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

OBJECTIONS BY OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Public Utilities Commission of Ohio ("PUCO") should not allow FirstEnergy to charge consumers $6 million per year to subsidize its Community Connections energy efficiency program after December 31, 2021 because charges after that date are unlawful.

As part of tainted House Bill 6 (133rd Gen. Assembly), the Ohio General Assembly decided that consumers should no longer be required to pay for utility-run energy efficiency programs. Under R.C. 4928.66(G)(3) (enacted under House Bill 6, 133rd General Assembly), once the energy efficiency mandates were met (which they were at the end of 2020), "any electric distribution utility cost recovery mechanism authorized by the commission for compliance with this section *shall terminate*," except as necessary for a final reconciliation (emphasis added).

Subsequently, the Ohio General Assembly passed another bill during the 134th General Assembly, also called House Bill 6. This law required electric distribution utilities like FirstEnergy to revive only certain low-income energy efficiency programs, and only through the end of 2021. This law was codified in R.C. 4928.661.

Consistent with R.C. 4928.661, the PUCO ordered all electric distribution utilities to "file an amended plan," which "shall identify the specific low-income customer programs which are being re-established and the specific level of funding which is available for the programs."[1] Rather than file such an amended plan, FirstEnergy filed a letter on the docket.[2] In its letter, FirstEnergy asserted that its low-income program, called Community Connections, "is not subject to R.C. 4928.661 because it was established in the Companies' current Electric Security Plan ('ESP IV'), not pursuant to R.C. 4928.66."[3] According to FirstEnergy, it will continue the Community Connections program not through December 31, 2021, as required by R.C. 4928.661, but through May 31, 2024, which is the end of ESP IV.[4]

FirstEnergy's interpretation of R.C. 4928.661 is erroneous. The law does not allow FirstEnergy to continue charging consumers for its Community Connections programs simply because that program was part of its ESP IV case. To the contrary, charges for consumers must end after December 31, 2021. Of course, if FirstEnergy wants to continue offering the Community Connections program after that date using its own money, instead of consumers' money, it is free to do so.

I. OBJECTIONS

One of the public relations selling points of tainted House Bill 6 (133rd Gen. Assembly) was that it would save consumers money, in part because it would eliminate charges to consumers for energy efficiency programs. This was to be accomplished through R.C. 4928.66(G)(3), which required the PUCO to terminate "any electric distribution cost recovery

[1] Entry ¶ 11 (June 14, 2021).

[2] Letter of Notification (July 14, 2021) (the "Letter").

[3] Letter at 1.

[4] Letter at 1.

mechanisms authorized by the commission for compliance" with the now defunct energy efficiency mandates.

Consistent with this law, the PUCO found as follows: "The plain language of R.C. 4928.66(G)(3) is clear and unambiguous. Once the cumulative saving cap has been met on December 31, 2020, the EDU's EE/PDR cost recovery riders must 'terminate.'"[5] Subsequently, the General Assembly enacted R.C. 4928.661 (through House Bill 6 (134th Gen. Assembly)). That law revived certain utility low-income programs as follows:

> (A) If an electric distribution utility had a portfolio plan that terminated on December 31, 2020, pursuant to division (F) of section 4928.66 of the Revised Code and included a program that benefited, and was limited to, low-income customers with an annual income at or below two hundred per cent of the federal poverty level, the utility shall re-establish the part of the portfolio plan that included the low-income program. The portfolio plan program re-established under this section shall include the same terms and conditions that the public utilities commission approved for the low-income program as it existed prior to the portfolio plan's termination, including the funding level originally allocated to the program.
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> (B) A portfolio plan program re-established under division (A) of this section shall terminate on December 31, 2021.
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> (C) The commission shall issue an order requiring electric distribution utilities to re-establish the portfolio plan programs described in division (A) of this section and setting forth the process for their re-establishment. The order shall not authorize the implementation of any new cost recovery mechanisms for these programs or extensions of any cost recovery mechanisms that existed before the programs described in division (A) of this section were re-established.

The question is whether R.C. 4928.661 applies to FirstEnergy's low-income Community Connections program. As explained below, it does. Thus, charges to consumers for the program

[5] Finding & Order ¶ 8 (November 18, 2020).

can continue through December 31, 2021, but after that, the law does not allow FirstEnergy to charge consumers for the Community Connections program.

The first condition under R.C. 4928.661 is that FirstEnergy "had a portfolio plan that terminated on December 31, 2020." This condition is met, as FirstEnergy's portfolio plan was approved for 2017 to 2019 on November 21, 2017,[6] and it was extended through December 31, 2020 by R.C. 4928.66(F)(2).[7]

The second condition under R.C. 4928.661 is that FirstEnergy's portfolio plan "included a program that benefited, and was limited to, low-income customers with an annual income at or below two hundred per cent of the federal level." This condition is also met. As FirstEnergy's application in this case shows, the Community Connections program was limited to consumers at or below 200% of the federal poverty level.[8] And as FirstEnergy's filings in this case also make clear, Community Connections was part of FirstEnergy's portfolio plan:

- Page 6 of the application in this portfolio case states that FirstEnergy "request[s] approval of the following residential programs," which includes, on the following page, the Community Connections program.
- Page 11 of the application in this portfolio case states, "the Proposed Plans include the Community Connections sub-program."
- Attachment A to the application in this portfolio case is titled "Energy Efficiency & Peak Demand Reduction Program Portfolio Plans." The Community Connections program is identified as part of this portfolio plan numerous times, including:

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[6] Opinion & Order (November 21, 2017).

[7] R.C. 4928.66(F)(2) ("If an electric distribution utility has a portfolio plan in effect as of October 22, 2019, and that plan expires before December 31, 2020, the commission shall extend the plan through that date. All portfolio plans shall terminate on that date.").

[8] *See* Application, Attachment A at 37 (explaining that low-income consumers may participate in Community Connections if they are eligible for the HWAP, PIPP, or HEAP, all of which require the consumers to be at or below 200% of the federal poverty guidelines). *See* https://development.ohio.gov/is/is_hwap.htm (200% poverty guidelines eligibility for HWAP), https://development.ohio.gov/is/is_heap.htm (175% poverty guidelines eligibility for HEAP), https://development.ohio.gov/is/is_pipp.htm (150% poverty guidelines eligibility for PIPP).

- Page 14: "Continuation and expansion of the Community Connections program"
- Page 20: "the Companies' Community Connections sub-program for low-income customers"
- Page 22: "The Companies' Community Connections sub-program partners with OPAE who uses the funds from this program to leverage other state funded programs through various agencies within the State of Ohio."
- Page 24, in a table titled "Residential Programs": "The low-income program provides weatherization services, home audits and installation of energy efficiency measures for low-income customers under the Community Connections sub-program."
- Page 25, in a table titled "Proposed Residential Portfolio": "Community Connections"
- Page 37-38: referencing and describing Community Connections as part of FirstEnergy's low-income energy efficiency program
- Page 90: providing the implementation schedule for the Community Connections program
- Appendix B-2: providing expected energy savings from the Community Connections program, to be counted toward FirstEnergy's mandates
- Appendix C-3: providing the rebate strategy for the Community Connections program
- Appendix C-4: summarizing the low-income program, including Community Connections
- Appendix C-4, TRC Benefits Table – Residential: including the Community Connections program for purpose of determining whether FirstEnergy's portfolio plan is expected to be cost-effective
- Appendix D: including the Community Connections program in FirstEnergy's market potential study, at pages 28, 89, and each page from 106-143.

- FirstEnergy witness Edward Miller testified that "the Proposed Plans include the Community Connections sub-program."[9]

[9] Direct Testimony of Edward C. Miller on Behalf of Ohio Edison Co., The Cleveland Electric Illuminating Co., The Toledo Edison Co. at 24 (April 15, 2016).

- Exhibit A to the Stipulation and Recommendation (Dec. 8, 2016) (the "Settlement") that FirstEnergy signed in this case includes Community Connections as part of the proposed portfolio.

- On December 21, 2017, FirstEnergy filed what it referred to as its "Stipulated EE/PDR Plan," which includes the Community Connections program.

FirstEnergy misstates the relevant legal standard in its Letter, arguing that Community Connections is not subject to R.C. 4928.661 "because it was established in the Companies' current Electric Security Plan ('ESP IV'), not pursuant to R.C. 4928.66." But that is not the law. The law says nothing about continuing low-income programs that were included in a utility's electric security plan. Instead, it provides that a low-income program shall continue until December 31, 2021 and then terminate thereafter if the utility's "portfolio plan ... included a program that benefited, and was limited to, low-income customers with an annual income at or below two hundred per cent of the federal poverty-level."[10] That standard is met here, as described above. Thus, regardless of whether Community Connections was approved in FirstEnergy's electric security plan case, R.C. 4928.661 prohibits charges to consumers after December 31, 2021.

II. CONCLUSION

FirstEnergy's theory that it can continue charging consumers for its Community Connections program for the duration of its ESP IV finds no basis in R.C. 4928.661. The PUCO should reject FirstEnergy's proposal and rule that any charges to consumers for the program must end after December 31, 2021, consistent with R.C. 4928.661.

[10] R.C. 4928.661.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections was served on the persons stated below via electronic transmission, this 29th day of July 2021.

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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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