

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Authority)	
to Establish a Standard Service Offer)	Case No. 23-23-EL-SSO
Pursuant to R.C. 4928.143 in the)	
Form of an Electric Security Plan.)	

In the Matter of the Application of)	
Ohio Power Company for Approval)	Case No. 23-24-EL-AAM
of Certain Accounting Authority.)	

**INITIAL POST-HEARING BRIEF OF THE
ENVIRONMENTAL LAW & POLICY CENTER**

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December 1, 2023

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I. INTRODUCTION

In order to encourage settlements, the Public Utilities Commission of Ohio (Commission) applies a three-part test that essentially asks whether a stipulation meets a public interest standard.¹ The Joint Stipulation and Recommendation (Stipulation) filed in this proceeding meets that test by bringing a new, innovative demand response program to residential customers of Ohio Power Company (AEP Ohio or the Company).

Peak demand events strain utilities' distribution systems and can sometimes result in customer outages, like those that happened during the June 2022 high-heat event in AEP Ohio's service territory. They can also be expensive, since they often require utilities to purchase high-cost electricity to satisfy the peak demand. Demand response programs mitigate peak demand, and thus relieve system strain, improve customer reliability, and decrease customer costs. The Stipulation submitted in this case includes a Smart Thermostat Demand Response Program that will provide AEP Ohio with a tool to reduce peak demand, which will benefit all of its customers, whether or not they participate in the Program. The Environmental Law and Policy Center (ELPC) encourages the Commission to adopt the Smart Thermostat Demand Response Program and the Stipulation as a whole.

II. FACTS

On January 6, 2023, AEP Ohio filed its Application for an Electric Security Plan in this proceeding. AEP Ohio Ex. 1. Among many other things, the Company proposed \$43.4 million annually in energy efficiency programs for all customers. AEP Ohio Ex. 2 at 12. Over the course of several months, parties engaged in discovery and settlement negotiations, eventually filing the

¹ ELPC has objected to the low bar that the Commission has set for stipulations, but in this proceeding the proposed Stipulation easily meets the three-part test that the Commission uses.

Stipulation on September 6, 2023. Joint Ex. 1. In addition to the Company, most intervenors signed the Stipulation, including Commission Staff, consumer advocate Citizens Utility Board (CUB), low-income consumer advocate Ohio Partners for Affordable Energy (OPAE), environmental advocates ELPC and the Ohio Environmental Council (OEC), and competitive supplier organizations Armada Power, Interstate Gas Supply, LLC (IGS), Direct Energy Business LLC and Direct Energy Services, LLC (Direct Energy), and Retail Energy Supply Association (RESA). Joint Ex. 1 at § IV.F (pp. 37-39).

The Stipulation eliminates the majority of the Company’s proposed residential and non-residential energy efficiency programs, leaving an annual budget of \$12 million for low-income residential energy efficiency programs. Joint Ex. 1 at § III.L (pp. 25-27). The Stipulation also proposes a residential Smart Thermostat Demand Response Program with an annual budget of \$5 million, to be recovered through the existing gridSMART Rider. Joint Ex. 1 at § III.I, ¶ 34 (pp. 21-24). The proposed program aims to “reduce peak demand thereby reducing stress on the distribution grid, reducing costs, and enhancing reliability” *Id.* In particular, the program:

- Allows AEP Ohio to call “Demand Response Events” and adjust participants’ home temperatures via their smart thermostats in order “to implement a PJM directive, to protect its distribution system, to limit or avoid distribution outages, to reduce load on localized constrained distribution circuits, and to reduce the coincident peak demand of the distribution network.”
- Identifies limits to and other parameters around the Demand Response Events, specifically: AEP Ohio may adjust participants’ home temperatures via their smart thermostats by no more than 3 degrees for no more than 4 hours during times of peak usage; AEP Ohio may not call more than 16 Demand Response Events in a calendar

year; AEP Ohio may not bid the associated demand response into the PJM market; and customers may override Demand Response Events.

- Provides for initial customer incentives for participation provided the customer enrolls in the program for at least 12 months, specifically: an initial \$75 incentive toward the purchase of a new qualifying smart thermostat; or an initial \$50 incentive for residential customers with existing qualifying smart thermostats.
- Provides for an annual \$25 customer incentive after each program year, as long as the customer does not override least 75% of the Demand Response Events.
- Specifies that any marketing and administration costs associated with the program will come out of the annual \$5 million budget.
- Gives customers flexibility to transfer initial incentives to their CRES providers, and otherwise allows CRES providers to engage with the AEP Ohio program and implement their own competitive demand response and/or energy efficiency programs.
- Establishes a working group in which the Company and other interested parties can “collaborate on ways to maximize the benefits of the program,” including discussion of any modifications required to address challenges associated with CRES provider engagement. *Id.*

III. STANDARD OF REVIEW

In reviewing a proposed stipulation, “[t]he ultimate issue for the Commission’s consideration is whether the agreement . . . is reasonable and should be adopted.” *In re Ohio Power Co. & Columbus S. Power Co. for Authority to Establish a Standard Service Offer*, Case

No. 11-346-EL-SSO, et al., Opinion & Order at 27 (Dec. 14, 2011). In conducting the inquiry, the Commission traditionally relies on a three-part test:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?
Id.

IV. ARGUMENT

A. The Stipulation Is Reasonable and Satisfies the Three-Part Test as Applied to the Proposed Residential Smart Thermostat Demand Response Program.

While the Commission must evaluate the Stipulation as a whole, ELPC focuses here on the proposed Smart Thermostat Demand Response Program, which satisfies each element of the three-part test.

1. The Program Is the Product of Serious Bargaining Among Capable, Knowledgeable Parties.

The entire Stipulation, including the Smart Thermostat Demand Response Program, emerged from a lengthy, intensive negotiation process, open to all parties, all of whom were capable and knowledgeable about the relevant issues. AEP Ohio Ex. 2 at 19; Staff Ex. 1 at 3-4. Only Ohio Consumers' Counsel (OCC) witness Colleen Shutrump argued against approval of the Smart Thermostat Demand Response Program, however she did not dispute that it satisfies this first part of the three-part test. OCC Ex. 5.

2. The Program Benefits Ratepayers and Is in the Public Interest.

By calling Demand Response Events through the Smart Thermostat Demand Response Program, AEP Ohio can reduce peak demand, thereby decreasing stress on its system, and reducing costs and enhancing reliability for all of its customers. Joint Ex. 1 at § III.I, ¶ 34 (pp. 21-22); AEP Ohio Ex. 2 at 23; Staff Ex. 1 at 10. As AEP Ohio witness Jamie Mayhan explained:

“Specifically, these programs [the Smart Thermostat Demand Response Program and the Interruptible Program (IRP)] allow the Company and customers to provide benefits to the grid by allowing the Company to call on customers to curtail load during times of high demand, and usually higher cost, as well as incentivizing peak load shifting in order to put less stress on the distribution grid and avoid potential outages to other customers. These programs can be powerful tools to avoid more widespread customer outages and reduce system costs.” AEP Ohio Ex. 2 at 23. Staff witness Christopher Healey similarly characterized the program as a “tool that can aid in improving grid reliability[] for the benefit of all customers.” Staff Ex. 1 at 10.

In addition to these systemwide benefits for all customers, participating customers receive further benefits, including an initial financial incentive to purchase a smart thermostat or continue using one they already own. Joint Ex. 1 at § III.I, ¶ 34 (pp. 21-23). Through their participation in the demand response component of the Program, customers also receive an annual incentive, as long as they do not override at least 75% of the Demand Response Events, and they save money on their bills due to their reduced usage during these peak demand events. Joint Ex. 1 at § III.I, ¶ 34 (p. 23). In addition, customers benefit from their smart thermostats’ energy-efficiency function, thereby saving more money on their bills.

Participating customers are protected through limits on the number of Demand Response Events AEP Ohio may call, and by how much the Company can adjust participants’ home temperatures via their smart thermostats. Joint Ex. 1 at § III.I, ¶ 34 (pp. 21-23). Specifically, AEP Ohio may call no more than 16 Demand Response Events in a calendar year, and customers may opt out of 25% of them and still receive the \$25 annual incentive. Joint Ex. 1 at III.I, ¶ 34 (pp. 22-23). The Company is limited to increasing or decreasing smart thermostat temperatures

by no more than 3 degrees for no more than 4 hours during a Demand Response Event. Joint Ex. 1 at III.I, ¶ 34 (p. 21).

3. The Program Does Not Violate Any Important Regulatory Principles and Practices; Rather, It Advances Important Regulatory Priorities.

The Stipulation as a whole does not violate any important regulatory principles and practices, and instead supports important principles and practices. AEP Ohio Ex. 24-25; Staff Ex. 1 at 11. In particular, the Smart Thermostat Demand Response Program promotes state policies in Ohio Revised Code Sections 4905.70 and 4928.02. Consistent with Section 4905.70, the Program would “**promote and encourage conservation of energy and a reduction in the growth rate of energy consumption,**” by reducing energy usage during Demand Response Events. Providing incentives for smart thermostats also enables customers to conserve energy at other times, through voluntarily increasing or decreasing their thermostat settings, and thus further reduces energy usage and, in turn, system costs for AEP Ohio and its customers.

In addition, the Program promotes at least the following subsections of Section 4928.02.

- **(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.** By reducing peak demand during Demand Response Events, and enabling the associated reliability and cost benefits, the Program promotes reliable and reasonably priced electric service for all customers.
- **(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure.** The Program is both a new smart grid program (smart

thermostats) and a new demand-side management program (demand response), and it also explicitly enables engagement by CRES providers and allows for competitive offerings. Joint Ex. 1 at § III.I, ¶ 34 (pp. 21-24). In addition, it gives participating customers another tool to use to take advantage of time-differentiated pricing, in that they may use their new thermostats to respond to these rate signals, whether they come from AEP Ohio or a CRES provider.

- **(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.** The Smart Thermostat Demand Response Program recognizes the role that CRES providers may play in the Program and in providing their own demand response offerings. For example, it allows CRES Providers to sign up shopping customers in the Program and allows customers to consent to passing through the initial smart thermostat incentive to their provider, which in turn may enable CRES providers to offer more deeply discounted or free smart thermostats. Joint Ex. 1 at § III.I, ¶ 34 (pp. 22-23); RESA Ex. 1 at 4-5. It also expressly reserves customers’ “ability, on their own or through their agent on their behalf (*e.g.*, CRES) to engage in energy efficiency and peak demand reduction activities and/or participate in PJM demand response programs.” Joint Ex. at § III.I, ¶ 34 (p. 22). Notably, both Direct Energy and RESA filed testimony in support of the Smart Thermostat Demand Response Program. Direct Energy Ex. 1; RESA Ex. 1. RESA witness John Smith discusses “how the program was limited to manage its potential negative impact on customer choice and the competitive marketplace” RESA Ex. 1 at 2. Similarly, Direct Energy witness Travis Kavulla describes the

program as “designed to improve AEP Ohio’s distribution reliability without interfering with competitive products and services offered by CRES providers.”

Direct Energy Ex. 1 at 3.

V. CONCLUSION

The Smart Thermostat Demand Response Program satisfies all three parts of the three-part test and ELPC recommends that the Commission approve it along with the rest of the Stipulation.

Dated: December 1, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Initial Post-Hearing Brief* submitted on behalf of the Environmental Law & Policy Center was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on December 1, 2023. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM

Summary: Brief Initial Post Hearing Brief of the Environmental Law & Policy Center
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