THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF OHIO POWER COMPANY FOR APPROVAL OF ITS ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAM PORTFOLIO PLAN FOR 2017 THROUGH 2020.	**CASE NO. 16-574-EL-POR**
IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO, INC. FOR APPROVAL OF ITS 2017-2019 ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAM PORTFOLIO PLAN.	**CASE NO. 16-576-EL-POR**
IN THE MATTER OF THE APPLICATION OF THE 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**
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 2018-2020.	**CASE NO. 17-1398-EL-POR**

FINDING AND ORDER

Entered in the Journal on February 26, 2020

I. SUMMARY

{¶ 1} The Commission finds that a wind-down of the statutorily required energy efficiency programs shall commence on September 30, 2020, and those programs shall terminate on December 31, 2020.

II. DISCUSSION

{¶ 2} Ohio Power Company, d/b/a AEP Ohio (AEP Ohio), Duke Energy Ohio, Inc. (Duke), The Dayton Power and Light Company (DP&L), the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) are electric distribution utilities (EDUs) as defined in R.C. 4928.01(A)(6) and public utilities as defined in R.C. 4905.02 and, as such, are subject to the energy efficiency and peak demand reduction (EE/PDR) requirements under R.C. 4928.64 and 4928.66.

{¶ 3} Ohio Adm.Code Chapter 4901:1-39 provides rules for the Commission's review of each electric utility's EE/PDR program portfolio plan that consists of cost-effective programs to encourage innovation and market access for all customer classes, achieve the statutory benchmarks for peak-demand reduction, and meet or exceed the statutory benchmarks for energy efficiency.

{¶ 4} Am. Sub. House Bill 6 (H.B. 6), which became effective on October 22, 2019, terminates Ohio's annual energy efficiency savings requirements on December 31, 2020, and reduces the total cumulative savings requirement to a statewide collective benchmark of 17.5 percent.

{¶ 5} On October 23, 2019, the Commission solicited comments from interested persons specifically on the two issues of: (1) whether the Commission should terminate the energy efficiency programs once the statutory cap of 17.5 percent has been met; and (2) whether it is appropriate for the EDUs to continue to spend ratepayer provided funds on energy efficiency programs after the statutory cap has been met. Comments would be accepted by the Commission no later than November 25, 2019.

{¶ 6} Comments were timely filed by Staff, AEP-Ohio, Duke, DP&L, FirstEnergy, Ohio Partners for Affordable Energy (OPAE), the Energy Resources Center (ERC), the Environmental Law & Policy Center, Natural Resources Defense Council, and the Ohio Environmental Council (collectively, the Environmental Groups), the Advanced Energy Economy (AEE), MaGrann Associates (MaGrann), The Ohio Hospital Association (OHA), Industrial Energy Users-Ohio (IEU), the Ohio Manufacturers' Association Energy Group

(OMAEG), Midwest Energy Efficiency Alliance (MEEA), Senator Sandra Williams, and the Kroger Company (Kroger). Additionally, comments were timely filed by the following interested stakeholders: the Combined Heat and Power Alliance (Alliance), 2G Energy, Air Conditioning, Heating, and Refrigeration Institute, Ameresco, Inc., Building Performance Association, Capstone Turbine, Cree Lighting, Eaton, ElectraTherm, Energy Management Solutions, Inc., Enginuity Power Systems, GEM Energy, Heat is Power Association, Ingersoll Rand, Integral Power L.L.C., Ironclad Energy Partners, Johns Manville, Midwest Cogeneration Association, National Association of Energy Service Companies, National Electrical Manufacturers Association, Ormat Technologies, Primary Energy, Recleim L.L.C., Schneider Electric, and Uplight.

{¶ 7} On December 2, 2019, Duke filed a request in Case No. 16-576-EL-POR to extend its existing portfolio plan through 2020. In support of its request, Duke states that the Commission granted its previous requests for a waiver and extended the deadline for filing the EE/PDR portfolio plan to September 1, 2019, and then to December 2, 2019. As a result of H.B. 6, and given that Duke's EE/PDR portfolio plan was in effect as of the effective date of H.B. 6 and would be due to expire as of December 31, 2019, Duke requests that the Commission extend the Company's existing EE/PDR portfolio plan through 2020. Duke further recommends, pursuant to R.C. 4928.66(F)(3), that the existing plan's budget be increased in 2020 to $46,895,800.

{¶ 8} Also on December 2, 2019, FirstEnergy provided notice in Case No. 16-743-EL-POR that it would not be filing a new EE/PDR portfolio plan. Specifically, FirstEnergy indicates that the deadline for FirstEnergy to file their next EE/PDR portfolio plan was extended to December 1, 2019. As a result of H.B. 6 providing for the extension of existing EE/PDR portfolio plans and corresponding budgets, FirstEnergy believes that there is no need for FirstEnergy to file new EE/PDR portfolio plans.

{¶ 9} On December 3, 2019, the National Housing Trust (NHT) filed comments on behalf of itself, the Columbus Apartment Association, Community Housing Network, Midwest Affordable Housing Association, and the Ohio Housing Council, as well as a request for leave to file its untimely comments. In support of its request, NHT states that it ran into technical difficulties as a first time e-docket filer with the Commission and that no party should be prejudiced by its comments. NHT further avers that it communicated with Commission Docketing Staff to ensure comments were filed successfully. The Commission finds that NHT's request is reasonable and should be granted. Accordingly, the Commission accepts NHT's comments for consideration.

{¶ 10} On December 3, 2019, the Ohio Energy Project (OEP) filed comments on behalf of its Board of Trustees and staff. On December 5, 2019, OEP filed a request for leave to file its untimely comments. OEP explains that it inadvertently missed the comment deadline. In support of its request, OEP avers that no parties will be adversely affected by submission of its comments, and the Commission's consideration of OEP's comments will result in a more comprehensive record because of OEP's unique perspective on energy efficiency programs. The Commission finds that OEP's request is reasonable and should be granted. Accordingly, the Commission accepts OEP's comments for consideration.

{¶ 11} On December 9, 2019, OCC filed a motion in Case No. 16-743-EL-POR to modify FirstEnergy's 2020 energy efficiency plan by eliminating charges to consumers for shared savings and a request for expedited treatment. OCC argues that shared savings are not part of a utility's energy efficiency portfolio budget under R.C. 4928.66(F)(2). Therefore, OCC posits that the Commission is not required to allow utilities to continue charging customers for shared savings.

{¶ 12} OCC filed another motion on December 9, 2019, in Case No. 16-576-EL-POR to modify Duke's 2020 energy efficiency plan by eliminating shared savings. OCC argues that shared savings are not part of a utility's energy efficiency portfolio budget under R.C. 4928.66(F)(2). Therefore, OCC posits that the Commission is not required to allow utilities to continue charging customers for shared savings. Additionally, OCC argues that if shared savings are removed from Duke's portfolio, the annual budget for 2020 should be limited to

$37,497,474. As a final matter, OCC contends that even if the Commission allows Duke to charge customers for shared savings in 2020, Duke's proposed $46,895,800 budget is inaccurately calculated and should be lowered to $44,216,406.

{¶ 13} Also on December 9, 2019, Willdan Energy Solutions (Willdan) filed comments in Case Nos. 16-574-EL-POR and 16-576-EL-POR.

A. Comments

{¶ 14} The Commission specifically requested comments on two issues: (1) whether the Commission should terminate the energy efficiency programs once the statutory cap of 17.5 percent has been met; and (2) whether it is appropriate for the EDUs to continue to spend ratepayer provided funds on energy efficiency programs after the statutory cap has been met. We have considered all of the recommendations raised in the filed comments and address them below. Any recommendation or comment that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

{¶ 15} The Commission notes that Staff filed a letter in the above-captioned case dockets relating to the changes being introduced by H.B. 6 on November 19, 2019. Staff determined that it would be helpful to provide the Commission with the current level of energy efficiency savings achieved collectively by the EDUs through the end of 2019, including energy savings forecasted to be achieved. Accordingly, Staff asked each of the EDUs to provide data demonstrating savings achieved and forecasted goals through the end of 2019. Using the updated data provided by each of the EDU, Staff prepared a summary, which adjusted the energy efficiency savings, both achieved and forecasted, through the remainder of 2019.

1. WHETHER THE COMMISSION SHOULD TERMINATE THE ENERGY EFFICIENCY PROGRAMS ONCE THE STATUTORY CAP OF 17.5 PERCENT HAS BEEN MET.

{¶ 16} In answering the Commission's first question, AEP Ohio states that the Commission should not terminate the energy efficiency programs once the statutory cap of 17.5 percent has been met because: (1) there is no practical way to determine exactly when the 17.5 percent requirement has been fulfilled, and (2) the statutory framework requires evaluation of collective EDU savings achievement at the end of 2020. Accordingly, AEP Ohio urges the Commission to harmonize all statutory provisions by selecting a reasonable date certain not earlier than the end of 2020, which would then provide a more practical and less confusing wind-down of energy efficiency programs.

{¶ 17} Separate from logistical concerns, AEP Ohio posits that terminating energy efficiency programs upon achieving the 17.5 percent threshold would conflict with multiple provisions of H.B. 6. AEP Ohio argues that measuring collective achievements in 2019 or early 2020 is directly inconsistent with the statutory language in R.C. 4928.66(G)(1), which requires the Commission to determine savings collectively achieved as of December 31, 2020. It is AEP Ohio's understanding that the language suggests that the General Assembly expected the inquiry to be taken up in January 2021, not November 2019. Accordingly, AEP Ohio states that the best way to give full effect to the words of the statute is to adopt a date certain for termination of the programs no earlier than the end of 2020, perhaps with a wind-down period toward the end of 2020. AEP Ohio states that adopting a date certain of September 30, 2020, as a wind-down date would achieve positive practical results for the EDUs and the Commission.

{¶ 18} FirstEnergy and Duke state that once the Commission has determined that the cumulative energy savings collectively achieved by all of the EDUs is at least 17.5 percent, the Commission should take steps to terminate the mandated energy efficiency programs. However, both FirstEnergy and Duke agree that H.B. 6 requires the Commission to make this determination after December 31, 2020. FirstEnergy and Duke explain that R.C. 4928.66(G)(1) mandates that the Commission make the determination as of December 31, 2020, which would include an energy savings baseline based on kilowatt-hours sold in calendar years 2018, 2019, and 2020. Further, FirstEnergy asserts that extending the programs through 2020 provides for a more orderly conclusion to the EDUs' mandated portfolio plans both because the EDUs have already planned to meet the statutory mandate and because concluding upon the 17.5 percent threshold provides less certain timing. FirstEnergy also notes that processes like rebate-eligible major appliance purchases, energy audits, and commercial and industrial customer capital investment decisions involve lag times and that terminating the programs prior to December 31, 2020, would alter expectations and cause market disruptions.

{¶ 19} Similar to the other EDUs, DP&L states that R.C. 4928.66 requires the continuation of energy efficiency programs through 2020 and alleges that the language in R.C. 4928.66(F) expressly states that utility energy efficiency portfolios are to be extended through 2020. Additionally, DP&L states that referring to the collective benchmark of 17.5 percent as a statutory cap is not accurate; rather, the language of R.C. 4928.66(G)(2)(a) and its use of the words "at least" establish 17.5 percent as a floor for statewide energy savings. According to DP&L, the law assumes and requires a continuation of the EDUs' programs under current energy efficiency riders through the end of 2020 if the Commission is to comply with R.C. 4928.66(G)(1). On the same note, DP&L avers that R.C. 4928.66(F) requires the Commission to extend plans through December 31, 2020, if an EDU's plan expires before that date. Lastly, DP&L assesses legislative intent, asserting that, even if the clear language of the statute is disputed, the General Assembly intended to maintain the current programs through December 31, 2020. DP&L cites language in the statute itself, legislative history and structure of other sections of H.B. 6, and the expansion of streamlined opt-out legislation as evidence of the legislature's intent to not disrupt the energy efficiency programs until December 31, 2020. Similarly, Duke posits that the General Assembly could have explicitly provided for an earlier termination, but it did not do so.

{¶ 20} Kroger and OMAEG also believe that energy efficiency programs should not be terminated prior to December 31, 2020. In support of its positions, Kroger states that Commission must apply R.C. 4928.66 as written and cannot terminate the energy efficiency programs before December 31, 2020, regardless of when the minimum threshold cumulative energy savings of 17.5 percent is met. Kroger states that by applying the clear language of R.C. 4928.66(G), the Commission's characterization of the 17.5 percent threshold as a cap is misguided, since the statute requires "at least" 17.5 percent in order to comply, suggesting that the General Assembly invited companies to exceed the minimum threshold. Similarly, OMAEG states that nothing in the statute prevents a utility from achieving more additional energy savings, so the 17.5 percent benchmark delineated by H.B. 6 should be viewed as a statutory floor, not a statutory cap. Kroger posits that whether or not cumulative energy savings collectively reach 17.5 percent should not be considered in determining whether or not to terminate the programs. OMAEG avers that the Ohio Administrative Code supports this position as well, since Ohio Adm.Code 4901:1-39 provides rules "for the implementation of electric utility programs that will * * * meet or exceed the statutory benchmark for energy efficiency." OMAEG further points out that R.C. 4928.66(A)(1) specifically requires an additional one percent of the baseline for energy savings for years 2017 through 2020. Lastly, OMAEG emphasizes that R.C. 4928.66(F)(2) states that the Commission shall extend portfolio plans through December 31, 2020, if such a plan expires prior to that date.

{¶ 21} IEU avers that the Commission can terminate existing EE/PDR riders once the statewide cap has been met. Specifically, IEU states that R.C. 4928.66(G)(3) specifies that the existing EE/PDR riders "shall terminate" once the 17.5 percent cumulative target is met. IEU contends that the cumulative 17.5 percent energy efficiency benchmark will be met, or should be deemed as achieved under R.C. 4928.66(G)(2)(b)(ii), effective December 31, 2019, based on Staff's comments indicating that, through the end of 2019, the EDUs will have reached a cumulate energy efficiency reductions of 17.29 percent. IEU urges the Commission take the following actions: (1) terminate all EE/PDR cost-recovery mechanisms on December 31, 2019, except as necessary for a final reconciliation of the allowable cost of compliance; (2) prohibit the EDUs from entering into any new contracts for services related to their portfolio plans; (3) direct the EDUs to eliminate any internal EE/PDR expenses effective December 31, 2019, except as necessary to conduct a final wind up of the portfolio plans; and (4) direct each EDU to review whether any ongoing contracts can be terminated early to minimize the potential for any future costs under the contracts from being imposed on customers. IEU states that this recommended course of action would not affect compliance actions the EDUs or customers have taken in 2019 and that the EDUs should be able to recover costs associated with 2019 compliance actions and customers should receive rebates/refunds for EE/PDR actions taken and submitted to the EDUs by the end of 2019 through a final reconciliation to occur in 2020. Beyond the final reconciliation in 2020, IEU posits that the law and State policy command that the mandates and associated cost recovery mechanisms cease, and customers be provided the opportunity to look to the competitive marketplace for EE/PDR solutions that meet customers' respective price, terms, conditions, and needs.

{¶ 22} OCC believes that the EDUs should be allowed to continue the energy efficiency programs through the end of 2020. As an initial matter, OCC states that, under R.C. 4928.66, it is unclear whether the Commission has the authority to terminate the programs immediately upon reaching the 17.5 percent threshold. OCC further states that if the 17.5 percent mandate is not reached by the end of 2020, then the Commission should allow the EDUs to continue offering programs and charging customers for those programs after the mandate is met, subject to consumer protection recommendations provided by OCC.

{¶ 23} OPAE and the Environmental Groups view the plain language of R.C. 4928.66 as clearly authorizing and requiring a continuation of the energy efficiency programs through 2020. Specifically, OPAE and the Environmental Groups argue that all portfolio plans are required to continue through 2020 under R.C. 4928.66(F)(2) and that it would be inconsistent with the statute to terminate energy efficiency portfolios prior to December 31, 2020. Additionally, OPAE states that R.C. 4928.66(G)(1)(b) requires the EDUs to meet a 17.5 percent reduction in energy use based on a three-year average covering calendar years 2018, 2019, and 2020, requiring a continuance of the energy efficiency programs through 2020, since the amount of kilowatt-hours sold in 2019 or 2020 is not known as of yet. Lastly, OPAE argues that, had the General Assembly desired the EE/PDR programs to terminate sooner, it would have said so explicitly. Furthermore, OPAE argues that R.C. 4928.66(F)(3) requires the EDUs to honor contracts entered into as part of the EE/PDR portfolios and that short-circuiting the contract that providers hold under the portfolio plans would have a harmful economic impact.

{¶ 24} In addition to the above arguments, AEE is of the belief that H.B. 6 allows the Commission the necessary discretion to determine a process and timing for handling the wind-down or transition of the programs leading up to December 31, 2020. AEE argues that the utilities are likely to need to continue their portfolio plans to meet their peak demand reduction targets under R.C. 4928.66(A)(1)(b), stating that H.B. 6 did not alter the EDUs' peak demand reduction standards. AEE avers that the Commission may continue the EE/PDR portfolio plans though R.C. 4905.70 and 4928.143(B)(2)(i) regardless of the amendments to R.C. 4928.66, stating that nothing in H.B. 6 provides, or even suggests, that the Commission should abandon utility energy efficiency programs altogether. Lastly, AEE posits that the Commission cannot eliminate portfolio plan cost recovery, at least for AEP, consistent with the terms of AEP's current Electric Security Plan (ESP).

{¶ 25} OHA contends that the Commission should continue energy efficiency programs through December 31, 2020, in order to avoid administrative confusion, lost investment, and non-compliance with the timelines set forth in the statute. OHA argues that nothing in the statute requires the Commission to terminate the programs prior to December 31, 2020; rather, the statute contemplates the Commission making its determination post-2020, by February 1, 2021. OHA argues that hospital financial planning is a multi-year process, including planned investments in energy efficiency, and these investments were based on original timelines of the energy efficiency programs approved by the Commission. OHA avers that terminating the energy efficiency programs prior to December 31, 2020, will disrupt planning investment and deny energy savings opportunities for customers.

{¶ 26} Senator Sandra Williams urges the Commission to adopt an approach that does not abruptly terminate the existing programs before a plan can be formed for the next steps. Senator Williams states her support for individual utilities' continuation of voluntary energy efficiency programs appropriately designed to benefit customers, emphasizing the impact of such programs on low-income and small business customers that are least able to afford up-front costs associated with efficiency improvements.

{¶ 27} Several other interested stakeholders filed comments relating to the termination of the energy efficiency programs once the statutory cap of 17.5 percent has been met. The Alliance submitted comments on behalf of certain manufacturers and trade associations with operations, employees, customers, and interests in Ohio. The Alliance states that the Commission should maintain the EDUs' energy efficiency programs for the full duration of 2020. Further, the Alliance contends that eliminating the programs will limit job growth in Ohio and greatly undermine the competitiveness of Ohioan businesses. Similarly, MaGrann, a small business engineering firm supporting energy efficiency construction for builders and developers, supports the continuation of the energy efficiency programs through 2020, as H.B. 6 intended, and states that the Commission cannot determine the cumulative achievement until after 2020 when the program year ends.

{¶ 28} The ERC, an interdisciplinary public service, research, and special projects organization that works to improve energy efficiency, filed comments specifically requesting that the Commission consider that energy efficiency incentives continue to be made available for current, combined heat and power (CHP) projects throughout the full duration of the 2017-2020 energy efficiency program cycle. The ERC believes that, if the

Commission were to eliminate the energy efficiency programs and incentives before the end of the already-approved 2017-2020 plans, such a decision would punish ratepayers who have made a good-faith effort to secure CHP incentives by the end of the 2020 program.

2. WHETHER IT IS APPROPRIATE FOR THE EDUS TO CONTINUE TO SPEND RATEPAYER PROVIDED FUNDS ON ENERGY EFFICIENCY PROGRAMS AFTER THE STATUTORY CAP HAS BEEN MET.

{¶ 29} In answering the Commission's second question, AEP Ohio states that it is appropriate for the EDUs to continue spending ratepayer-provided funds on energy efficiency programs after the statutory cap has been met. In support of its position, AEP Ohio asserts that all customers benefit from mandatory energy efficiency programs, which are cost-effective and return significantly more benefits to customers than costs. According to AEP Ohio, continuance past the 17.5 percent minimum is prudent because it would allow the EDUs to provide sufficient advance notice of program end dates to customers in order to achieve an orderly shutdown at the end of 2020. AEP Ohio proposes a course of action with several components: (1) honoring all current approved energy efficiency projects; (2) ending acceptance of new direct rebate energy efficiency program applications on September 30, 2020; (3) continuing the community assistance program to serve low-income customers and appliance recycling program through the end of 2020; (4) continuing energy efficiency education programs through the end of 2020; and (5) completing an abbreviated EM&V review of energy efficiency programs to be completed by the end of 2020. Additionally, AEP Ohio urges the Commission to establish criteria and processes for the EDUs to continue uninterrupted provision of voluntary programs upon termination of mandatory programs, including a cost recovery mechanism, since the current programs are popular and provide significant benefits to all customers. Finally, as part of the reconciliation and termination of AEP Ohio's underlying EE/PDR Rider, AEP Ohio requests that the Commission ensure the continued cost of non-energy efficiency costs currently recovered by the rider through an appropriate rate mechanism.

{¶ 30} FirstEnergy and Duke also assert that Commission-approved, voluntary energy efficiency and peak demand response programs that an EDU has proposed outside of R.C. 4928.66 should remain available. Duke believes that the EDUs are best positioned to offer these programs to customers, and FirstEnergy states that these voluntary programs have existed for years, are cost-effective, beneficial to customers, and are in furtherance of state policies. On the same note, Duke states that there are other good reasons for the Commission to allow the EDUs' portfolios to continue through 2020: (1) customers have come to rely on the programs; (2) abrupt termination of similar programs have had negative impacts in other jurisdictions; and (3) the programs are cost-effective and benefit ratepayers. Further, Duke asserts that terminating the programs would result in early termination of contracts with vendors, leading to potential financial penalties for Duke and disruptions in the market. Additionally, Duke claims that the EDUs are required to meet the annual 2020 peak load reduction of 0.75 percent, so the portfolio of energy efficiency and demand response programs should continue so it can hit the annual benchmark. Duke argues that the Commission is obligated to extend the EDUs' portfolio plans through December 31, 2020, if any of those plans are set to expire before December 31, 2020, under R.C. 4928.66(F)(2). Lastly, FirstEnergy states that its Commission-approved Demand Side Management and Energy Efficiency Rider (Rider DSE) includes, among other things, recovery of costs incurred due to compliance with R.C. 4928.66. Thus, FirstEnergy argues, in order to fulfill obligations under its most recent ESP, Rider DSE must continue, including the portions of it related to energy efficiency programs.

{¶ 31} DP&L, in agreeance with the other EDUs, states that the energy efficiency programs are cost-effective and benefit the public interest, returning significantly more benefits to customers than costs; however, DP&L believes that the Commission should treat the EDUs individually according to their unique circumstances. For example, DP&L explains that its current portfolio is designed to span 2018 through 2020, and to continue the programs through their previously approved duration would be appropriate. DP&L avers that it would be inappropriate to discontinue a unanimous agreement among the parties.

Additionally, DP&L states that the approval of its portfolio allowed it to rely on the Commission's Order for internal budgeting purposes. Similar to Duke's argument, DP&L claims that it entered into long-term contracts with many of its vendors in reliance upon the approved plan, and that termination of the programs prior to the end of 2020 could have a material impact on both DP&L and those vendors. Further, DP&L avers that it has already committed peak demand savings in reliance upon continuation of at least through 2020, and that premature discontinuation of the programs may require DP&L to purchase replacement capacity to cover the shortfall or incur capacity penalties, ultimately depriving customers of benefits.

{¶ 32} Both Kroger and OMAEG assert that it is appropriate and reasonable for the EDUs to continue to offer cost-effective energy efficiency programs through December 31, 2020, in addition to the statutory requirement to do so. First, Kroger and OMAEG state that giving mercantile customers the choice of whether to participate in and pay for their EDU's energy efficiency program, which is provided in H.B. 6, while terminating the program prior to December 31, 2020, essentially nullifies the choice given to customers. Further, Kroger states that its payment for, and participation in, the energy efficiency programs through 2020 has already been factored into energy management decisions and budgeting considerations. According to Kroger, it would be unfair and unreasonable for the Commission to terminate the programs prior to the statutorily mandated date and could have unintended consequences on Kroger and other customers' business decisions and energy efficiency projects. OMAEG agrees and states that manufacturers and businesses may be relying on the programs in making certain business decisions, and it would be inappropriate for the Commission to terminate the programs prior to December 31, 2020, as termination could disrupt businesses' allocation of internal capital. With respect to PJM, Kroger avers that Ohio customers benefit when demand response is bid into PJM's capacity auction, as it reduces costs associated with operating the demand response program and can suppress capacity prices. Along the same lines, OMAEG states that previously approved energy efficiency programs have PJM capacity commitments to achieve in 2020;

if the programs were to be terminated early, costs to Ohio ratepayers would increase as the EDU would be required to purchase back the forgone energy efficiency capacity in future incremental capacity auctions. Finally, OMAEG asserts that the EDUs are still required by law to achieve an additional 0.75 percent of peak demand reduction in 2020 under R.C. 4928.66(A)(1)(b). OMAEG states that the EDUs have approved or extended program plans through 2020 to achieve the demand reduction requirement that is integrated within their programs.

{¶ 33} OCC believes that energy efficiency programs should be offered on a statewide basis and run by a statewide, non-utility administrator. OCC avers that having utilities themselves run the programs creates a conflict of interest since the EDUs have several incentives to sell more electricity. OCC states that requiring a non-utility third party to administer energy efficiency programs for the entire state would eliminate utilities' bias in administering the programs, allow for economies of scale, allow for consistency across the state, and lower the cost of administering the programs through competitive bidding. OCC proposes several modifications to the customer-funded energy efficiency programs.

{¶ 34} OPAE is of the opinion that the Commission should approve continuation of the energy efficiency programs after the statutory cap has been met because Ohio statute requires the continuance of the portfolios, the programs are beneficial to all customers, and the programs are cost-effective. The Environmental Groups agree with OPAE and also believe that the statutory language supports the continuance of ratepayer provided funds on those programs until the end of 2020. Along the same lines, OHA argues that there is no additional economic harm to ratepayers for continuing to pay for the programs through the end of 2020, given that the Commission determined each of the efficiency portfolios were cost-effective.

{¶ 35} The Alliance states that the Commission should urge the EDUs to spend funds on the energy efficiency programs once the statutory cap is met because these programs boost businesses' economic opportunity by significantly reducing their energy costs, energy use, and emissions. The following organizations strongly support continued ratepayer funding for and continued operation of existing utility energy efficiency programs through the end of 2020: 2G Energy, Air Conditioning, Heating, and Refrigeration Institute, Ameresco, Inc., Building Performance Association, Capstone Turbine, Combined Heat and Power Alliance, Cree Lighting, Eaton. ElectraTherm, Energy Management Solutions, Inc., Enginuity Power Systems, GEM Energy, Heat is Power Association, Ingersoll Rand, Integral Power L.L.C., Ironclad Energy Partners, Johns Manville, Midwest Cogeneration Association, National Association of Energy Service Companies, National Electrical Manufacturers Association, Ormat Technologies, Primary Energy, Recleim L.L.C., Schneider Electric, and Uplight.

{¶ 36} The BICEP Network, a coalition of 55 major employers and manufacturers across the United States, filed comments stating their support for continued ratepayer funding for and continued operation of existing utility energy efficiency programs through the end of 2020. In support of their position, the BICEP Network states that continued operation and funding of programs will help ensure that investments in cost-effective energy resources are pursued and are not suddenly curtailed and will provide confidence to the business community that Ohio is committed to keeping energy costs low through programs that are stable and widely available for all ratepayers. Similarly, Uplight believes that keeping energy efficiency programs in place will promote robust wholesale markets, drive customer-side benefits from grid modernization, implement time-varying rates, and promote affordability for income-qualified customers.

{¶ 37} NHT argues that the statute permits and requires energy efficiency programs to continue through 2020, and therefore, it is appropriate for the EDUs to continue to spend ratepayer provided funds on energy efficiency programs through December 31, 2020. NHT urges the Commission to continue the energy efficiency programs through at least 2020 and further recommends that the Commission continue to explore the opportunities for energy efficiency in Ohio past 2020, with an emphasis on low-income energy efficiency programs. NHT strongly believes that low-income families, particularly those living in affordable multifamily housing, need energy efficiency programs through, at least, the end of 2020 and beyond.

{¶ 38} OEP provides services relating to energy education among students and teachers in all of Ohio's 88 counties. OEP requests that the Commission consider alternatives for the continuation of its e^3/Be E^3 Smart Program, an energy efficiency educational program. Specifically, OEP states that its most urgent concern is the deadline to discontinue the energy efficiency programs after 2020 stating that, while H.B. 6 does not directly impact OEP's natural gas funding partners, the entire curriculum and training for the e^3/Be E^3 Smart Program is based on having both natural gas and electric service and would be difficult to continue without the support of AEP Ohio and DP&L. OEP avers that if OEP does not have funding for 2020-2021, its e^3/Be E^3 Smart Program will be discontinued.

{¶ 39} Willdan is of the belief that terminating the existing energy efficiency programs once they reach the 17.5 statutory cap would create unpredictable and dramatic job loss. Willdan further argues that the intent of H.B. 6 is to create a transitional plan for energy efficiency programs. Ultimately, Willdan believes the Commission should not terminate them abruptly.

III. COMMISSION CONCLUSION

{¶ 40} The Commission finds that Duke and FirstEnergy's respective requests to have the Commission extend their existing portfolio plans through 2020 are well taken and consistent with the plain language of H.B. 6. While H.B.6 provided the Commission with the authority to authorize changes to the plans, we do not find that any changes are necessary at this time and agree with the proposed amended budgets for both of the EDUs in the 2020 calendar year. Accordingly, the existing portfolio plans as approved in Case Nos. 16-576-EL-POR and 16-743-EL-POR should be extended through December 31, 2020, or, as described further below, an earlier date as directed by the Commission. Additionally, we also note that AEP Ohio's existing portfolio plan was approved for 2017 through 2020 in Case No. 16-574-EL-POR, and DP&L's existing portfolio plan was approved for 2018 through 2020 in Case Nos. 17-1398-EL-POR and 17-1399-EL-WVR. *In re Ohio Power Co.*, Case No. 16-574-EL-POR, Opinion and Order (Jan. 18, 2017); *In re Dayton Power & Light Co.*, Case Nos. 17-1398-EL-POR and 17-1399-EL-WVR, Opinion and Order (Dec. 20, 2017).

{¶ 41} As the Supreme Court of Ohio has stated numerous times, the Commission "is a creature of the General Assembly and may exercise no jurisdiction beyond that conferred by statute." *Penn Central Transportation Co. v. Pub. Util. Comm.*, 35 Ohio St.2d 97, 298 N.E.2d 97 (1973). In construing a statute, our paramount concern is legislative intent. In determining legislative intent, the Commission first looks to the plain language in the statute and the purpose to be accomplished. If the meaning of the statute is unambiguous and definite, it must be applied as written, and no further interpretation is necessary. *WorldCom, Inc. v. City of Toledo*, Case Nos. 02-3207-AU-PWC, 02-3210-EL-PWC, Opinion and Order (May 14, 2003), citing *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Ed.*, 74 Ohio St. 543, 660 N.E.2d 463 (1996).

{¶ 42} Upon review, it is clear that the General Assembly envisioned significant adjustments to Ohio's energy efficiency requirements when it passed H.B. 6 into law, and it is our duty, as the administrative agency overseeing the implementation of energy efficiency standards, to comport with, and effectuate, the General Assembly's desired intent. After careful consideration of the language of the statute and the responsive comments submitted by interested stakeholders, we note that there is very little, if any, ambiguity in regard to the ultimate objectives of the General Assembly's passage of this legislation. The amendments in H.B. 6 to both the renewable portfolio standards (RPS) and the energy efficiency provisions demonstrate the intent of the General Assembly to reduce the costs of these provisions to customers in order to facilitate the state's effectiveness in the global economy. R.C. 4928.02(N). Notably, H.B. 6 reduces the RPS standards, excludes certain mercantile customers from the RPS standards, allows all mercantile customer to opt-out of energy efficiency programs and requires that all energy efficiency programs terminate no later than December 31, 2020.

{¶ 43} Therefore, the Commission finds that H.B. 6 and R.C. 4928.66, read *in pari materia*, specify that the termination of all EE/PDR portfolio plans must occur no later than December 31, 2020. R.C. 4928.66(F)(2). We further recognize an abrupt termination of the portfolio plans would be impracticable, as many commenters have concluded. AEP Ohio has aptly demonstrated that an orderly wind-down of the energy efficiency programs should commence, as opposed to an abrupt termination. Accordingly, the wind-down of the energy efficiency programs should begin on September 30, 2020, as proposed by AEP Ohio. We agree with AEP Ohio that this will allow the EDUs to plan and implement an orderly wind-down of the energy efficiency programs, with the ability to ramp down and minimize post-2020 cost reconciliation. Additionally, we agree that this will enable the EDUs to provide timely and effective communications to participating customers and follow through on existing commitments and pending proposals. Finally, as AEP Ohio points out, adopting the proposed wind-down date of September 30, 2020, will give the Commission a reasonable basis to conclude that the 17.5 percent energy savings will be achieved ahead of the December 31, 2020 portfolio plan expiration and the one percent mandate for energy savings in 2020.

{¶ 44} Accordingly, on September 30, 2020, the EDUs shall begin the process of winding down their respective energy efficiency programs. Any application for an energy efficiency program approved prior to September 30, 2020 should be honored. We direct that the EDUs cease accepting applications for direct rebate programs for both residential and non-residential energy efficiency programs on September 30, 2020. As recommended by AEP Ohio, and beginning April 1, 2020, the EDUs should begin notifying customers that applications will no longer be accepted as of September 30, 2020. Applications that have been received by the EDUs during the wind-down period should be reviewed and approved, if appropriate, and energy savings will continue to be realized. However, we believe that programs which do not involve a direct rebate to consumers should continue only until the wind-down date of September 30, 2020 in order to ensure that all activities under these programs are fully completed by December 31, 2020. After the winding down of the energy efficiency programs, it will be necessary for the Commission to conduct the final review contemplated by R.C. 4928.66(G)(1) to ensure that the cumulative statutory cap has been met, as of December 31, 2020.

IV. ORDER

{¶ 45} It is, therefore,

{¶ 46} ORDERED, That NHT and OEP's respective comments be accepted for consideration. It is, further,

{¶ 47} ORDERED, That Duke and FirstEnergy's existing EE/PDR portfolio plans be extended through 2020. It is, further,

{¶ 48} ORDERED, That EDUs begin the process of winding down the energy efficiency programs on September 30, 2020, as directed in Paragraph 44. It is, further,

{¶ 49} ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

COMMISSIONERS:
Approving:
Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GAP/LLA/TS/hac