

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the matter of the Application of Ohio Power Company For an increase in Electric Distribution Rates))))	Case No. 20-0585-EL-AIR
In the Matter of the Application of Ohio Power Company For Tariff Approval)))	Case No. 20-0586-EL-ATA
In the Matter of the Application of Ohio Power Company For Approval to Change Accounting))))	Case No. 20-0587-EL-AAM

**MEMORANDUM CONTRA OHIO MANUFACTURERS’ ASSOCIATION ENERGY
GROUP AND THE KROGER CO.’S JOINT MOTION TO STRIKE OBJECTIONS TO
THE STAFF REPORT BY THE OHIO ENVIRONMENTAL COUNCIL**

I. Introduction

Pursuant to OAC 4901-1-28(B), R.C. 4909.19, and the December 10th, 2020 Attorney Examiner Entry, the Ohio Environmental Council (“OEC”) filed objections to the Staff Report on December 18, 2020. A Joint Motion to Strike Objections to the Staff Report was filed by the Ohio Manufacturers’ Association Energy Group and the Kroger Co. (“OMAEG and Kroger”) on April 22nd, 2021. It argues that OEC’s first, second, and third objections should be stricken. However, OMAEG and Kroger’s motion fails to provide sufficient reason to strike OEC’s objections to the Staff Report, and the Joint Motion should be denied.

II. Law & Argument

The three objections to the Staff Report filed by OEC at issue do not contravene Ohio law and Commission precedent, and are not outside the scope of a distribution rate case. The Joint Motion to Strike OEC’s objections should be denied.

a. OEC’s Objections do not contravene Ohio law or Commission precedent.

Ohio law and Commission precedent is clear that OEC’s objections to the Staff Report meet the requirements for appropriately filed objections. Therefore, the Joint Motion to Strike should be denied. Under OAC 4901-1-28(B), objections “may relate to the findings, conclusions, or recommendations contained in the [Staff] report, or to the failure of the [Staff] report to address one or more specific items.” Further, “[a]ll objections must be specific” and any “objections that fail to meet this requirement may be stricken upon motion of any party....” The Commission has held that “the only requirements as to objections are that they must relate to findings, conclusions or recommendations in a staff report, or must relate to the failure of the staff report to address as items, and must be specific,” and that the “Ohio Supreme Court has made it very clear that the Commission may not vary from these requirements.”¹ The Commission also noted that it “may not consider matters which are ‘not put in issue by the applicant and not related to the rates which are the subject of the application’”.² Finally, the “intrinsic merit, or lack of merit, of any particular objection must be dealt with following the evidentiary hearing on the matter, not by striking it prior to that time.”³

AEP Ohio’s original application included \$40,261,000 in the test year for implementation of a demand side management plan (“DSM”), including program costs as well as an administrative fee to deploy the programs.⁴ The Staff Report recommended removal of the DSM Plan in base rates, noting that despite being “generally supportive of energy efficiency and

¹ *In re: App. of Water and Sewer LLC for an Increase in Rates and Charges*, PUCO Case No. 03-318-WS-AIR, Entry at 2-3 (Nov. 10, 2003) citing *Industrial Energy Consumers v. Pub. Util. Comm. Ohio*, 63 Ohio St.3d 551 (1992).

² *Id.* at 3.

³ *Id.*

⁴ *Direct Testimony of Jon F. Williams* (demand side management) and *Direct Testimony of Jeffrey W. Lehman* (electric transportation program component), Pub. Util. Comm. Ohio, Case No. 20-585-EL-AIR (June 15, 2020).

demand side management programs that furthers state policies as defined in R.C. 4928.02,” it had concerns about the proposal in the current application.⁵ The OEC’s first three objections all relate directly to the Staff Report recommendation to remove the energy efficiency and demand side management programs that were originally part of AEP Ohio’s application:

- **OBJECTION 1:** The Staff Report unreasonably relies upon “legislative uncertainty” as a rationale for elimination of the Demand Side Management Plan.
- **OBJECTION 2:** The Staff Report unreasonably removes the DSM Plan, leaving customers in AEP territory without the benefits of energy efficiency.
- **OBJECTION 3:** The Staff Report fails to recognize the benefits of energy efficiency and transportation electrification for Ohioans by supporting expansion of the DSM Plan.⁶

When a topic has been placed at issue in a rate case, and the objections meet the standards of specificity required by the Ohio Administrative Code, the topic should be heard on the merits at hearing—exactly as it should be here. *See Indus. Energy Consumers v. Pub. Util. Comm. Ohio*, 63 Ohio St.3d 551 (1992) (where a motion to strike was filed related to partial service rates, the Ohio Supreme Court held, it would be “error for the examiner to strike [the] objection” because “partial service rates were placed at issue... and the commission was required to consider the merits of the objection at hearing.”). The Staff Report recommended removal of the Demand Side Management Plan and stated reasons for its recommendations. Our objections specifically object to Staff’s logic.

Further, OMAEG and Kroger’s reliance on the passage of House Bill 6 (HB 6) as a reason for removing efficiency and DSM programs from this docket oversimplifies and misstates what the passage of HB 6 meant. While HB 6 removed the mandatory Energy Efficiency/Peak Demand Reduction (EE/PDR) programs previously in place, it did not remove or ban voluntary

⁵ *Staff Report* at 20-21.

⁶ *Obj. to the Staff Report of Investigation Filed by Ohio Environmental Council*, at 2-5 (Dec. 18, 2020).

efficiency proposals like the program in AEP's original application in this case. In fact, as we noted in our Objections, the legislative history accompanying passage of House Bill 6 demonstrates legislators did not intend to limit voluntary efficiency proposals like AEP's DSM Plan.⁷

The OEC's three objections directly relate to the DSM proposal by AEP Ohio and addressed by Staff in its filed Report in these cases. OMAEG and Kroger misinterpret existing law based upon HB 6's termination of the EE/PDR programs. The elimination of mandatory EE/PDR programs does not equate to a bar on voluntary programs in Ohio. OMAEG and Kroger's Joint Motion to Strike should be denied.

b. The OEC's Objections are appropriate topics for a distribution rate case.

Despite the removal of the mandatory EE/PDR programs in House Bill 6, it is the policy of the state of Ohio to encourage energy efficiency programs,⁸ which PUCO Staff specifically noted in its Staff Report.⁹ Additionally, DSM programs directly impact the rates Ohioans pay for energy in the state, and the EE/PDR programs run over the last decade (2009 - 2019) have saved Ohioans over \$7 billion.¹⁰ As such, DSM programs are an appropriate topic for a distribution rate case.

Further, OMAEG and Kroger's reliance on the Commission's February 24, 2021 Finding and Order in the EE/PDR docket again misses the point that voluntary efficiency programs are a

⁷ See *OEC Obj. to Staff Report*, at 3 (additionally, "Majority Floor Leader Bill Seitz explained, during session on July 23, 2019 when speaking in support of House Bill 6, that "...section 4905.70 of the Ohio Revised Code, which will remain in effect when we pass this bill, will allow utilities to file for voluntary energy efficiency programs at the Public Utilities Commission of Ohio so it is not true that we are prohibiting voluntary energy efficiency programs initiated by the utilities.")

⁸ 4928.02(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses.

⁹ Staff Report at 21.

¹⁰ Midwest Energy Efficiency Alliance, *Energy Efficiency in Ohio Energy & Bill Savings for Customers, 2009-2019*, available at https://www.mwalliance.org/sites/default/files/meea-research/2009-2019_ohio_energy_and_bill_savings_august_2020.pdf

separate and distinct issue from the mandatory EE/PDR programs that were wound down as a result of HB 6's passage. OMAEG and Kroger also point to the announced efficiency stakeholder workshops and other "ample opportunities" as a reason that striking the OEC's objections will not result in prejudice by granting this motion. To the contrary, utility distribution rate cases are rare in Ohio, and the OEC has the right to provide evidence showing that DSM programs do belong in base rates.

IV. Conclusion

For the foregoing reasons, the Joint Motion to Strike Ohio Environmental Council's first three objections should be denied.

Respectfully Submitted,

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April 27, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on April 27, 2021.

/s/Miranda Leppla
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Summary: Memorandum Contra Ohio Manufacturers' Association Energy Group and The Kroger Co's Joint Motion to Strike Objections to the Staff Report electronically filed by Ms. Miranda R Leppla on behalf of Ohio Environmental Council