR was approved in ESP IV with the expectation and intent that it will remain valid as long as that ESP is in effect. The Commission should preserve Rider ELR and its important reliability and economic development functions, not grasp for reasons to terminate it. Accordingly, existing ELR customers should be permitted to continue participating in Rider ELR provided they satisfy the still applicable eligibility criteria.

### **III. H.B. 6 Does Not Require A Refund Of Rider ELR Costs.**

OCC argues that the Commission should refund the ELR costs collected since January 1, 2021 because the EE/PDR portfolio programs were terminated December 31, 2020 pursuant to H.B. 6. Again, this request is based upon the false premise that Rider ELR was part of the FirstEnergy EE/PDR portfolio plan terminated by H.B. 6. It was not. Rider ELR is an ESP-established mechanism, not an EE/PDR portfolio program impacted by H.B. 6. Consequently, no refunds or tariff modifications expanding the potential for a refund of ELR costs are warranted in this proceeding.

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<sup>5</sup> R.C. 1.50 Severability of Code section provisions (“*If any provisions of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.*”); Toledo Police Patrolman's Ass'n, Local 10 v. City of Toledo, 94 Ohio App. 3d 734, 740 (1994) (*citing* Huntington & Finke Co. v. Lake Erie Lumber & Supply Co. (1924), 109 Ohio St. 488, 143 N.E. 132, paragraph one of the syllabus) (“*Whether a contract \* \* \* is entire or divisible depends generally upon the intention of the parties, and this must be ascertained by the ordinary rules of construction, considering not only the language of the contract, but also, in cases of uncertainty, the subject-matter, the situation of the parties, and circumstances surrounding the transaction, and the construction placed upon the contract by the parties themselves.*”).

## CONCLUSION

**WHEREFORE**, for the foregoing reasons, the Commission should hold that Rider ELR is not an energy efficiency program established pursuant to the mandates contained in R.C. 4928.66 and therefore it should not be terminated pursuant to R.C. 4928.66(G).

Respectfully submitted,

*/s/ Michael L. Kurtz*

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April 12, 2021

## 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 on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 12<sup>th</sup> day of April 2021 to the following:

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Summary: Comments Ohio Energy Group (OEG) Reply Comments electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group