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 Authority to Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan	)))))))	Case No. 23-0301-EL-SSO

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

Robert Kelter (Counsel of Record)
PHV-2685-2024
Senior Attorney
Environmental Law & Policy Center
35 E Wacker Drive, Suite 1600
Chicago, IL 60601
RKelter@elpc.org
(312) 796-3734

Nicholas Wallace
PHV-27212-2024
Associate Attorney
Environmental Law & Policy Center
35 E Wacker Drive, Suite 1600
Chicago, IL 60601
nwallace@elpc.org
(312) 673-6500

Erica McConnell
Ohio Bar No. 102799
Staff Attorney
Environmental Law & Policy Center
21 W. Broad Street, 8th Floor
Columbus, OH 43215
emcconnell@elpc.org
(312) 673-6500

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I. INTRODUCTION

The Electric Security Plan (ESP) application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, FirstEnergy or the Companies) sets forth a framework for provision of generation, transmission and distribution service to the Companies' customers over the next eight years. As part of that broader proposal, the Companies have an energy efficiency and peak demand reduction (EE/PDR) Plan pursuant to the ESP-enabling statute, which explicitly states that a utility may establish "energy efficiency programs" as part of an ESP. R.C. 4928.143(B)(2). The EE/PDR Plan also advances the state policy that "the public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption." R.C. 4905.70.

The Companies' EE/PDR Plan will provide substantial benefits to customers. It helps customers cut their bills by reducing their energy usage. The Plan further reduces costs for everyone by allowing FirstEnergy to avoid investing in costly generation, transmission, and distribution capacity. In total, FirstEnergy estimates that the EE/PDR Plan will provide at least $139 million in net benefits to FirstEnergy's utility system and customers. Companies Ex. 5, Att. ECM-4.

The Environmental Law & Policy Center (ELPC) recognizes that the Commission has scaled back utility-run energy efficiency programs in several recent decisions. Those decisions make clear, however, that the Commission will review energy efficiency proposals on a "case-by-case basis, based upon the evidence in the record of each proceeding." *Columbia Gas of Ohio, Inc.*, Case No. 21-0637-GA-AIR Opinion & Order at 18 (Jan. 26, 2023). The record evidence in *this* proceeding demonstrates that participating and nonparticipating customers alike will benefit from the Companies' energy efficiency and demand response programs. Accordingly, ELPC urges the Commission to approve the EE/PDR Plan as an essential element of FirstEnergy's overall ESP V plan.

II. FACTS

On April 5, 2023, FirstEnergy filed its Application for an Electric Security Plan in this proceeding. As part of that larger plan, FirstEnergy proposes spending $72.1 million annually for four years on energy efficiency and peak demand reduction. Companies Ex. 5 at 26. The Companies' EE/PDR proposal consists of four residential programs and one commercial program, Energy Solutions for Business. Companies Ex. 5 at 4. While ELPC supports the Companies' entire EE/PDR Plan, we focus our argument on the residential programs because of their importance to reducing residential ratepayers' bills. The four residential programs are (1) Residential Rebates, (2) Energy Education, (3) Low Income Energy Efficiency, and (4) Demand Response for Residential. Companies Ex. 5 at 4.

As witness Miller explains, the purpose of the three residential energy efficiency programs is to "(1) address educational barriers; (2) address cost barriers; and (3) tap a variety of delivery channels and vendors." Companies Ex. 5 at 6. To that end, the Residential Rebates and Low Income Energy Efficiency programs help reduce upfront costs of efficiency upgrades for the Companies' customers, while the Energy Education program aims to provide information regarding energy efficiency to customers who may otherwise be unaware of its benefits.

In addition to the energy efficiency programs, FirstEnergy also proposes a Demand Response for Residential program, which encourages customers to reduce their load at times of peak demand. Customers with smart thermostats and other smart appliances can receive incentives for allowing a third-party vendor to directly manage their energy usage during peak demand days. Companies Ex. 5 at 20.

As shown in Table 1 below, the four residential programs collectively provide net benefits of $10 million, adjusted for the high costs of the low income program. Because the primary purposes of the Low Income Energy Efficiency program is to benefit low-income participants by reducing their energy costs, that program has negative net benefits for customers as a whole. Setting aside those negative net benefits, the other three residential programs have net benefits of more than $27 million annually.

Table 1

Program	**TRC Benefits**	**TRC Costs**	**Net Benefits**
Residential Rebates	$90,031,167	$74,956,335	$15,074,832
Energy Education	$18,562,585	$13,930,722	$4,631,863
Low Income Energy Efficiency	$16,476,169	$34,455,928	-$17,979,759
Demand Response for Residential	$17,060,109	$8,861,657	$8,198,452
Residential Total	$142,130,030	$132,204,642	$9,925,388

Companies Ex. 5 at Att. ECM-4

III. ARGUMENT

A. The ESP Statute Supports FirstEnergy's EE/PDR Plan

Section 4928.143 of the Ohio Revised Code controls this Commission's review of an ESP application, stating that the Commission "shall approve or modify and approve an [ESP] application . . . if it finds that the electric security plan so approved . . . is more favorable in the aggregate as compared to the expected results" of a market rate offer (MRO) under Section 4928.142. The Ohio Supreme Court has explained that under the "more favorable in the aggregate" test, the Commission may consider both the quantitative and qualitative benefits of a proposed ESP. *In re Application of Ohio Edison Co.*, 2016-Ohio-3021, ¶¶ 21-23.

The legislature's repeal of mandatory energy efficiency programs previously codified at Section 4928.66 of the Ohio Revised Code should not affect the Commission's decision in this case. That repeal, enacted as part of HB 6, eliminated the mandate that utilities run energy efficiency programs. But it left intact other important statutory provisions relevant to this case. As noted above, the ESP statute itself explicitly authorizes utilities to include "energy efficiency programs" in ESP applications. R.C. 4928.143(B)(2)(i). And that explicit authorization aligns with the legislature's general directive that "the public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption." R.C. 4905.70.

B. FirstEnergy's Energy Efficiency Programs Would Benefit Ratepayers

Energy efficiency benefits ratepayers in two ways: (1) by reducing their energy usage and therefore lowering their bills; and (2) by reducing peak demand and allowing the utility to avoid costly investments in generation capacity and the grid. Companies Ex. 5 at 7-8. The record demonstrates that FirstEnergy's energy efficiency programs would provide both of these benefits to FirstEnergy customers by enabling more customers to switch to energy efficient appliances like induction stoves, heat pumps, and smart thermostats and by encouraging more efficient energy use practices.

As witness Miller testifies, the Residential Rebates targets specific appliances "to maximize the benefits of the program to customers." Companies Ex. 5 at 11. For example, the Companies expect to support the purchase of 2,000 heat pumps and 2,000 smart thermostats annually. Companies Ex. 5 at Att. ECM-3. Energy Education complements Residential Rebates by informing customers about the benefits of energy efficiency and opportunities to take advantage of it, including the Residential Rebates program and incentives through the Inflation

Reduction Act. Companies Ex. 5 at 10. The Low Income Energy Efficiency Program provides comprehensive energy efficiency to income-eligible customers, including home weatherization and direct install of efficient appliances. Companies Ex. 5 at 17-18. The Energy Solutions for Business program provides participating businesses with rebates, energy audits, and incentives for efficiency upgrades of custom equipment. Companies Ex. 5 at 22.

Collectively, the Companies' energy efficiency programs create significant annual energy and demand savings. FirstEnergy witness Miller provided data showing both the energy savings and the demand reduction associated with each of the energy efficiency programs, as reflected in the table below:

Table 2		
	Annual Energy Savings (MWh)	**Annual Demand Savings (MW)**
Residential Rebates	44,296	7.3
Energy Education	32,952	5.8
Low Income Energy Efficiency	5,382	0.8
Energy Solutions for Business	164,769	23.9
Total	247,399	38

Companies Ex. 5 at Att. ECM-2.

Those energy and demand savings translate to net benefits for participating and nonparticipating ratepayers alike. As FirstEnergy witness Miller testifies, the Companies' EE/PDR Plan as a whole will yield $139 million in net benefits under the most conservative benefit-cost test, the Total Resource Cost (TRC) test. Companies Ex. 5, Att. ECM-4. Under that test, Residential Rebates provides net benefits of roughly $15 million while Energy Education provides net benefits of $5.5 million. *Id.* Witness Miller explains that the TRC test "examines the benefits and costs from the combined perspective of the utility system and participants." Companies Ex. 5 at 27. Hence, it compares the costs of the EE/PDR Plan, including the costs of administering the programs, against the benefits to ratepayers of avoided energy, capacity, transmission, and distribution costs, as well as avoided operations and maintenance expenses.

At the same time, the TRC test excludes some important benefits of the EE/PDR program, such as the health and environmental benefits of reduced air pollution from lower energy use. Companies Ex. 5 at 27-28. The TRC therefore constitutes a conservative estimate of the benefits of the EE/PDR program. In addition to the TRC, witness Miller also calculated the program's benefits and costs under the Societal Cost Test (SCT) and the Utility Cost Test (UCT). Companies Ex. 5 at 27-28. The results of all three tests confirm the overall finding that the residential energy efficiency programs have significant net benefits, as show in Table 1 above. As witness Miller testifies, use of these tests is "consistent with past practice in Ohio." Companies Ex. 5 at 27. As discussed further below, no party challenges the results of the Companies' benefit-cost analysis or provides any analysis contradicting those results.

C. Staff Does Not Refute the Savings Benefits the Programs Would Provide Customers

Staff witness Braun supports the Energy Education, Low Income Energy Efficiency, and Demand Response for Residential programs while opposing the Residential Rebates and Energy Solutions for Business programs. But witness Braun's direct testimony does not provide any substantive analysis or justification for Staff's opposition to those programs. Instead, witness Braun testifies that she premises Staff's opposition as "consistent with previous Commission orders (for example, Columbia Gas of Ohio's most recent base distribution rate case) that have provided a framework of what the Commission finds to be appropriate energy efficiency programs at this time." Staff Ex. 3 at 5 (citing *Columbia Gas of Ohio, Inc.*, Case No. 21-0637-GA-AIR Opinion & Order at 56 (Jan. 26, 2023)). She never discusses the merits of the programs, FirstEnergy's savings analysis, or anything else about efficiency.

ELPC believes Ms. Braun misstates the Commission's finding in Columbia Gas, which was based on a Stipulation where Columbia proposed a strong efficiency program that it withdrew. The Commission's order in that case does not set forth a general framework for the Commission's approval of energy efficiency programs. Nor does the order suggest that utility-run rebate programs are presumptively prohibited in Ohio. Instead, the *Columbia Gas* decision declares that the Commission will consider energy efficiency programs on a "case-by-case basis, based upon the evidence in the record of each proceeding." *Columbia Gas of Ohio, Inc.*, Opinion & Order at 18. As discussed above, the record in this case contains substantial evidence demonstrating that the Companies' energy efficiency programs will benefit ratepayers, and when the Commission applies the standards of review for cases that don't settle, it should approve the FirstEnergy program.

D. CRES Providers and the Retail Market Will Not Provide the Benefits of the Energy Efficiency Programs

Several parties, including OCC and RESA, recognize the benefits of energy efficiency but contend that the EE/PDR Plan is unnecessary because the private market will provide those benefits in the absence of the Companies' programs. The record does not support that conclusion. Instead, the evidence shows that the competitive market has failed to furnish energy efficiency programs similar to what the Companies propose, despite the fact that the Companies stopped providing such programs more than three years ago.

To begin, the record does not support a finding that competitive retail electric service (CRES) providers currently offer or have any plans to offer energy efficiency programs that generate savings and benefits similar to FirstEnergy's Plan. While various witnesses testified that FirstEnergy's energy efficiency offerings are "competitive products," those witnesses could not identify CRES providers in the FirstEnergy service area that offer equivalent programs. The

Retail Electricity Supply Association (RESA) provided two witnesses, John Smith and Matthew White, both of whom testified that FirstEnergy's residential EE/PDR programs would push CRES providers out of the market. RESA/IGS Ex. 1 at 11; RESA Ex. 16 at 6-7. But on cross, neither witness White nor witness Smith could provide a single concrete example of a CRES provider currently offering anything remotely equivalent to FirstEnergy's proposed residential EE/PDR programs. Tr. at 1828:13-1829:19; Tr. at 2163:20-2164:16. The witnesses' inability to provide such examples is particularly striking given that FirstEnergy has not offered any residential energy efficiency or demand response programs to non-low-income customers since the Company ended its mandatory programs over three years ago.

The record likewise does not support OCC's position that retailers like Home Depot provide sufficient access to energy efficient products to realize comparable benefits in the absence of the Companies' rebate programs. OCC witness Shutrump contends that the Companies' Residential Rebates program is unnecessary because "consumers demand energy efficient products and services even when no rebates are available from their utility." OCC Ex. 4 at 7. Yet witness Shutrump provides no persuasive evidence to support that conclusory statement. Instead, she cites data from Home Depot showing that, on a national level, sales of energy efficient appliances helped consumers save $2.8 billion on their utility bills. OCC Ex. 4 at 7. But on cross, witness Shutrump admitted that the Home Depot data on which she relies is not specific to Ohio and seemingly includes sales *enabled by utility-run rebate programs in other states.* Tr. 1720:11-15. Moreover, Witness Shutrump admitted that she had not conducted any analysis to determine whether sales of energy efficient appliances in Ohio have declined in the absence of the utility rebate programs. Tr. 1719:14-20.

E. Ratepayers Will Not Realize the Benefits of Residential Demand Response Without the Companies' Program

Demand Response complements energy efficiency by allowing deeper reductions in peak demand. The Companies' Demand Response for Residential program has two components—Behavioral Demand Response and Load Control Demand Response. As witness Miller explains, Behavioral Demand Response provides notifications to customers with smart meters to encourage them to lower usage at times when demand is especially high. Companies Ex. 5 at 20. The Load Control Demand Response Program gives direct control over participating customers' smart thermostat to an outside vendor, who can reduce those customers' load at critical times. Customers receive incentives for enrolling in and participating in the Load Control program. *Id.*

Witness Miller provides data demonstrating that Demand Response is a particularly efficient method of reducing strain on the grid at times of peak demand, allowing FirstEnergy to avoid otherwise necessary investments in generation, transmission, and distribution capacity. Companies Ex. 5 at Att. ECM-2. In total, Mr. Miller estimates that the Demand Response for Residential Program will generate 29.7 MW of demand savings annually. *Id*. The program will have a benefit-cost ratio of nearly two-to-one, with annual costs of $8.8 million yielding benefits of $17 million. *Id.* at Att. ECM-4.

The Companies are uniquely positioned to provide the benefits of residential Demand Response. In fact, RESA witness White acknowledged on cross that CRES providers face a "structural issue" in providing Demand Response to residential customers. Tr. 1801:12-18. Neither witness White nor any other witness could identify any CRES provider that currently operates a residential demand response program in Ohio. RESA witness Smith states in direct testimony that Vistra offers Demand Response, but later clarifies that it offers that program *in Texas*, not Ohio. RESA Ex. 16 at 9-10. On cross, witness Smith admitted that Vistra does not offer Ohio customers any of the programs that are a part of FirstEnergy's EE/PDR Plan. Tr. at 2164:10-11. In the final analysis, ratepayers will have no opportunity to participate in demand response programs and FirstEnergy customers will not realize the significant benefits of Demand Response in the absence of the EE/PDR Plan.[1]

IV. CONCLUSION

FirstEnergy's EE/PDR Plan will provide significant benefits to FirstEnergy customers by allowing them to reduce energy use and by enabling the company to avoid investments in generating capacity and grid infrastructure. The only quantitative analysis on the record in this proceeding shows net benefits of at least $139 million for the EE/PDR Plan as a whole. Those uncontested benefits are an important piece of the Company's overall ESP proposal, and sufficient to support a finding that the ESP as a whole is more favorable in the aggregate than an alternative MRO.

Staff's testimony bases its opposition to the Residential Rebate part of FirstEnergy's Plan solely on the direction it believes the Commission wants to take, without addressing the merits or value to customers FirstEnergy claims the programs will deliver. Similarly, RESA's witnesses provide no evidence that competitive suppliers offer any programs or savings similar to the FirstEnergy programs. And OCC provides no evidence that customers make energy efficiency investments on their own, absent the utility run programs.

In simple terms, FirstEnergy makes a strong case that its efficiency and demand response programs save customers money. The parties opposing the programs fail to refute that evidence

[1] Staff supports the Demand Response program. Staff Ex. 3 at 3. OCC witness Shutrump stated that her testimony would address OCC's position on Demand Response, OCC Ex. 4 at 3, but she never provides any further explanation of its position. Hence, RESA is the only party that has stated a substantive opposition to the Demand Response program.

in a meaningful way. FirstEnergy's efficiency and demand response programs will benefit consumers and the Commission should approve the ESP, including the entirety of the Companies' EE/PDR Plan.

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Respectfully submitted,

/s/ Robert Kelter

Robert Kelter (Counsel of Record)
PHV-2685-2024
Senior Attorney
Environmental Law & Policy Center
35 E Wacker Drive, Suite 1600
Chicago, IL 60601
RKelter@elpc.org
(312) 796-3734

Nicholas Wallace
PHV-27212-2024
Associate Attorney
Environmental Law & Policy Center
35 E Wacker Drive, Suite 1600
Chicago, IL 60601
nwallace@elpc.org
(312) 673-6500

Erica McConnell
Ohio Bar No. 102799
Staff Attorney
Environmental Law & Policy Center
21 W. Broad Street, 8th Floor
Columbus, OH 43215
emcconnell@elpc.org
(312) 673-6500

Counsel for the Environmental Law & Policy Center

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 January 19, 2024. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

Respectfully submitted,

/s/ Robert Kelter
Robert Kelter (Counsel of Record)
PHV-2685-2024
Senior Attorney
Environmental Law & Policy Center
35 E Wacker Drive, Suite 1600
Chicago, IL 60601
RKelter@elpc.org
(312) 796-3734

Email Service List:

JLang@Calfee.com
Alana.Noward@occ.ohio.gov
bryce.mckenney@nrg.com
thomas.lindgren@ohioago.gov
amy.botschnerobrien@ohioago.gov
Rhiannon.Howard@OhioAGO.gov
mkurtz@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
rdove@keglerbrown.com
nbobb@keglerbrown.com
Michael.Nugent@igs.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
slee@spilmanlaw.com
todd.schafer@outlook.com
mjsettineri@vorys.com
glpetrucci@vorys.com
aasanyal@vorys.com
dparram@brickergraydon.com
rmains@brickergraydon.com
dromig@nationwideenergypartners.com
brian.gibbs@nationwideenergypartners.com
paul@carpenterlipps.com
mpritchard@mcneeslaw.com
awalke@mcneeslaw.com
tdougherty@theOEC.org
katherine.hollingsworth@lasclev.org
sjagers@ohiopovertylaw.org
mwalters@proseniors.org
dmanor@ablelaw.org
rnader@communitylegalaid.org
bknipe@firstenergycorp.com
cwatchorn@firstenergycorp.com
talexander@beneschlaw.com
mkeaney@beneschlaw.com
khehmeyer@beneschlaw.com
dproano@bakerlaw.com
ahaque@bakerlaw.com
eprouty@bakerlaw.com
pwillison@bakerlaw.com
dstinson@brickergraydon.com
gkrassen@nopec.org

meissnerjoseph@yahoo.com
trhayslaw@gmail.com
leslie.kovacik@toledo.oh.gov
bojko@carpenterlipps.com
easley@carpenterlipps.com
mkl@smxblaw.com
jrb@smxblaw.com
little@litohio.com
hogan@litohio.com
ktreadway@oneenergyllc.com
jdunn@oneenergyllc.com
trent@hubaydougherty.com
emcconnell@elpc.org
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
kshimp@dickinsonwright.com
eowoyt@vorys.com
whitt@whitt-sturtevant.com
ctavenor@theOEC.org

Becky.Merola@calpinesolutions.com
jlaskey@norris-law.com
knordstrom@theOEC.org
jpetroff@lawforlabor.com
jmcinerney@lawforlabor.com
junger@spilmanlaw.com
Joe.Oliker@igs.com
MBarbara@Calfee.com
tlong@mcneeslaw.com
RKelter@elpc.org
nwallace@elpc.org
cadieux@carpenterlipps.com
John.Finnigan@occ.ohio.gov
Robert.Eubanks@occ.ohio.gov
William.Michael@occ.ohio.gov
Alex.Hickey@occ.ohio.gov
Thomas.Zuehlke@occ.ohio.gov
trhayslaw@gmail.com
bojko@carpenterlipps.com
easley@carpenterlipps.com
MBarbara@Calfee.com